

WSR 08-15-106
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
(Division of Alcohol and Substance Abuse)

[Filed July 18, 2008, 10:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-24-004.

Title of Rule and Other Identifying Information: The department is amending certification requirements for chemical dependency service providers.

Proposed amended rules in chapter 388-805 WAC:

Amending WAC 388-805-005 What definitions are important throughout this chapter?, 388-805-010 What chemical dependency services are certified by the department?, 388-805-030 What are the requirements for opiate substitution treatment program certification?, 388-805-100 What do I need to do to maintain agency certification?, 388-805-110 What do I do to relocate or remodel a facility?, 388-805-130 How does the department suspend or revoke certification?, 388-805-145 What are the key responsibilities required of an agency administrator?, 388-805-150 What must be included in an agency administrative manual?, 388-805-205 What are agency personnel file requirements?, 388-805-300 What must be included in the agency clinical manual?, 388-805-310 What are the requirements for chemical dependency assessments?, 388-805-315 What are the requirements for treatment, continuing care, transfer, and discharge plans?, 388-805-620 What are the requirements for outpatient services?, 388-805-625 What are the requirements for outpatient services for persons subject to RCW 46.61.5056?, 388-805-710 What are the requirements for opiate substitution medical management?, 388-805-715 What are the requirements for opiate substitution medication management? and 388-805-810 What are the requirements for DUI assessment providers?; repealing WAC 388-805-815 What are the requirements for DUI assessment services?; and new WAC 388-805-855 What are the requirements for screening and brief intervention services?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on September 23, 2008, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 24, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 23, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by September 16, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is:

- Amending the sections that refer to definitions, certified services, opiate treatment program certification, maintaining agency certification, agency clinical manual, outpatient services, opiate substitution medical management, and DUI assessment providers;
- Eliminating WAC 388-805-815 DUI assessment services requirements;
- Adding WAC 388-805-850 Screening and brief intervention services; and
- Adding new language as appropriate.

Reasons Supporting Proposal: DASA is proposing amendments to chapter 388-805 WAC. The proposed new rule amendment revisions will include:

1. Adding and expanding definitions in WAC 388-805-005 for "Critical incidents" and "Screening and brief intervention."
2. Changing the definition in WAC 388-805-005 to "community relations plan and opiate substitution treatment program" to reflect the federal rule and the guidelines for accreditation reference changes.
3. Adding language for a new service in WAC 388-805-010 for "Screening and brief intervention."
4. Correcting a typo in WAC 388-805-030 from SAMSHA to SAMHSA.
5. Further defining the legislative authority in WAC 388-805-030 to include "county, city, or tribal," so it is congruent with the rest of the chapter.
6. Expanding the requirements to maintain agency certification in WAC 388-805-100 to include "transfer summary," references for "transfer summary," and reformatting of the section.
7. Correcting the references for a "sample floor plan" in WAC 388-805-110.
8. Reformatting WAC 388-805-145, "key responsibilities required of an agency administrator."
9. Adding language in WAC 388-805-150 requiring an opiate substitution treatment program to report the death of a patient to the department.
10. Reformatting in WAC 388-805-205, "Agency personnel file requirements."
11. Adding new language in WAC 388-805-300, "Agency clinical manual," that requires that clinical supervisors have documentation of their competency, to document record reviews, allows record reviews to be done semiannually instead of quarterly, and to ensure continued competency of each chemical dependency professional (CDP).
12. Adding language in WAC 388-805-310, "Requirements for chemical dependency assessments," to include evaluation of parental and sibling alcohol and other drug use in youth assessments, moves WAC 388-805-815 requirements to WAC 388-805-310, and adds new language for persons charged with a violation under RCW 46.61.502 or 46.61.504. These requirements for persons with an initial finding other than substance dependence would include:
 - a. A criminal case history and police report or documentation of efforts to include this information.

b. Results of a urinalysis or drug test at the time of the assessment or documentation of efforts to include this information.

13. Removing the word "transfer" from WAC 388-805-315.

14. Adding language to WAC 388-805-620, requirements for outpatient services, to clarify requirements. An assessment is to be conducted prior to admission and the development [of] an individualized treatment plan prior to the patient's participation in treatment.

15. Removing the word "intensive" from WAC 388-805-625.

16. Adding language to WAC 388-805-710 to reflect the federal requirements in 42 C.F.R. Part 8.12 regarding periodic assessment.

17. Eliminating language from WAC 388-805-715 to reflect the federal notice regarding the use of levomethadyl acetate (LAAM).

18. Adding language to WAC 388-805-810 requirements for DUI assessment providers from WAC 388-805-815 to indicate that programs must limit persons who have been arrested under chapter 46.61 RCW.

19. Eliminating WAC 388-805-815 and moving content to WAC 388-805-310 and 388-805-810.

20. Adding a new WAC 388-805-855 for the requirements for "Screening and brief intervention services."

Statutory Authority for Adoption: RCW 70.96A.090 and 42 C.F.R. Part 8.

Statute Being Implemented: RCW 70.96A.090 and 42 C.F.R. Part 8.

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

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

Name of Agency Personnel Responsible for Drafting and Implementation: Deb Cummins, Division of Alcohol and Substance Abuse, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-3716, 1-877-301-4557 toll free; and Enforcement: Dennis Malmer, Division of Alcohol and Substance Abuse, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-3747, 1-877-301-4557 toll free.

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

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The department of social and health services, division of alcohol and substance abuse is proposing amendments to chapter 388-805 WAC, Certification requirements for chemical dependency service providers.

The purpose of this chapter is to describe the standards and processes necessary for certifying chemical dependency treatment service providers.

The proposed amendments to chapter 388-805 WAC include:

- Language to add and expand definitions in WAC 388-805-005 for critical incident, and screening and brief intervention.
- Language to change definitions in WAC 388-805-005 to community relations plan and opiate substitution

treatment program to reflect federal rule and guideline reference changes.

- Language to add a new service in WAC 388-805-010 for screening and brief intervention.
- A correction in WAC 388-805-030 from SAMSHA to SAMHSA.
- Language to define legislative authority in WAC 388-805-030 to include county, city, and tribal to be congruent with the rest of the chapter.
- Language to expand the requirements to maintain agency certification in WAC 388-805-100 to include transfer summary, references for transfer summary, and reformat the section.
- A correction in WAC 388-805-110 to provide correct references for sample floor plan information.
- Reformatting WAC 388-805-145, key responsibilities required of an agency administrator.
- Language added to WAC 388-805-150 requiring opiate substitution treatment programs to report all patient deaths.
- Reformatting WAC 388-805-205, agency personnel file requirements.
- Language added to WAC 388-805-300, agency clinical manual, to require clinical supervisors to have documentation of competency, document record reviews, reduce record reviews from quarterly to semiannually, and to ensure continued competency of each chemical dependency professional (CDP).
- Language added to WAC 388-805-310 requirements for chemical dependency assessments to include: Evaluation of parental and sibling alcohol and other drug use in youth assessments, move WAC 388-805-815 requirements to WAC 388-805-310, and new language for persons charged with a violation under RCW 46.61.502 or 46.61.504. These requirements for persons with an initial find other than substance dependence would include:
 - o A criminal case history and police report or documentation of efforts to include this information.
 - o Results of a urinalysis or drug test at the time of the assessment or documentation of efforts to include this information.
- Language added to WAC 388-805-620 requirements of outpatient services to clarify requirements for conducting an assessment prior to admission, and developing an individualized treatment plan prior to participation in treatment.
- A proposal to eliminate language from WAC 388-805-625.
- Language added to WAC 388-805-710 to reflect the federal requirements in 42 C.F.R. Part 8.12 regarding periodic assessment.
- A proposal to eliminate language from WAC 388-805-715 to reflect the federal notice regarding the use of levomethadyl acetate (LAAM).
- Language added to WAC 388-805-810 requirements for DUI assessment providers from WAC 388-805-815 to indicate that programs must limit persons who have been arrested under chapter 46.61 RCW.
- A proposal to repeal WAC 388-805-815 and moving content to WAC 388-805-310 and 388-805-810.

- A new WAC 388-805-855 proposed for the requirements of screening and brief intervention services.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS) - DETERMINATION OF NEED: Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those business entities that employ fifty or fewer people and are independently owned and operated.

These proposed rules impact chemical dependency service providers. These businesses fall under the North American Industry Classification System (NAICS) codes:

- 622210 - psychiatric and substance abuse hospitals.
- 623220 - residential substance abuse facilities.
- 621420 - outpatient substance abuse centers.

Preparation of an SBEIS is required when a proposed rule has the potential of placing a disproportionate economic impact on small businesses. The statute outlines information that must be included in a SBEIS.

INVOLVEMENT OF SMALL BUSINESSES: Stakeholders were selected from a variety of chemical dependency treatment programs, CDP associations, and county alcohol and drug coordinators across the state. Stakeholders participated in the development and feedback about the proposed rules. The stakeholder group had an opportunity to analyze the rules and respond to any potential costs associated with each proposed rule.

DASA staff and stakeholders determined that less than minor costs would be associated with the proposed rules.

COST OF COMPLIANCE: Under chapter 19.85 RCW, DASA has considered annual costs to small businesses that are \$50 or more per client. The costs for DUI assessment requirements would only affect three hundred ninety-two providers who are certified to provide DUI assessment. Costs for annual medical evaluation update and reporting of medication errors in an outpatient setting would affect eighteen opiate substitution treatment programs. All other proposed rule changes would affect five hundred eighty providers.

GENERAL COSTS: DASA analysis revealed that there are costs imposed by the proposed amendments.

A. The first proposed revisions to chapter 388-805 WAC include changes in the requirements for DUI assessments (WAC 388-805-310). The proposed language is as follows:

(iii) If the initial finding is other than substance dependence, the assessment must also include:

(A) **Police report**, or documentation of efforts to include this information;

(B) Court originated **criminal case history** or documentation of efforts to include this information; and

(C) Results of a **urinalysis or drug testing** obtained at the time of the assessment or documentation of efforts to include this information.

Police Report: The police report provides information about the arrest incident itself and often includes descriptions from the officers and other information that the offender can't remember or would omit from the information provided to the assessor.

There are several points to consider:

- Police reports are often not made available by local jurisdictions due to delays in completion or other reasons.
- The reports are not available electronically on the court data system available to providers. Police reports are only available in hard copy from the patient, their attorney, or the courts.
- Five counties already require providers to obtain and review a copy of the police report and criminal history.

Costs of obtaining the police report:

- In some jurisdictions, the police report is provided to the client by their attorney and brought to the session by the client. In these situations, there are no additional costs to the provider.
- In King County and many other jurisdictions, the court has offered to provide the police report upon receipt of a faxed or mailed Release of Information (ROI). In these cases there is some cost for handling, faxing, mailing, and filing of the report when it arrives via fax or mail. An estimated fifteen minutes of staff time to fax the ROI and process a faxed or mailed report and salary of \$20 per hour, the cost will likely not exceed \$5. We would anticipate that staff would request both criminal history and police report at the same time.

Criminal History: Self reported legal history for DUI offenders is frequently incomplete. A court generated criminal history that includes both arrests and convictions reveal a much higher degree of alcohol and other drug offenses. The criminal history may come in several forms.

- The Defendant Case History (DCH) is a fairly readable document that provides pertinent criminal history. It can be an excellent additional source of information for alcohol and other drug related arrests and convictions that are not available from the driver's abstract. The administrative office of the courts has denied chemical dependency provider access to an online DCH due to security concerns, instead, promising to consider access when the new court information system is released. However, this new system is over three years behind schedule and no release date has been announced. The client's attorney does have access to hardcopy or electronic versions of the DCH. A copy of the DCH can be obtained via fax or written request to the court, via the defense attorney, or hand-carried by the client to the visit. Costs of obtaining the DCH are similar to the police report (\$5 for fifteen minutes of staff time phoning, faxing, or mailing).
- The JIS system is the electronic court system currently available to providers. It is an archaic system that some providers find intimidating and others use with little difficulty. The initial fee for the JIS system is waived for certified providers and the cost per client will vary from **65 cents for offenders with few prior offenses to \$5 or more** for more extensive criminal histories.
- Verbal summations are available in some courts to provide a telephone summary of the patient's alcohol and drug related criminal history. The summation must come from court personnel, not the defense bar. The

cost of a verbal summation is the time needed to connect with the probation officer or other court staff and then to listen and write down the summary. We estimate that obtaining a verbal summation will still take an average of fifteen minutes to obtain, with an estimated \$5 per summation for the CDP's time.

Urinalysis/Drug testing: Urinalysis is the drug testing option most likely to be used due to the relatively low cost and dependability. While the presence of drugs other than [than] alcohol at the time of assessment do not on their own constitute grounds for a diagnosis of abuse or dependence, they may compliment other collateral information and observations available during and after the assessment. Other testing methods may ultimately prove to be as inexpensive and reliable.

Cost estimates must not only include the lab analysis fee, but also must consider the staff time involved in handling the sample. Many programs require observed samples to get around the various products and techniques used by offenders to conceal drug use. DASA is using \$25 as an anticipated cost for drug testing at assessment.

Computing the added costs of the DUI assessment changes in the WAC revision:

Steps in finding the # of assessments affected by the new requirements	Additional detail	Calculations associated with estimates
2007 DUI citations reported by AOC case-loads of the courts report		41,569
Subtract DUI citations in counties known to already require revised DUI assessment materials	King: 8,907 Snohomish: 5,317 Spokane: 2,581 Whatcom: 1,353 Kitsap: 1,479 Total: 19,637	41,569 - 19,637 = 21,932
Subtract citations with no follow-up on assessment requirements	At least 10% of these citations are issued to offenders unlikely to follow through with assessment requirements due to financial resources, immigration status, and dismissal of charges due to BAC issues, incarceration, or other factors.	21,932 - 10% (2,193) = 19,739
Subtract deferred prosecution from total remaining citations	12.6% of citations are deferred pros. [prosecution] on average (2,763)	19,739 - 12.6% (2,487) = 17,252
Removing dependent clients from the remaining citations	Percentage of guilty/convicted assessments in 1993 and 2007 Study with ISE and SA findings 69%	17,252 - 31% (5,348) = 11,904
Potential assessments affected by new WAC requirements		11,904

Using our estimate of 11,904 clients with an initial finding of insufficient evidence and substance abuse, we anticipate a maximum cost of \$357,120. DASA has determined

that three hundred ninety-two providers are certified to conduct DUI assessments. The maximum anticipated cost divided across 392 providers yields an estimated cost of \$911 per agency per year. The maximum anticipated cost per client is estimated at \$25 for the urine drug screen.

At the high end of our scenarios, the provider will expend \$5 to request both the police report and criminal history via fax or mail. They will also expend \$25 in staff time and lab fees for a basic urine drug screen for a total of \$30 per client.

B. Proposed revision to chapter 388-805 WAC includes changes in the requirements for the agency clinical manual regarding clinic supervision (WAC 388-805-300).

DASA has determined that current rules require each certified agency administrator to designate a clinical supervisor. The proposed language would require that the designated clinical supervisor demonstrate competency in clinic supervision through some type of formal training. DASA certifies five hundred eighty chemical dependency service providers. Estimated cost would be \$10 for staff time to review agency policy and procedures manuals.

C. Proposed revision to chapter 388-805 WAC includes changes in definitions throughout the chapter (WAC 388-805-005).

DASA has determined that the proposed language expanding the definition of "critical incident" to include medication errors in outpatient administered medication that requires urgent medical intervention is a clarification of 42 C.F.R. Part 8.12(c) and CSAT Guidelines for the Accreditation of Opioid Treatment Programs 2.C.(3). DASA certifies eighteen opiate substitution treatment programs. Other outpatient programs are currently required to report critical incidents. Estimated cost would be \$10 for staff time to review agency policy and procedures manuals. This requirement is determined to be cost neutral.

D. Proposed revision to chapter 388-805 WAC includes changes in the administrative manual requirements (WAC 388-805-150).

The reporting of patient deaths in an opiate substitution treatment program has been determined to be a clarification of 42 C.F.R. Part 8.12(c) and CSAT Guidelines for the Accreditation of Opioid Treatment Programs 2.C.(3). DASA certified eighteen opiate substitution treatment programs. Estimated cost would be \$10 for staff time to review agency policy and procedures manuals. This requirement is determined to be cost neutral.

E. Proposed revision to chapter 388-805 WAC includes changes in the requirements for the opiate substitution medical management (WAC 388-805-710).

DASA has determined that the proposed language is a clarification of 42 C.F.R. Part 8.12 (f)(4), which requires programs to conduct initial and periodic assessments for patients enrolled in an opiate substitution treatment program. DASA certifies eighteen opiate substitution treatment programs. This is not a new requirement. Estimated cost would be \$10 for staff time to review agency policy and procedures manuals.

The following chart demonstrates the overall cost per provider type that are affected by the proposed rules for DUI

assessment providers, all providers, and opiate substitution providers.

	DUI Assessment Providers = 392	All Provider = 570	Opiate Substitution Providers = 18
A = \$30	Yes	No	No
B = \$10	Yes	Yes	Yes
C = \$10	No	No	Yes
D = \$10	No	No	Yes
E = \$10	No	No	Yes
Total cost per provider	\$40	\$10	\$40

Mitigating Costs: DASA has plans for mitigating costs for small businesses in the following ways:

- Programs are already required to use a DOL driver's abstract to complete the DUI assessment, and clients are expected to bring this to the appointment. Programs can also require offenders to obtain the DCH and police report either directly from the court or from their attorney prior to the assessment appointment. If the offender fails to bring these documents to the session, the provider can charge the patient an additional fee to cover their costs of obtaining these documents.
- Urinalysis/drug screening costs can be passed on to the client either through the assessment fee or an add-on fee when the initial finding is "insufficient evidence" or "substance abuse." Many programs currently require a UA for all DUI assessments regardless of findings.
- Private for-profit providers can pass additional fees on to the client.
- Publicly-funded providers will be able to bill medicaid for urinalysis costs.
- Training will be offered by DASA via web-based training; regional training and training in clinical supervision is provided at DASA conferences.
- The clinical supervisor will be required to ensure each CDP continues to demonstrate competency in treatment, assessment, continuing stay, and discharge plans. Language is proposed to reduce the number of record reviews from quarterly to semiannually. This will reduce the amount of time the clinical supervisors will be conducting record audit functions. DASA has determined that the clinical supervision requirements will be cost neutral.

JOBS CREATED OR LOST: In collecting information from representative small businesses through a stakeholder query, DASA estimates that no jobs will be created or lost as a result of small businesses complying with these rules.

CONCLUSION: DASA has given careful consideration to the impact of proposed rules in chapter 388-805 WAC on small businesses. To comply with the Regulatory Fairness Act, chapter 19.85 RCW, DASA has analyzed impacts on small businesses and proposed ways to mitigate costs. However, DASA does not determine the costs to be more than minor.

Please contact Deb Cummins if you have any questions at (360) 725-3716, toll free at 1-877-301-4557, or by e-mail at cummida@dshs.wa.gov.

A copy of the statement may be obtained by contacting Deb Cummins, Certification Policy Manager, P.O. Box

45330, Olympia, WA 98504-5330, phone (360) 725-3716, fax (360) 438-8057, e-mail cummida@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Deb Cummins, Certification Policy Manager, P.O. Box 45330, Olympia, WA 98504-5330, phone (360) 725-3716, fax (360) 438-8057, e-mail cummida@dshs.wa.gov.

July 15, 2008
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-11-096, filed 5/17/06, effective 6/17/06)

WAC 388-805-005 What definitions are important throughout this chapter? "Added service" means the adding of certification for chemical dependency levels of care to an existing certified agency at an approved location.

"Addiction counseling competencies" means the knowledge, skills, and attitudes of chemical dependency counselor professional practice as described in Technical Assistance Publication No. 21, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services 1998.

"Administrator" means the person designated responsible for the operation of the certified treatment service.

"Adult" means a person eighteen years of age or older.

"Alcoholic" means a person who has the disease of alcoholism.

"Alcoholism" means a primary, chronic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. The disease is often progressive and fatal. It is characterized by impaired control over drinking, preoccupation with the drug alcohol, use of alcohol despite adverse consequences, and distortions in thinking, most notably denial. Each of these symptoms may be continuous or periodic.

"Approved supervisor" means a person who meets the education and experience requirements described in WAC 246-811-030 and 246-811-045 through 246-811-049 and who is available to the person being supervised.

"Authenticated" means written, permanent verification of an entry in a patient treatment record by an individual, by means of an original signature including first initial, last name, and professional designation or job title, or initials of the name if the file includes an authentication record, and the date of the entry. If patient records are maintained electronically, unique electronic passwords, biophysical or passcard equipment are acceptable methods of authentication.

"Authentication record" means a document that is part of a patient's treatment record, with legible identification of all persons initialing entries in the treatment record, and includes:

- (1) Full printed name;
- (2) Signature including the first initial and last name; and
- (3) Initials and abbreviations indicating professional designation or job title.

"Bloodborne pathogens" means pathogenic microorganisms that are present in human blood and can cause disease in humans. The pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

"Branch site" means a physically separate certified site where qualified staff provides a certified treatment service, governed by a parent organization. The branch site is an extension of a certified provider's services to one or more sites.

"Certified treatment service" means a discrete program of chemical dependency treatment offered by a service provider who has a certificate of approval from the department of social and health services, as evidence the provider meets the standards of chapter 388-805 WAC.

"Change in ownership" means one of the following conditions:

(1) When the ownership of a certified chemical dependency treatment provider changes from one distinct legal owner to another distinct legal owner;

(2) When the type of business changes from one type to another such as, from a sole proprietorship to a corporation; or

(3) When the current ownership takes on a new owner of five percent or more of the organizational assets.

"Chemical dependency" means a person's alcoholism or drug addiction or both.

"Chemical dependency counseling" means face-to-face individual or group contact using therapeutic techniques that are:

(1) Led by a chemical dependency professional (CDP), or CDP trainee under supervision of a CDP;

(2) Directed toward patients and others who are harmfully affected by the use of mood-altering chemicals or are chemically dependent; and

(3) Directed toward a goal of abstinence for chemically dependent persons.

"Chemical dependency professional" means a person certified as a chemical dependency professional by the Washington state department of health under chapter 18.205 RCW.

"Child" means a person less than eighteen years of age, also known as adolescent, juvenile, or minor.

"Clinical indicators" include, but are not limited to, inability to maintain abstinence from alcohol or other nonprescribed drugs, positive drug screens, patient report of a subsequent alcohol/drug arrest, patient leaves program against program advice, unexcused absences from treatment, lack of participation in self-help groups, and lack of patient progress in any part of the treatment plan.

"Community relations plan" means a plan to minimize the impact of an opiate substitution treatment program as defined by the Center for Substance Abuse Guidelines for the Accreditation of Opioid Treatment Programs, section ((XVIII)) 2.C.(4).

"County coordinator" means the person designated by the legislative authority of a county to carry out administrative and oversight responsibilities of the county chemical dependency program.

"Criminal background check" means a search by the Washington state patrol for any record of convictions or civil

adjudication related to crimes against children or other persons, including developmentally disabled and vulnerable adults, per RCW 43.43.830 through 43.43.842 relating to the Washington state patrol.

"Critical incidents" includes:

(1) Death of a patient;

(2) Serious injury;

(3) Sexual assault of patients, staff members, or public citizens on the facility premises;

(4) Abuse or neglect of an adolescent or vulnerable adult patient by another patient or agency staff member on facility premises;

(5) A natural disaster presenting a threat to facility operation or patient safety;

(6) A bomb threat; a break in or theft of patient identifying information;

(7) Suicide attempt at the facility;

(8) An error in program administered medication at an outpatient facility that results in adverse effects requiring urgent medical intervention.

"CSAT" means the Federal Center For Substance Abuse Treatment, a Substance Abuse Service Center of the Substance Abuse and Mental Health Services Administration.

"Danger to self or others," for purposes of WAC 388-805-520, means a youth who resides in a chemical dependency treatment agency and creates a risk of serious harm to the health, safety, or welfare to self or others. Behaviors considered a danger to self or others include:

(1) Suicide threat or attempt;

(2) Assault or threat of assault; or

(3) Attempt to run from treatment, potentially resulting in a dangerous or life-threatening situation.

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

"Determination of need" means a process used by the department for opiate substitution treatment program slots within a county area as described in WAC 388-805-040.

"Detoxification" or **"detox"** means care and treatment of a person while the person recovers from the transitory effects of acute or chronic intoxication or withdrawal from alcohol or other drugs.

"Disability, a person with" means a person whom:

(1) Has a physical or mental impairment that substantially limits one or more major life activities of the person;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

"Discrete treatment service" means a chemical dependency treatment service that:

(1) Provides distinct chemical dependency supervision and treatment separate from any other services provided within the facility;

(2) Provides a separate treatment area for ensuring confidentiality of chemical dependency treatment services; and

(3) Has separate accounting records and documents identifying the provider's funding sources and expenditures of all funds received for the provision of chemical dependency treatment services.

"Domestic violence" means:

- (1) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members;
- (2) Sexual assault of one family or household member by another;
- (3) Stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member; or
- (4) As defined in RCW 10.99.020, 26.50.010, or other Washington state statutes.

"Drug addiction" means a primary, chronic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. The disease is often progressive and fatal. Drug addiction is characterized by impaired control over use of drugs, preoccupation with drugs, use of a drug despite adverse consequences, and distortions in thinking, most notably denial. Each of these symptoms may be continuous or periodic.

"Essential requirement" means a critical element of chemical dependency treatment services that must be present in order to provide effective treatment.

"Established ratio" means using 0.7 percent (.007) of a designated county's adult population to determine an estimate for the number of potential patients with an opiate diagnosis in need of treatment services as described in WAC 388-805-040.

"Faith-based organization" means an agency or organization such as a church, religiously affiliated entity, or religious organization.

"First steps" means a program available across the state for low-income pregnant women and their infants. First steps provides maternity care for pregnant and postpartum women and health care for infants and young children.

"Governing body" means the legal entity responsible for the operation of the chemical dependency treatment service.

"HIV/AIDS brief risk intervention (BRI)" means an individual face-to-face interview with a patient, to help that person assess personal risk for HIV/AIDS infection and discuss methods to reduce infection transmission.

"HIV/AIDS education" means education, in addition to the brief risk intervention, designed to provide a person with information regarding HIV/AIDS risk factors, HIV antibody testing, HIV infection prevention techniques, the impact of alcohol and other drug use on risks and the disease process, and trends in the spread of the disease.

"Medical practitioner" means a physician, advanced registered nurse practitioner (ARNP), or certified physician's assistant. ARNPs and midwives with prescriptive authority may perform practitioner functions related only to indicated specialty services.

"Off-site treatment" means provision of chemical dependency treatment by a certified provider at a location where treatment is not the primary purpose of the site; such as in schools, hospitals, or correctional facilities.

"Opiate substitution treatment program" means an organization that administers or dispenses an approved medication as specified in ((212 CFR Part 291)) 42 CFR Part 8 for

treatment or detoxification of opiate dependence. The agency is:

- (1) Certified as an opioid treatment program by the Federal Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration;
- (2) Licensed by the Federal Drug Enforcement Administration;
- (3) Registered by the state board of pharmacy;
- (4) Accredited by an opioid treatment program accreditation body approved by the Federal Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration; and
- (5) Certified as an opiate substitution treatment program by the department.

"Outcomes evaluation" means a system for determining the effectiveness of results achieved by patients during or following service delivery, and patient satisfaction with those results for the purpose of program improvement.

"Patient" is a person receiving chemical dependency treatment services from a certified program.

"Patient contact" means time spent with a patient to do assessments, individual or group counseling, or education.

"Patient placement criteria (PPC)" means admission, continued service, and discharge criteria found in the patient placement criteria for the treatment of substance-related disorders as published by the American Society of Addiction Medicine (ASAM).

"Probation assessment officer (PAO)" means a person employed at a certified district or municipal court probation assessment service that meets the PAO requirements of WAC 388-805-220.

"Probation assessment service" means a certified assessment service offered by a misdemeanor probation department or unit within a county or municipality.

"Progress notes" are a permanent record of ongoing assessments of a patient's participation in and response to treatment, and progress in recovery.

"Qualified personnel" means trained, qualified staff, consultants, trainees, and volunteers who meet appropriate legal, licensing, certification, and registration requirements.

"Registered counselor" means a person registered by the state department of health as required by chapter 18.19 RCW.

"Relocation" means change in location from one office space to a new office space, or moving from one office building to another.

"Remodeling" means expansion of existing office space to additional office space at the same address, or remodeling of interior walls and space within existing office space.

"SAMHSA" means the Federal Substance Abuse and Mental Health Services Administration.

"Screening and brief intervention" means: a combination of services designed to screen for risk factors that appear to be related to alcohol and other drug use disorders, provide interventions to enhance patient motivation to change, and make appropriate referral as needed.

"Self-help group" means community based support groups that address chemical dependency.

"**Service provider**" or "**provider**" means a legally operated entity certified by the department to provide chemical dependency services. The components of a service provider are:

- (1) Legal entity/owner;
- (2) Facility; and
- (3) Staff and services.

"**Sexual abuse**" means:

- (1) Sexual assault;
- (2) Incest; or
- (3) Sexual exploitation.

"**Sexual harassment**" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of employment or treatment; or

(2) Such conduct interferes with work performance or creates an intimidating, hostile, or offensive work or treatment environment.

"**Substance abuse**" means a recurring pattern of alcohol or other drug use that substantially impairs a person's functioning in one or more important life areas, such as familial, vocational, psychological, physical, or social.

"**Summary suspension**" means an immediate suspension of certification, per RCW 34.05.422(4), by the department pending administrative proceedings for suspension, revocation, or other actions deemed necessary by the department.

"**Supervision**" means:

(1) Regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give directions and require change; and

(2) "**Direct supervision**" means the supervisor is on the premises and available for immediate consultation.

"**Suspend**" means termination of the department's certification of a provider's treatment services for a specified period or until specific conditions have been met and the department notifies the provider of reinstatement.

"**TARGET**" means the treatment and assessment report generation tool.

"**Treatment plan review**" means a review of active problems on the patient's individualized treatment plan, the need to address new problems, and patient placement.

"**Treatment services**" means the broad range of emergency, detoxification, residential, and outpatient services and care. Treatment services include diagnostic evaluation, chemical dependency education, individual and group counseling, medical, psychiatric, psychological, and social services, vocational rehabilitation and career counseling that may be extended to alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other drugs, and intoxicated persons.

"**Urinalysis**" means analysis of a patient's urine sample for the presence of alcohol or controlled substances by a licensed laboratory or a provider who is exempted from licensure by the department of health:

(1) "**Negative urine**" is a urine sample in which the lab does not detect specific levels of alcohol or other specified drugs; and

(2) "**Positive urine**" is a urine sample in which the lab confirms specific levels of alcohol or other specified drugs.

"**Vulnerable adult**" means a person who lacks the functional, mental, or physical ability to care for oneself.

"**Young adult**" means an adult who is eighteen, nineteen, or twenty years old.

"**Youth**" means a person seventeen years of age or younger.

AMENDATORY SECTION (Amending WSR 06-11-096, filed 5/17/06, effective 6/17/06)

WAC 388-805-010 What chemical dependency services are certified by the department? (1) The department certifies the following types of chemical dependency services:

(a) **Detoxification services**, which assist patients in withdrawing from alcohol and other drugs including:

(i) **Acute detox**, which provides medical care and physician supervision for withdrawal from alcohol or other drugs; and

(ii) **Subacute detox**, which is nonmedical detoxification or patient self-administration of withdrawal medications ordered by a physician, provided in a home-like environment.

(b) **Residential treatment services**, which provide chemical dependency treatment for patients and include room and board in a twenty-four-hour-a-day supervised facility, including:

(i) **Intensive inpatient**, a concentrated program of individual and group counseling, education, and activities for detoxified alcoholics and addicts, and their families;

(ii) **Recovery house**, a program of care and treatment with social, vocational, and recreational activities to aid in patient adjustment to abstinence and to aid in job training, employment, or other types of community activities; and

(iii) **Long-term treatment**, a program of treatment with personal care services for chronically impaired alcoholics and addicts with impaired self-maintenance capabilities. These patients need personal guidance to maintain abstinence and good health.

(c) **Outpatient treatment services**, which provide chemical dependency treatment to patients less than twenty-four hours a day, including:

(i) **Intensive outpatient**, a concentrated program of individual and group counseling, education, and activities for detoxified alcoholics and addicts and their families;

(ii) **Outpatient**, individual and group treatment services of varying duration and intensity according to a prescribed plan; and

(iii) **Opiate substitution outpatient treatment**, which meets both outpatient and opiate substitution treatment program service requirements.

(d) **Assessment services**, which include:

(i) **ADATSA assessments**, alcohol and other drug assessments of patients seeking financial assistance from the department due to the incapacity of chemical dependency.

Services include assessment, referral, case monitoring, and assistance with employment; and

(ii) **DUI assessments**, diagnostic services requested by the courts to determine a person's involvement with alcohol and other drugs and to recommend a course of action.

(e) **Information and assistance services**, which include:

(i) **Alcohol and drug information school**, an education program about the use and abuse of alcohol and other drugs, for persons referred by the courts and others, who may have been assessed and do not present a significant chemical dependency problem, to help those persons make informed decisions about the use of alcohol and other drugs;

(ii) **Information and crisis services**, response to persons having chemical dependency needs, by phone or in person;

(iii) **Emergency service patrol**, assistance provided to intoxicated persons in the streets and other public places;

(iv) **Screening and brief intervention services**, a combination of services designed to screen for risk factors that appear to be related to alcohol and other drug use disorders, provide interventions and make appropriate referral as needed. These services may be provided in a wide variety of settings.

(2) The department may certify a provider for more than one of the services listed under subsection (1) of this section when the provider complies with the specific requirements of the selected services.

AMENDATORY SECTION (Amending WSR 06-11-096, filed 5/17/06, effective 6/17/06)

WAC 388-805-030 What are the requirements for opiate substitution treatment program certification? Certification as an opiate substitution treatment program is contingent on the concurrent approval by applicable state regulatory authorities; certification as an opioid treatment program by the Federal CSAT SAMHSA; accreditation by an opioid treatment program accreditation body approved by the Federal CSAT ((SAMSHA-[SAMHSA])) SAMHSA; and licensure by the Federal Drug Enforcement Administration. In addition to WAC 388-805-015 or 388-805-020 requirements, a potential opiate substitution treatment program provider must submit to the department:

(1) Documentation the provider has communicated with the county legislative authority and if applicable, the city legislative authority or tribal legislative authority, in order to secure a location for the new opiate substitution treatment program that meets county, tribal or city land use ordinances.

(2) A completed community relations plan developed in consultation with the county, city or tribal legislative authority or their designee to minimize the impact of the opiate substitution treatment programs upon the business and residential neighborhoods in which the program is located. The plan must include documentation of strategies used to:

(a) Obtain stakeholder input regarding the proposed location;

(b) Address any concerns identified by stakeholders; and

(c) Develop an ongoing community relations plan to address new concerns expressed by stakeholders as they arise.

(3) A copy of the application for a registration certificate from the Washington state board of pharmacy.

(4) A copy of the application for licensure to the Federal Drug Enforcement Administration.

(5) A copy of the application for certification to the Federal CSAT SAMHSA.

(6) A copy of the application for accreditation by an accreditation body approved as an opioid treatment program accreditation body by the Federal CSAT SAMHSA.

(7) Policies and procedures identified under WAC 388-805-700 through 388-805-750.

(8) Documentation that transportation systems will provide reasonable opportunities to persons in need of treatment to access the services of the program.

(9) At least three letters of support from the administrator or their designee of other health care providers within the existing health care system in the area the applicant proposes to establish a new opiate substitution treatment program. The letters must demonstrate a relationship to the service area's existing health care system.

(10) A declaration to limit the number of individual program participants to three hundred fifty as specified in RCW 70.96A.410 (1)(e).

(11) For new applicants, who operate opiate substitution treatment programs in another state, copies of national and state certification/accreditation documentation, and copies of all survey reports written by national and/or state certification or accreditation organizations for each site they have operated an opiate substitution program in over the past six years.

AMENDATORY SECTION (Amending WSR 06-11-096, filed 5/17/06, effective 6/17/06)

WAC 388-805-100 What do I need to do to maintain agency certification? ((+)) A service provider's continued certification and renewal is contingent upon:

~~((a))~~ ~~(1)~~ Completion of an annual declaration of certification (~~= and~~).

~~((b))~~ ~~(2)~~ Payment of certification fees, if applicable.

~~((c))~~ ~~(3)~~ Providing the essential requirements for chemical dependency treatment, including the following elements:

(a) Treatment process:

(i) Assessments, as described in WAC 388-805-310;

(ii) Treatment planning, as described in WAC 388-805-315 (2)(a) and 388-805-325(11);

(iii) Documenting patient progress, as described in WAC 388-805-315 (1)(b) and 388-805-325(13);

(iv) Treatment plan reviews and updates, as described in WAC 388-805-315 (2)(a), 388-805-325(11) and 388-805-325 (13)(c);

(v) Patient compliance reports, as described in WAC 388-805-315 (4)(b), 388-805-325(17), and 388-805-330;

(vi) Continuing care, transfer summary and discharge planning, as described in WAC 388-805-315 (2)(c) and (d), (6)(a) and (b), and (7)(a), and 388-805-325 (18) and (19); and

(vii) Conducting individual and group counseling, as described in WAC 388-805-315 (2)(b) and 388-805-325(13).

(b) Staffing: Provide sufficient qualified personnel for the care of patients as described in WAC 388-805-140(5) and 388-805-145(5);

(c) Facility:

(i) Provide sufficient facilities, equipment, and supplies for the care and safety of patients as described in WAC 388-805-140 (5) and (6);

(ii) If a residential provider, be licensed by the department of health as described by WAC 388-805-015 (1)(b).

~~((3))~~ (4) Findings during periodic on-site surveys and complaint investigations to determine the provider's compliance with this chapter. During on-site surveys and complaint investigations, provider representatives must cooperate with department representatives to:

(a) Examine any part of the facility at reasonable times and as needed;

(b) Review and evaluate records, including patient clinical records, personnel files, policies, procedures, fiscal records, data, and other documents as the department requires to determine compliance; and

(c) Conduct individual interviews with patients and staff members.

~~((4))~~ (5) The provider must post the notice of a scheduled department on-site survey in a conspicuous place accessible to patients and staff.

~~((5))~~ (6) The provider must correct compliance deficiencies found at such surveys immediately or as agreed by a plan of correction approved by the department.

AMENDATORY SECTION (Amending WSR 06-11-096, filed 5/17/06, effective 6/17/06)

WAC 388-805-110 What do I do to relocate or remodel a facility? (1) When a certified chemical dependency service provider plans to relocate or change the physical structure of a facility in a manner that affects patient care, the provider must:

(a) Submit a completed agency relocation approval request form, or a request for approval in writing if remodeling, sixty or more days before the proposed date of relocation or change.

(b) Submit a sample floor plan that includes information identified under WAC 388-805-015 (2)~~((#))~~(j) through ~~((#))~~ (l).

(c) Submit a completed facility accessibility self-evaluation form.

(d) Provide for department examination of nonresidential premises before approval, as described under WAC 388-805-060.

(e) Contact the department of health for approval before relocation or remodel if a residential treatment facility.

(2) Opiate substitution treatment provider must complete WAC 388-805-030, 388-805-035, and 388-805-040 requirements for a facility relocation.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

WAC 388-805-130 How does the department suspend or revoke certification? (1) The department must suspend or revoke a provider's certification when a disqualifying situation described under WAC 388-805-065 applies to a current service provider.

(2) The department must revoke a provider's certification when the provider knowingly failed to report, as ordered by the court pursuant to chapter 46.61 RCW, within a continuous twelve-month period, three incidents of patient noncompliance with treatment ordered by the court.

(3) The department may suspend or revoke a provider's certification when any of the following provider deficiencies or circumstances occur:

(a) A provider fails to provide the essential requirements of chemical dependency treatment as described in WAC ~~((388-805-100(2)))~~ 388-805-100(3), and one or more of the following conditions occur:

(i) Violation of a rule threatens or results in harm to a patient;

(ii) A reasonably prudent provider should have been aware of a condition resulting in significant violation of a law or rule;

(iii) A provider failed to investigate or take corrective or preventive action to deal with a suspected or identified patient care problem;

(iv) Noncompliance occurs repeatedly in the same or similar areas;

(v) There is an inability to attain compliance with laws or rules within a reasonable period of time.

(b) The provider fails to submit an acceptable and timely plan of correction for cited deficiencies; or

(c) The provider fails to correct cited deficiencies.

(4) The department may suspend certification upon receipt of a providers written request. Providers requesting voluntary suspension must submit a written request for reinstatement of certification within one year from the effective date of the suspension. The department will review the request for reinstatement, determine if the provider is able to operate in compliance with certification requirements, and notify the provider of the results of the review for reinstatement.

AMENDATORY SECTION (Amending WSR 06-11-096, filed 5/17/06, effective 6/17/06)

WAC 388-805-145 What are the key responsibilities required of an agency administrator? (1) The administrator is responsible for the day-to-day operation of the certified treatment service, including:

(a) All administrative matters;

(b) Patient care services; and

(c) Meeting all applicable rules and ethical standards.

(2) When the administrator is not on duty or on call, a staff person must be delegated the authority and responsibility to act in the administrator's behalf.

(3) The administrator must ensure administrative, personnel, and clinical policy and procedure manuals:

(a) Are developed and adhered to; and

(b) Are reviewed and revised as necessary, and at least annually.

(4) The administrator must employ sufficient qualified personnel to provide adequate chemical dependency treatment, facility security, patient safety and other special needs of patients.

(5) The administrator must ensure all persons providing counseling services are registered, certified or licensed by the department of health.

(6) The administrator must ensure full-time chemical dependency professionals (CDPs), CDP trainees, or other licensed or registered counselors in training to become a CDP do not exceed one hundred twenty hours of patient contact per month.

(7) The administrator must assign the responsibilities for a clinical supervisor to at least one person within the organization.

(8) The administrator of a certified opiate substitution treatment program must ensure that:

~~(a) The number of patients will not exceed three hundred and fifty unless authorized by the county in which the program is located((-~~

~~(9) The administrator or program sponsor of a certified opiate substitution treatment program must ensure that);~~

~~(b) Treatment is provided to patients in compliance with 42 Code of Federal Regulations, Part 8.12((-~~

~~(10) The administrator or program sponsor of a certified opiate substitution treatment program shall); and~~

~~(c) A formally designated ((a)) medical director is appointed~~ who shall assume responsibility for:

~~((a)) (i) All medical services performed; and~~

~~((b)) (ii) Ensuring the program is in compliance with all applicable Federal, State and local laws and regulations.~~

AMENDATORY SECTION (Amending WSR 06-11-096, filed 5/17/06, effective 6/17/06)

WAC 388-805-150 What must be included in an agency administrative manual? Each service provider must have and adhere to an administrative manual that contains at a minimum:

(1) The organization's:

(a) Articles and certificate of incorporation if the owner is a corporation;

(b) Partnership agreement if the owner is a partnership; or

(c) Statement of sole proprietorship.

(2) The agency's bylaws if the owner is a corporation.

(3) Copies of a current master license and state business licenses or a current declaration statement that they are updated as required.

(4) The provider's philosophy on and objectives of chemical dependency treatment with a goal of total abstinence, consistent with RCW 70.96A.011.

(5) A policy and procedures describing how services will be made sensitive to the needs of each patient, including assurance that:

(a) Certified interpreters or other acceptable alternatives are available for persons with limited English-speaking proficiency and persons having a sensory impairment; and

(b) Assistance will be provided to persons with disabilities in case of an emergency.

(6) A policy addressing special needs and protection for youth and young adults, and for determining whether a youth or young adult can fully participate in treatment, before admission of:

(a) A youth to a treatment service caring for adults; or

(b) A young adult to a treatment service caring for youth.

(7) An organization chart specifying:

(a) The governing body;

(b) Each staff position by job title, including volunteers, students, and persons on contract; and

(c) The number of full- or part-time persons for each position.

(8) A delegation of authority policy.

(9) A copy of current fee schedules.

(10) A policy and procedures implementing state and federal regulations on patient confidentiality, including provision of a summary of 42 CFR Part 2.22 (a)(1) and (2) to each patient.

(11) A policy and procedures for reporting suspected child abuse and neglect.

(12) A policy and procedures for reporting the death of a patient to the division of alcohol and substance abuse within one business day when:

(a) The patient is in residence; ~~((a))~~

(b) An outpatient dies on the premises; or

(c) The patient is enrolled in an opiate substitution treatment program.

(13) Patient grievance policy and procedures.

(14) A policy and procedures on reporting of critical incidents and actions taken to the division of alcohol and substance abuse within two business days when an unexpected event occurs.

(15) A smoking policy consistent with the Washington Clean Indoor Air Act, chapter 70.160 RCW.

(16) For a residential provider, a facility security policy and procedures, including:

(a) Preventing entry of unauthorized visitors; and

(b) Use of passes for leaves of patients.

(17) For a nonresidential provider, an evacuation plan for use in the event of a disaster, addressing:

(a) Communication methods for patients, staff, and visitors including persons with a visual or hearing impairment or limitation;

(b) Evacuation of mobility-impaired persons;

(c) Evacuation of children if child care is offered;

(d) Different types of disasters;

(e) Placement of posters showing routes of exit; and

(f) The need to mention evacuation routes at public meetings.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

WAC 388-805-205 What are agency personnel file requirements? (1) The administrator must ensure that there is a current personnel file for each employee, trainee, student, and volunteer, and for each contract staff person who provides or supervises patient care.

(2) The administrator must designate a person to be responsible for management of personnel files.

(3) Each person's file must contain:

(a) A copy of the results of a tuberculin skin test or evidence the person has completed a course of treatment approved by a physician or local health officer if the results are positive;

(b) Documentation of training on bloodborne pathogens, including HIV/AIDS and hepatitis B for all employees, volunteers, students, and treatment consultants on contract;

(i) At the time of staff's initial assignment to tasks where occupational exposure may take place;

(ii) Annually thereafter for bloodborne pathogens;

(c) A signed and dated commitment to maintain patient confidentiality in accordance with state and federal confidentiality requirements; and

(d) A record of an orientation to the agency as described in WAC 388-805-200(5).

(4) In addition, each personnel file for staff members providing patient care must contain:

(a) Verification of qualifications for their assigned position including:

(i) For a chemical dependency professional (CDP): A copy of the person's valid CDP certification issued by the department of health (DOH);

(ii) For approved supervisors: Documentation to substantiate the person meets the qualifications of an approved supervisor as defined in WAC 246-811-010;

(iii) For each person engaged in the treatment of chemical dependency, including counselors, physicians, nurses, and other registered, certified, or licensed health care professionals, evidence they comply with the credentialing requirements of their respective professions;

(b) A copy of a current job description, signed and dated by the employee and supervisor which includes:

(i) Job title;

(ii) Minimum qualifications for the position;

(iii) Summary of duties and responsibilities;

(iv) For contract staff, formal agreements or personnel contracts, which describe the nature and extent of patient care services, may be substituted for job descriptions.

(c) A written performance evaluation for each year of employment:

(i) Conducted by the immediate supervisor of each staff member; and

(ii) Signed and dated by the employee and supervisor.

(5) In addition, for residential ((facilities)) programs, the personnel file for staff members providing patient care must contain documentation ((of current cardiopulmonary resuscitation (CPR) and first aid training)) for at least one person on each shift of training in:

(a) Cardiopulmonary resuscitation (CPR); and

(b) First aid.

~~((5))~~ (6) Documentation of health department training and approval for any staff administering or reading a TB test.

~~((6))~~ (7) Employees who have been patients of the agency must have personnel records:

(a) Separate from clinical records; and

(b) Have no indication of current or previous patient status.

~~((7) In addition, each patient care staff member's personnel file must contain:~~

~~(a) Verification of qualifications for their assigned position including:~~

~~(i) For a chemical dependency professional (CDP): A copy of the person's valid CDP certification issued by the department of health (DOH);~~

~~(ii) For approved supervisors: Documentation to substantiate the person meets the qualifications of an approved supervisor as defined in WAC 246-811-010;~~

~~(iii) For each person engaged in the treatment of chemical dependency, including counselors, physicians, nurses, and other registered, certified, or licensed health care professionals, evidence they comply with the credentialing requirements of their respective professions;~~

~~(iv))~~ (8) For probation assessment officers (PAO): Documentation that the person has met the education and experience requirements described in WAC 388-805-220;

~~((iv))~~ (a) For probation assessment officer trainees:

~~((A))~~ (i) Documentation that the person meets the qualification requirements described in WAC 388-805-225; and

~~((B))~~ (ii) Documentation of the PAO trainee's supervised experience as described in WAC 388-805-230 including an individual education and experience plan and documentation of progress toward completing the plan.

~~((vi))~~ (9) For information school instructors:

~~((A))~~ (a) A copy of a certificate of completion of an alcohol and other drug information school instructor's training course approved by the department; and

~~((B))~~ (b) Documentation of continuing education as specified in WAC 388-805-250.

~~((b) A copy of a current job description, signed and dated by the employee and supervisor which includes:~~

~~(i) Job title;~~

~~(ii) Minimum qualifications for the position;~~

~~(iii) Summary of duties and responsibilities;~~

~~(iv) For contract staff, formal agreements or personnel contracts, which describe the nature and extent of patient care services, may be substituted for job descriptions.~~

~~(e) A written performance evaluation for each year of employment:~~

~~(i) Conducted by the immediate supervisor of each staff member; and~~

~~(ii) Signed and dated by the employee and supervisor.)~~

AMENDATORY SECTION (Amending WSR 06-11-096, filed 5/17/06, effective 6/17/06)

WAC 388-805-300 What must be included in the agency clinical manual? Each chemical dependency service provider must have and adhere to a clinical manual containing patient care policies and procedures, including:

(1) How the provider meets WAC 388-805-305 through 388-805-350 requirements.

(2) How the provider will meet applicable certified service standards for the level of program service requirements:

Allowance of up to twenty percent of education time to consist of film or video presentations.

(3) Identification of resources and referral options so staff can make referrals required by law and as indicated by patient needs.

(4) Assurance that there is an identified clinical supervisor who:

(a) Is a chemical dependency professional (CDP);

(b) Has documented competency in clinical supervision;

(c) Reviews and documents a sample of patient records of each CDP (~~(quarterly)~~) semi annually; (~~(and)~~)

~~((e))~~ (d) Ensures implementation of assessment, treatment, continuing care, transfer and discharge plans in accord with WAC 388-805-315; and

(e) Ensures continued competency of each CDP in assessment, treatment, continuing care, transfer, and discharge plans in accord with WAC 388-805-310 and 388-805-315.

(5) Patient admission, continued service, and discharge criteria using PPC.

(6) Policies and procedures to implement the following requirements:

(a) The administrator must not admit or retain a person unless the person's treatment needs can be met;

(b) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must assess and refer each patient to the appropriate treatment service; and

(c) A person needing detoxification must immediately be referred to a detoxification provider, unless the person needs acute care in a hospital.

(7) Additional requirements for opiate substitution treatment programs:

(a) A program physician must ensure that a person is currently addicted to an opioid drug and that the person became addicted at least one year before admission to treatment;

(b) A program physician must ensure that each patient voluntarily chooses maintenance treatment and provides informed written consent to treatment;

(c) A program physician must ensure that all relevant facts concerning the use of the opioid drug are clearly and adequately explained to the patient;

(d) A person under eighteen years of age needing opiate substitution treatment is required to have had two documented attempts at short-term detoxification or drug-free treatment within a twelve-month period. A waiting period of no less than seven days is required between the first and second short-term detoxification treatment;

(e) No person under eighteen years of age may be admitted to maintenance treatment unless a parent, legal guardian, or responsible adult designated by the relevant state authority consents in writing to treatment;

(f) A program physician may waive the requirement of a one year history of addiction under subsection (7)(a) of this section, for patients released from penal institutions (within six months after release), for pregnant patients (program physician must certify pregnancy), and for previously treated patients (up to two years after discharge);

(g) Documentation in each patient's record that the service provider made a good faith effort to review if the patient is enrolled in any other opiate substitution treatment service;

(h) When the medical director or program physician of an opiate substitution treatment program provider in which

the patient is enrolled determines that exceptional circumstances exist, the patient may be granted permission to seek concurrent treatment at another opiate substitution treatment program provider. The justification for finding exceptional circumstances for double enrollment must be documented in the patient's record at both treatment program providers.

(8) Tuberculosis screening for prevention and control of TB in all detox, residential, and outpatient programs, including:

(a) Obtaining a history of preventive or curative therapy;

(b) Screening and related procedures for coordinating with the local health department; and

(c) Implementing TB control as provided by the department of health TB control program.

(9) HIV/AIDS information, brief risk intervention, and referral.

(10) Limitation of group counseling sessions to twelve or fewer patients.

(11) Counseling sessions with nine to twelve youths to include a second adult staff member.

(12) Provision of education to each patient on:

(a) Alcohol, other drugs, and chemical dependency;

(b) Relapse prevention; and

(c) HIV/AIDS, hepatitis, and TB.

(13) Provision of education or information to each patient on:

(a) The impact of chemical use during pregnancy, risks to the fetus, and the importance of informing medical practitioners of chemical use during pregnancy;

(b) Emotional, physical, and sexual abuse; and

(c) Nicotine addiction.

(14) An outline of each lecture and education session included in the service, sufficient in detail for another trained staff person to deliver the session in the absence of the regular instructor.

(15) Assigning of work to a patient by a CDP when the assignment:

(a) Is part of the treatment program; and

(b) Has therapeutic value.

(16) Use of self-help groups.

(17) Patient rules and responsibilities, including disciplinary sanctions for noncomplying patients.

(18) If youth are admitted, a policy and procedure for assessing the need for referral to child welfare services.

(19) Implementation of the deferred prosecution program.

(20) Reporting status of persons convicted under chapter 46.61 RCW to the department of licensing.

(21) Asking at intake or next counseling session if the patient has been court ordered to chemical dependency or mental health treatment and is under supervision by the department of corrections, and documenting the patient's response in the clinical record.

(22) For patients that are court ordered to receive chemical dependency or mental health treatment and under department of corrections supervision, the provider must request:

(a) Authorizations to share information with the department of corrections, the county designated chemical dependency specialist and any other court ordered treatment provider; or

(b) A copy of the court order that exempts the patient from the reporting requirements with the department of corrections and mental health provider.

(c) If a patient refuses to sign a release, document attempt in the patient record.

(23) Nonresidential providers must have policies and procedures on:

- (a) Medical emergencies;
- (b) Suicidal and mentally ill patients;
- (c) Laboratory tests, including UA's and drug testing;
- (d) Services and resources for pregnant women;

(i) A pregnant woman who is not seen by a private physician must be referred to a physician or the local first steps maternity care program for determination of prenatal care needs; and

(ii) Services include discussion of pregnancy specific issues and resources.

AMENDATORY SECTION (Amending WSR 06-11-096, filed 5/17/06, effective 6/17/06)

WAC 388-805-310 What are the requirements for chemical dependency assessments? A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must conduct and document an assessment of each patient's involvement with alcohol and other drugs. The CDP's assessment must include:

(1) A face-to-face diagnostic interview with each patient to obtain, review, evaluate, and document the following:

(a) A history of the patient's involvement with alcohol and other drugs, including:

- (i) The type of substances used;
- (ii) The route of administration; and
- (iii) Amount, frequency, and duration of use.

(b) History of alcohol or other drug treatment or education;

(c) The patient's self-assessment of use of alcohol and other drugs;

(d) A relapse history; ~~((and))~~

(e) A legal history; and

(f) In addition, for persons who have been charged with a violation under RCW 46.61.502 or 46.61.504 RCW, ensure the assessment includes an evaluation in the written summary of the patient's:

(i) Blood or breath alcohol level and other drug levels or documentation of the patient's refusal at the time of the arrest, if available;

(ii) Self reported driving record and the abstract of the patient's legal driving record; and

(iii) If the initial finding is other than substance dependence, the assessment must also include:

(A) The police report or documentation of efforts to include this information;

(B) A court originated criminal case history or documentation of efforts to include this information; and

(C) The results of a urinalysis or drug testing obtained at the time of the assessment or documentation of efforts to include this information.

(2) If the patient is in need of treatment, a CDP or CDP trainee under supervision of a CDP must evaluate the assess-

ment using PPC dimensions for the patient placement decision.

(3) If an assessment is conducted on a youth, and the patient is in need of treatment, the CDP, or CDP trainee under supervision of a CDP, must also obtain the following information:

(a) Parental and sibling use of alcohol and other drugs;

(b) History of school assessments for learning disabilities or other problems, which may affect ability to understand written materials;

(c) Past and present parent/guardian custodial status, including running away and out-of-home placements;

(d) History of emotional or psychological problems;

(e) History of child or adolescent developmental problems; and

(f) Ability of parents/guardians to participate in treatment.

(4) Documentation of the information collected, including:

(a) A diagnostic assessment statement including sufficient data to determine a patient diagnosis supported by criteria of substance abuse or substance dependence;

(b) A written summary of the data gathered in subsections (1), (2), and (3) of this section that supports the treatment recommendation;

(c) A statement regarding provision of an HIV/AIDS brief risk intervention, and referrals made; and

(d) Evidence the patient:

(i) Was notified of the assessment results; and

(ii) Documentation of treatment options provided, and the patient's choice; or

(iii) If the patient was not notified of the results and advised of referral options, the reason must be documented.

(5) Completion and submission of all reports required by the courts, department of corrections, department of licensing, and department of social and health services in a timely manner.

(6) Referral of an adult or minor who requires assessment for involuntary chemical dependency treatment to the county-designated chemical dependency specialist.

AMENDATORY SECTION (Amending WSR 06-11-096, filed 5/17/06, effective 6/17/06)

WAC 388-805-315 What are the requirements for treatment, continuing care, transfer, and discharge plans? (1) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must be responsible for the overall treatment plan for each patient, including:

(a) Patient involvement in treatment planning;

(b) Documentation of progress toward patient attainment of goals; and

(c) Completeness of patient records.

(2) A CDP or a CDP trainee under supervision of a CDP must:

(a) Develop the individualized treatment plan based upon the assessment and update the treatment plan based upon achievement of goals, or when new problems are identified;

(b) Conduct individual and group counseling;

- (c) Develop the continuing care plan; and
- (d) Complete the discharge summary.

(3) A CDP, or CDP trainee under supervision of a CDP, must also include in the treatment plan for youth problems identified in specific youth assessment, including any referrals to school and community support services.

(4) A CDP, or CDP trainee under supervision of a CDP, must follow up when a patient misses an appointment to:

- (a) Try to motivate the patient to stay in treatment; and
- (b) Report a noncompliant patient to the committing authority as appropriate.

(5) A CDP, or CDP trainee under supervision of a CDP, must involve each patient's family or other support persons, when the patient gives written consent:

- (a) In the treatment program; and
 - (b) In self-help groups.
- (6) When transferring a patient from one certified treatment service to another within the same agency, at the same location, a CDP, or a CDP trainee under supervision of a CDP, must:

- (a) Update the patient assessment and treatment plan; and
- (b) Provide a summary report of the patient's treatment and progress, in the patient's record.

(7) A CDP, or CDP trainee under supervision of a CDP, must meet with each patient at the time of discharge from any treatment agency, unless in detox or when a patient leaves treatment without notice, to:

- (a) Finalize a continuing care plan to assist in determining appropriate recommendation for care;
- (b) Assist the patient in making contact with necessary agencies or services; and
- (c) Provide the patient a copy of the plan.

(8) When transferring a patient to another treatment provider, the current provider must forward copies of the following information to the receiving provider when a release of confidential information is signed by the patient:

- (a) Patient demographic information;
- (b) Diagnostic assessment statement and other assessment information, including:
 - (i) Documentation of the HIV/AIDS intervention;
 - (ii) TB test result;
 - (iii) A record of the patient's detox and treatment history;
 - (iv) The reason for the transfer; and
 - (v) Court mandated, department of correction supervision status or agency recommended follow-up treatment.
- (c) Discharge summary; and
- (d) The plan for continuing care or treatment.

(9) A CDP, or CDP trainee under supervision of a CDP, must complete a discharge summary, within seven days of each patient's discharge from the agency, which includes:

- (a) The date of discharge (~~or transfer~~); and
- (b) A summary of the patient's progress toward each treatment goal, except in detox.

AMENDATORY SECTION (Amending WSR 06-11-096, filed 5/17/06, effective 6/17/06)

WAC 388-805-620 What are the requirements for outpatient services? A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must:

(1) Complete admission assessments (~~within ten calendar days of admission, or by the second visit~~), prior to admission unless participation in this outpatient treatment service is part of the same provider's continuum of care.

(2) Complete an initial individualized treatment plan prior to the patient's participation in treatment.

(3) Conduct group or individual chemical dependency counseling sessions for each patient, each month, according to an individual treatment plan.

~~((3))~~ (4) Conduct and document a treatment plan review for each patient:

- (a) Once a month for the first three months; and
- (b) Quarterly thereafter or sooner if required by other laws.

AMENDATORY SECTION (Amending WSR 06-11-096, filed 5/17/06, effective 6/17/06)

WAC 388-805-625 What are the requirements for outpatient services for persons subject to RCW 46.61-5056? (1) Patients admitted to outpatient treatment subject to RCW 46.61.5056, must complete outpatient treatment as described in subsection (2) of this section.

(2) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must:

- (a) For the first sixty days of treatment:
 - (i) Conduct group or individual chemical dependency counseling sessions for each patient, each week, according to an individual treatment plan.
 - (ii) Conduct at least one individual chemical dependency counseling session of no less than thirty minutes duration excluding a chemical dependency assessment for each patient, according to an individual treatment plan.
 - (iii) Conduct alcohol and drug basic education for each patient.

(iv) Document patient participation in self-help groups described in WAC 388-805-300(16) for patients with a diagnosis of substance dependence.

(v) For patients with a diagnosis of substance dependence who received intensive inpatient chemical dependency treatment services, the balance of the sixty-day time period will consist, at a minimum, of weekly outpatient counseling sessions according to an individual treatment plan.

(b) For the next one hundred twenty days of treatment:

- (i) Conduct group or individual chemical dependency counseling sessions for each patient, every two weeks, according to an individual treatment plan.

(ii) Conduct at least one individual chemical dependency counseling session of no less than thirty minutes duration every sixty days for each patient, according to an individual treatment plan.

(c) Upon completion of one hundred eighty days of (~~intensive~~) treatment, a CDP, or a CDP trainee under the supervision of a CDP, must refer each patient for ongoing treatment or support, as necessary, using PPC.

(3) For patients who are assessed with insufficient evidence of substance dependence or substance abuse, a CDP must refer the patient to alcohol/drug information school.

AMENDATORY SECTION (Amending WSR 06-11-096, filed 5/17/06, effective 6/17/06)

WAC 388-805-710 What are the requirements for opiate substitution medical management? (1) ~~((The medical director must assume responsibility for administering all medical services performed by the opiate substitution treatment program.~~

~~(2) The medical director must be responsible for ensuring that the opiate substitution treatment program is in compliance with all applicable federal, state, and local laws and regulations.~~

~~(3)) A program physician or authorized health care professional under supervision of a program physician, must provide oversight for determination of opiate physical addiction and conducting a complete, fully documented physical evaluation for each patient before admission.~~

~~((4)) (2) A medical examination must be conducted on each patient:~~

~~(a) By a program physician or other medical practitioner;~~

~~(and)~~

~~(b) Within fourteen days of admission; and~~

~~(c) Annually to update the medical examination of each patient by a program physician or other medical practitioner to include the patient's overall physical condition and response to medication.~~

~~((5)) (3) Prior to initial prescribed dosage of opiate substitution medication, a program physician must ensure that all pregnant patients are provided written and verbal:~~

~~(a) Current health information concerning the possible addiction, health risks and benefits opiate substitution medication may have on them and their fetus;~~

~~(b) Current health information concerning the risks of not initiating opiate substitution medication may have on them and their fetus and;~~

~~(c) Referral options to address neonatal abstinence syndrome for their baby.~~

~~((6)) (4) Following the patient's initial dose of opiate substitution treatment, the physician must establish adequacy of dose, considering:~~

~~(a) Signs and symptoms of withdrawal;~~

~~(b) Patient comfort; and~~

~~(c) Side effects from over medication.~~

~~((7)) (5) Prior to the beginning of detox, a program physician must approve an individual detoxification schedule for each patient being detoxified.~~

AMENDATORY SECTION (Amending WSR 06-11-096, filed 5/17/06, effective 6/17/06)

WAC 388-805-715 What are the requirements for opiate substitution medication management? (1) An opiate substitution treatment program must use only those opioid agonist treatment medications that are approved by the Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid addiction.

(2) In addition, an opiate substitution treatment program who is fully compliant with the protocol of an investigational use of a drug and other conditions set forth in the application may administer a drug that has been authorized by the Food and Drug Administration under an investigational new drug application under section 505(i) of the Federal Food, Drug, and Cosmetic Act for investigational use in the treatment of opioid addiction. Currently the following opioid agonist treatment medications will be considered to be approved by the Food and Drug Administration for use in the treatment of opioid addiction:

(a) Methadone; and

(b) ~~((Levomethadyl acetate (LAAM); and~~

~~(e)) Buprenorphine distributed as subutex and suboxone.~~

(3) An opiate substitution treatment program must maintain current procedures that are adequate to ensure that the following dosage form and initial dosing requirements are met:

(a) Methadone must be administered or dispensed only in oral form and must be formulated in such a way as to reduce its potential for parenteral abuse;

(b) For each new patient enrolled in a program, the initial dose of methadone must not exceed thirty milligrams and the total dose for the first day must not exceed forty milligrams, unless the program physician documents in the patient's record that forty milligrams did not suppress opiate abstinence symptoms.

(4) An opiate substitution treatment program must maintain current procedures adequate to ensure that each opioid agonist treatment medication used by the program is administered and dispensed in accordance with its approved product labeling. Dosing and administration decisions must be made by a program physician familiar with the most up-to-date product labeling. These procedures must ensure that any significant deviations from the approved labeling, including deviations with regard to dose, frequency, or the conditions of use described in the approved labeling, are specifically documented in the patient's record.

AMENDATORY SECTION (Amending WSR 06-11-096, filed 5/17/06, effective 6/17/06)

WAC 388-805-810 What are the requirements for DUI assessment providers? (1) If located in a district or municipal probation department, each DUI service provider must meet the requirements of:

(a) WAC 388-805-001 through 388-805-135,

(b) WAC 388-805-145 (4), (5), and (6);

(c) WAC 388-805-150, the administrative manual, subsections (4), (7) through (11), (13), and (14);

(d) WAC 388-805-155, facilities, subsections (1)(b), (c), (d), and (2)(b);

(e) WAC 388-805-200 (1), (4), and (5);

(f) WAC 388-805-205 (1), (2), (3)(a) through (d), (4),

~~((6)) (5), and (7);~~

(g) WAC 388-805-220, 388-805-225, and 388-805-230;

(h) WAC 388-805-260, volunteers;

(i) WAC 388-805-300, clinical manual, subsections (1), (2), (3), (9), (20), (21), and (22);

- (j) WAC 388-805-305, patients' rights;
- (k) WAC 388-805-310, assessments;
- (l) WAC 388-805-320, patient record system, subsections (3)(a) through (f), and (5);
- (m) WAC 388-805-325, record content, subsections (1), (2), (3), (4), (5), (7), (8), (10), (15), (16), and (17); and
- (n) WAC 388-805-350, outcomes evaluation(~~(; and~~);
- ~~(o) WAC 388-805-815, DUI assessment services).~~
- (2) If located in another certified chemical dependency treatment facility, the DUI service provider must meet the requirements of:
 - (a) WAC 388-805-001 through 388-805-260; 388-805-305 and 388-805-310; and
 - (b) WAC 388-805-300, 388-805-320, 388-805-325 as noted in subsection (1) of this section, 388-805-350(~~(; and~~);
 - ~~(c) WAC 388-805-815).~~
 - (3) Providers must limit patients to persons who have been arrested for a violation of driving under the influence of intoxicating liquor or other drugs or in physical control of a vehicle as defined under chapter 46.61 RCW.

NEW SECTION

WAC 388-805-855 What are the requirements for screening and brief intervention services? (1) Screening and brief intervention service providers must be governed under:

- (a) WAC 388-805-001 through 388-805-135, 388-805-205 and 388-805-640; and
- (b) This section.
- (2) The screening and brief intervention administrator must:
 - (a) Ensure a chemical dependency professional (CDP), or a CDP trainee under the supervision of a CDP, provides the services;
 - (b) Maintains a current list of local resources for legal, employment, education, interpreter, and social and health services;
 - (c) Ensure all staff completes forty hours of training that covers the following areas before assigning unsupervised duties:
 - (i) Chemical dependency screening and brief intervention techniques; and
 - (ii) Motivational interviewing.
 - (d) Have policies and procedures for the provision of screening and brief intervention services, such as:
 - (i) Screening;
 - (ii) Motivational interviewing; and
 - (iii) Referral.
 - (e) Ensure the individual patient records contain:
 - (i) A copy of a referral;
 - (ii) Demographic information;
 - (iii) Documentation the patient was informed and received a copy of the requirements under 42 C.F.R Part 2;
 - (iv) Documentation the patient received a copy of the counselor disclosure information;
 - (v) Documentation the patient received a copy of the patient rights;
 - (vi) Properly completed authorization for the release of information;

- (vii) A copy of screening documents including outcome and referrals; and
- (viii) Progress notes summarizing any contact with the patient.

REPEALER

The following section of the Washington Administrative Code is repealed:

- | | |
|-----------------|--|
| WAC 388-805-815 | What are the requirements for DUI assessment services? |
|-----------------|--|

WSR 08-16-119

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed August 5, 2008, 3:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-23-078.

Title of Rule and Other Identifying Information: The department is amending the following sections from the boarding home licensing chapter: WAC 388-78A-2470 Criminal history disclosure and background, 388-78A-2680 Boarding home use of audio and video monitoring, 388-78A-2690 Resident use of electronic monitoring, 388-78A-2950 Water supply, 388-78A-2980 Lighting, 388-78A-3030 Toilet rooms and bathrooms, 388-78A-3450 Finalizing a preliminary finding, and 388-78A-3460 Appeal of administrative law judge's initial order or finding.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on September 23, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 24, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 23, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by September 16, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **Criminal History Disclosure:** To correct typographical error in section heading.

Electronic Monitoring: To clarify, enhance readability and usability of electronic monitoring requirements; to ensure boarding home compliance with resident rights when electronic monitoring is used.

Building: To clarify, enhance readability and usability of construction requirements regarding lighting, water supply and showers; to create flexibility in construction requirements for boarding home providers to meet resident needs.

Resident Protection Program: To clarify, enhance readability and usability of the rules; to provide guidance to administrative law judges that a department denial of a petition to remove a finding of neglect under WAC 388-78A-3460 from a department list may not be appealed.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 18.20.090.

Statute Being Implemented: Chapter 18.20 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Todd Henry, P.O. Box 45600, Olympia, WA 98513, (360) 725-2580; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department determined that the amendments result in no more than "minor costs" as defined in RCW 19.85.030. In some cases, the amendments may result in a cost savings.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Todd Henry, Boarding Home Program, P.O. Box 45600, Olympia, WA 98513, phone (360) 725-2580, fax (360) 438-7903, e-mail henryte@dshs.wa.gov.

July 31, 2008

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-2470 Criminal history disclosure and background (~~(inquires -inquiries))~~ checks. (1) This section applies to any individual associated with the licensee or boarding home who may have unsupervised access to residents, including but not limited to:

- (a) Employees;
- (b) Managers;
- (c) Volunteers who are not residents;
- (d) Contractors; and
- (e) Students.

(2) The boarding home must:

(a) Ensure any individual associated with the licensee or boarding home who may have unsupervised access to residents has had a background check of conviction records, pending charges and disciplinary board decisions completed within the past two years, and is repeated every two years thereafter, and that individual has not been:

- (i) Convicted of a crime against children or other persons as defined in RCW 43.43.830 or 43.43.842;
- (ii) Convicted of crimes relating to financial exploitation as defined in RCW 43.43.830 or 43.43.842;

(iii) Found in any disciplinary board final decision to have abused a vulnerable adult as defined in RCW 43.43.830;

(iv) The subject in a protective proceeding under chapter 74.34 RCW;

(v) Convicted of criminal mistreatment; or

(vi) Found by the department to have abandoned, abused, neglected or exploited a minor, or abandoned, abused, neglected, exploited, or financially exploited a vulnerable person, provided the individual was offered an administrative hearing to contest the finding, and the finding was upheld, or the individual failed to timely appeal the finding.

(b) Not hire or retain, directly or by contract, or accept as a volunteer, any individual prohibited from having unsupervised access to residents under (a) of this subsection, except as provided in subsection (6) of this section and RCW 43.43.842.

(3) Prior to first starting his or her duties, the boarding home must:

(a) Require each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents to disclose, consistent with RCW 43.43.834(2), whether he or she:

(i) Has been convicted of a crime, including any of the following as defined in RCW 43.43.830:

- (A) All crimes against children or their persons;
- (B) All crimes relating to financial exploitation; and
- (C) All crimes relating to drugs;

(ii) Has had findings made against him or her in any civil adjudicative proceeding as defined in RCW 43.43.830; or

(iii) Has both convictions for (i) and findings made against him or her under (ii).

(b) Require each individual making the disclosures required in subsection (3)(a) of this section:

- (i) To make the disclosures in writing;
- (ii) To swear under penalty of perjury that the contents of the disclosure are accurate; and
- (iii) To sign the disclosure statement.

(4) Prior to first starting his or her duties, the boarding home must take one or more of the following three actions for each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents:

(a) Initiate a background check on the individual through the department, which includes taking the following actions:

(i) Informing the individual that a background check is required.

(ii) Requiring the individual to complete and sign a DSHS background authorization form prior to the individual having unsupervised access to residents;

(iii) Submitting all background check authorization forms to the department's:

(A) Aging and disability services administration with the initial application for licensure; and

(B) Background check central unit for currently licensed boarding homes.

(iv) Verbally informing the named individual of his/her individual background check results and offering to provide

him or her a copy of the background check results within ten days of receipt.

(b) Obtain from the individual's prior employer a copy of the completed criminal background inquiry information for the individual, subject to the following conditions:

(i) The prior employer was a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW;

(ii) The nursing home, boarding home or adult family home providing completed criminal background inquiry information for the individual is reasonably known to be the individual's most recent employer;

(iii) No more than twelve months has elapsed from the date the individual was employed by the nursing home, boarding home or adult family home and the date of the individual's current application;

(iv) The background inquiry for the individual is no more than two years old; and

(v) The boarding home has no reason to believe the individual has or may have a disqualifying conviction or finding as described in RCW 43.43.842.

(c) When using staff persons from a home health, hospice, or home care agency licensed under chapter 70.127 RCW, or a nursing pool registered under chapter 18.52C RCW, the boarding home must establish, maintain and follow a written agreement with the agency or pool to ensure the requirements of subsection (2) of this section are met for the agency or pool staff who may work in the boarding home.

(5) The boarding home must ensure that all disclosure statements, and background check results obtained by the boarding home, are:

(a) Maintained on-site in a confidential and secure manner;

(b) Used for employment purposes only;

(c) Not disclosed to any individual except:

(i) The individual named on the background check result;

(ii) Authorized state and federal employees;

(iii) The Washington state patrol auditor; and

(iv) As otherwise authorized in chapter 43.43 RCW.

(d) Retained and available for department review:

(i) During the individual's employment or association with a facility; and

(ii) At least two years following termination of employment or association with a facility.

(6) The boarding home may conditionally hire, directly or by contract, an individual having unsupervised access to residents pending a background inquiry, provided the boarding home:

(a) Obtains a criminal history background check authorization form from the individual prior to the individual beginning work;

(b) Submits the criminal history background check authorization form to the department no later than one business day after the individual started working; and

(c) Has received three positive references for the individual.

(7) The department may require the boarding home or any other individual associated with the boarding home who

has unsupervised access to residents to complete additional disclosure statements or background inquiries if the department has reason to believe that offenses specified under RCW 43.43.830 have occurred since completion of the previous disclosure statement or background inquiry.

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 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2680 (~~Boarding home use of~~) Electronic monitoring equipment—Audio monitoring and video monitoring. (1) Except as provided for in this section or in WAC 388-78A-2690, the boarding home must not use the following on the premises:

(a) ~~(Any)~~ Audio monitoring ~~((on the boarding home premises)) equipment~~; or

(b) ~~(Any audio monitoring used in combination with)~~ Video monitoring equipment if it includes an audio component.

(2) The boarding home may video monitor and ~~((not))~~ video record ~~((activity))~~ activities in the boarding home or on the ~~((boarding home))~~ premises, without an audio component, only in the following areas:

(a) ~~((Boarding home))~~ Entrances and exits ~~((if))~~ as long as the ~~((camera(s)-is))~~ cameras are:

(i) Focused only on the entrance ~~((/))~~ or exit doorways; and

(ii) Not focused on areas where residents ~~((may congregate))~~ gather.

(b) Areas used exclusively by staff persons such as, but not limited to, medication storage areas or food preparation areas, if residents do not go into these areas;

(c) Outdoor areas not commonly used by residents, such as, but not limited to, delivery areas; and

(d) Designated smoking areas ~~((excluding resident rooms, subject to the following conditions:~~

~~(i) When the area is being used by residents assessed as needing supervision for smoking, a staff person must watch the video monitor at any time the area is being used by such residents for smoking;~~

~~(ii) The video camera must be placed in a clearly visible area;~~

~~(iii) The video monitor must be placed where it cannot be viewed by the general public; and~~

~~(iv) All residents in the facility must be notified of the use of the video monitoring))~~, subject to the following conditions:

(i) Residents have been assessed as needing supervision for smoking;

(ii) A staff person watches the video monitor at any time the area is used by such residents;

(iii) The video camera is clearly visible;

(iv) The video monitor is not viewable by general public; and

(v) The boarding home notifies all residents in writing of the video monitoring equipment.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2690 ~~((Resident use of))~~ **Electronic monitoring equipment—Resident requested use.** (1) The boarding home must ~~((limit the use of resident-initiated video or audio monitoring to the sleeping room or apartment of the resident who requested the monitoring))~~ not use audio or video monitoring equipment to monitor any resident unless:

(a) The resident has requested the monitoring; and

(b) The monitoring is only used in the sleeping room of the resident who requested the monitoring.

(2) If ~~((a))~~ the resident requests ~~((video or))~~ audio or video monitoring ~~((in his/her sleeping room or apartment)),~~ before any electronic monitoring occurs, the boarding home must ensure that:

~~((Appropriate actions are taken to ensure monitoring is consistent with and))~~ The electronic monitoring does not violate chapter 9.73 RCW;

(b) The resident has identified a threat to ~~((his or her safety or))~~ the resident's health, ((or the)) safety ((of his)) or ((her possessions, and has requested electronic monitoring)) personal property;

(c) The resident's roommate has provided written consent to ~~((the))~~ electronic monitoring, if the resident has a roommate; and

(d) The resident and the boarding home have agreed upon a specific duration for the ~~((use of the))~~ electronic monitoring ~~((;))~~ and ~~((the boarding home has documented))~~ the agreement is documented in writing.

(3) The boarding home must:

(a) Re-evaluate the need for ((resident-initiated)) the electronic monitoring with the resident at least quarterly ((or more often as appropriate)); and

(b) Have each re-evaluation in writing, signed and dated by the resident.

(4) The boarding home must ~~((discontinue the use of resident-initiated electronic monitoring))~~ immediately ~~((if))~~ stop electronic monitoring if the:

(a) ((The)) Resident no longer ((desires it)) wants electronic monitoring;

(b) ((The)) Roommate objects ((to the use)) or withdraws the consent to the electronic monitoring; or

(c) The resident becomes unable to give consent.

(5) For the purposes of consenting to video electronic monitoring, without an audio component the term "resident" includes the resident's surrogate decision maker.

(6) For the purposes of consenting to any audio electronic monitoring, the term "resident" includes:

(a) The individual residing in the boarding home; or

(b) The resident's court-appointed guardian or attorney-in-fact who has obtained a court order specifically authorizing the court-appointed guardian or attorney-in-fact to consent to electronic monitoring of the resident.

(7) If a resident's decision maker consents to audio electronic monitoring as specified in (6) above, the boarding home must maintain a copy of the court order authorizing such consent in the resident's record.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2950 **Water supply.** The boarding home must:

(1) Provide water meeting the provisions of chapter 246-290 WAC, Group A public water supplies or chapter 246-291 WAC, Group B public water systems;

(2) Maintain the boarding home water systems free of cross-connections as specified in the edition of *Cross-Connection Control Manual* ((-6th Edition)), published by the Pacific Northwest Section of the American Water Works Association, in effect on the date of the official application for department of health construction review of the boarding home or new boarding home construction;

(3) Provide hot and cold water under adequate pressure readily available throughout the boarding home;

(4) Provide all sinks in resident rooms, toilet rooms and bathrooms, and bathing fixtures used by residents with hot water between 105°F and 120°F at all times; and

(5) Label or color code nonpotable water supplies "unsafe for domestic use."

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2980 **Lighting.** (1) The boarding home must maintain electric light fixtures and lighting necessary for the comfort and safety of residents and for the activities of residents and staff.

(2) The boarding home must ~~((maintain))~~ provide enough lighting in ((common areas that meets Illuminating Engineering Society (IES) recommendations as follows:)) each resident's room to meet the resident's needs, preferences and choices.

~~((AVERAGE MAINTAINED FOOTCANDLES))~~

((Area))	((Ambient Light))	((Task Light))
((Toilet, bathing and laundry facilities))	((30))	((50))
((Dining/day rooms))	((50))	((N/A))
((Corridors, hallways, and stairways))	((30))	((N/A))
((Janitor's closet and utility rooms))	((30))	((N/A))
((Reading rooms))	((100))	((N/A))

(3) ~~((The boarding home must provide enough lighting in each resident's room to meet the resident's needs, preferences and choices))~~ New boarding home construction must, at a minimum, meet the Illuminating Engineering Society of North America (IESNA) recommendations for lighting in common areas as established in the edition of the Illuminating Engineering Society of North America Lighting Handbook. The applicable handbook is the one in effect on the date of the official application to the department of health construction review for the new boarding home construction.

(4) Existing boarding home construction must maintain, at a minimum, the Illuminating Engineering Society of North

America (IESNA) recommendations for lighting in common areas as established in the edition of the Illuminating Engineering Society of North America Lighting Handbook. The applicable handbooks is the one in effect on the date of the official application to the department of health construction review for the boarding home or that portion of the boarding home undergoing construction review.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-3030 Toilet rooms and bathrooms. (1)

The boarding home must provide private or common-use toilet rooms and bathrooms to meet the needs of each resident.

(2) The boarding home must provide each toilet room and bathroom with:

- (a) Water resistant, smooth, low gloss, nonslip and easily cleanable materials;
- (b) Washable walls to the height of splash or spray;
- (c) Grab bars installed and located to minimize accidental falls including one or more grab bars at each:
 - (i) Bathing fixture; and
 - (ii) Toilet.
- (d) Plumbing fixtures designed for easy use and cleaning and kept in good repair; and
- (e) Adequate ventilation to the outside of the boarding home. For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, must provide mechanical ventilation to the outside.

(3) The boarding home must provide each toilet room with a:

- (a) Toilet with a clean, nonabsorbent seat free of cracks;
- (b) Handwashing sink in or adjacent to the toilet room.

For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the handwashing sink must be in the toilet room or in an adjacent private area that is not part of a common use area of the boarding home; and

(c) Suitable mirror with adequate lighting for general illumination.

(4) For boarding homes approved for construction or initially licensed after August 1, 1994, the boarding home must provide a toilet and handwashing sink in, or adjoining, each bathroom.

(5) When providing common-use toilet rooms and bathrooms, the boarding home must provide toilets and handwashing sinks for residents in the ratios of one toilet and one handwashing sink for every eight residents or fraction as listed in the following table:

Number of Residents	Number of Toilets*	Number of Handwashing Sinks
1-8	1	1
9-16	2	2
17-24	3	3
25-32	4	4
33-40	5	5

Number of Residents	Number of Toilets*	Number of Handwashing Sinks
41-48	6	6
49-56	7	7
57-64	8	8
65-72	9	9
73-80	10	10
81-88	11	11
89-96	12	12
97-104	13	13
105-112	14	14
113-120	15	15
121-128	16	16
129-136	17	17
137-144	18	18
145-152	19	19
153-160	20	20
161-168	21	21
169-176	22	22
177-184	23	23

*When two or more toilets are contained in a single bathroom, they are counted as one toilet.

(6) When providing common-use toilet rooms and bathrooms, the boarding home must provide bathing fixtures for residents in the ratio of one bathing fixture for every twelve residents or fraction thereof as listed in the following table:

Number of Residents	Number of Bathing Fixtures
1-12	1
13-24	2
25-36	3
37-48	4
49-60	5
61-72	6
73-84	7
85-96	8
97-108	9
109-120	10
121-132	11
133-144	12
145-160	13
161-172	14
173-184	15
185-196	16

(7) When providing common-use toilet rooms and bathrooms, the boarding home must:

- (a) Designate toilet rooms containing more than one toilet for use by men or women;

(b) Designate bathrooms containing more than one bathing fixture for use by men or women;

(c) Equip each toilet room and bathroom designed for use by, or used by, more than one person at a time, in a manner to ensure visual privacy for each person using the room. The boarding home is not required to provide additional privacy features in private bathrooms with a single toilet and a single bathing fixture located within a private apartment;

(d) Provide a handwashing sink with soap and single use or disposable towels, blower or equivalent hand-drying device in each toilet room, except that single-use or disposable towels or blowers are not required in toilet rooms or bathrooms that are located within a private apartment;

(e) Provide reasonable access to bathrooms and toilet rooms for each resident by:

(i) Locating a toilet room on the same floor or level as the sleeping room of the resident served;

(ii) Locating a bathroom on the same floor or level, or adjacent floor or level, as the sleeping room of the resident served;

(iii) Providing access without passage through any kitchen, pantry, food preparation, food storage, or dishwashing area, or from one bedroom through another bedroom; and

(f) Provide and ensure toilet paper is available at each common-use toilet.

(8) In boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home must ensure ~~((fifty))~~ twenty-five percent of all the bathing fixtures in the boarding home are roll-in type showers that have:

(a) One-half inch or less threshold that may be a collapsible rubber water barrier;

(b) A minimum size of thirty-six inches by forty-eight inches; and

(c) Single lever faucets located within thirty-six inches of the seat so the faucets are within reach of persons seated in the shower.

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3450 Finalizing a preliminary finding. (1) A preliminary finding becomes a final finding when:

(a) The department notifies the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident there is a preliminary finding pursuant to WAC 388-78A-3410; and

(b) The individual alleged to have abandoned, abused, neglected, exploited or financially exploited a resident does not ask for an administrative hearing; or

(c) The administrative law judge:

(i) Dismisses the hearing following withdrawal of the appeal or default; or

(ii) ~~((Issues an initial order upholding the finding and the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident fails to appeal the initial order to the department's board of appeals))~~ Dismisses the appeal for failure to comply with time limits under WAC 388-78A-3440; or

(iii) Issues an initial order upholding the finding and the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident fails to appeal the initial order to the department's board of appeals.

(d) The board of appeals issues a final order upholding the finding.

(2) A final finding is permanent.

(3) A final finding will only be removed from the department or agency list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult if it is rescinded following judicial review.

(4) The department may remove a single finding of neglect from its records based upon a written petition by the individual found to have neglected a resident provided that at least one calendar year must have passed between the date a request was made to remove the finding of neglect and the date the final finding was finalized and recorded.

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3460 Appeal of administrative law judge's initial order or finding.

(1) If the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident or the department disagrees with the administrative law judge's decision, either party may challenge this decision by filing a petition for review with the department's board of appeals under chapter 34.05 RCW, Administrative Procedure Act, and chapter 388-02 WAC.

(2) If the department appeals the administrative law judge's decision, the department will not change the finding in the department's records until a final hearing decision is issued.

(3) The department's decision to deny a petition to remove a finding of neglect under WAC 388-78A-3450 may not be appealed.

WSR 08-16-123

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed August 5, 2008, 4:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-08-034.

Title of Rule and Other Identifying Information: Chapter 388-831 WAC, Community protection program.

Washington Administrative Code	Effect of Rule
388-831-0010 Definitions (New)	Adds definitions used in this chapter.
388-831-0020 (New)	Defines the community protection program (CPP).
388-831-0030 (New)	Defines individuals with community protection issues.
388-831-0040 (New)	Defines who is covered by these rules.

Washington Administrative Code	Effect of Rule
388-831-0050 (New)	Defines the steps necessary to receive services.
388-831-0060 (New)	Defines what is contained in the assessment.
388-831-0065 (New)	Defines what happens for refusal to participate in the assessment.
388-831-0070 (New)	Describes what information will be given to individuals considered for placement in the CPP.
388-831-0080 (New)	Describes the notification requirement to individuals who are appropriate for placement in the CPP.
388-831-0090 (New)	Describes the notification requirement to individuals who cannot be managed successfully in the CPP
388-831-0100 (New)	Explains how to apply for the CPP.
388-831-0110 (New)	Describes what information will be shared with others.
388-831-0120 (New)	Describes what the services will be.
388-831-0130 (New)	Describes the services available in the CPP.
388-831-0150 (New)	Defines who can provide therapy.
388-831-0160 (New)	Describes the services available for individuals who refuse placement in the CPP.
388-831-0200 (New)	Defines how often progress will be reviewed.
388-831-0210 (New)	Defines what is included in the review of progress.
388-831-0220 (New)	Defines when placement in a less restrictive setting may be considered.
388-831-0230 (New)	Describes the process to move to a less restrictive setting.
388-831-0240 (New)	Defines when termination from the CPP may occur.
388-831-0250 (New)	Describes that participation in the CPP is voluntary but limits the services available if this occurs.
388-831-0260 (New)	Defines where the enforcement rules against a provider of residential services and support may be found.
388-831-0300 (New)	Defines the appeal rights for individuals receiving services through the CPP waiver.
388-831-0400 (New)	Clarifies that nothing in these rules create an entitlement to placement on the CPP waiver.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on September 23, 2008, at 10:00 a.m.

Date of Intended Adoption: September 24, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on September 23, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by September 16, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The division of developmental disabilities (DDD) is creating a new chapter 388-831 WAC, Community protection program, to implement chapter 303, Laws of 2006 (ESSB 6630).

Reasons Supporting Proposal: This chapter codifies the rules relating to the administration of the community protection program as directed by the legislature.

Statutory Authority for Adoption: RCW 71A.12.030, ESSB 6630, Laws of 2006.

Statute Being Implemented: Title 71A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail brinksc@dshs.wa.gov, (360) 725-3416, fax (360) 404-0955; Implementation: Shirley Everard, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail Everash@dshs.wa.gov, (360) 725-3444, fax (360) 404-0955; and Enforcement: Doug Washburn, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail washbdc@dshs.wa.gov, (360) 725-3452, fax (360) 404-0955.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The DDD has analyzed the rules and determined that they do not affect small businesses and nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt from a cost-benefit analysis pursuant to RCW 34.05.[328] (5)(b)(iii) and (vii) as they adopt Washington state statutes and relate to client medical or financial eligibility.

August 1, 2008
Stephanie E. Schiller
Rules Coordinator

Chapter 388-831 WAC

COMMUNITY PROTECTION PROGRAM

NEW SECTION

WAC 388-831-0010 Definitions. The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

"Certified community protection program residential services" means access to twenty-four hour supervision, instruction, and support services as identified in the person's individual support plan.

"Community protection program" See WAC 388-831-0020.

"Constitutes a risk to others" means a determination of a person's risk and/or dangerousness based upon a thorough assessment by a qualified professional. Actuarial risk assessment instruments should be used to supplement clinical judgment whenever appropriate.

"Department" means the department of social and health services.

"Developmental disability" means that condition defined in WAC 388-823-0040 and RCW 71A.10.020(3).

"Disclosure" means providing copies of professional assessments, incident reports, legal documents, and other information pertaining to community protection issues to ensure the provider has all relevant information. Polygraph and plethysmograph reports are excluded from disclosure.

"Division" means the division of developmental disabilities (DDD).

"Managed successfully" means that a person supported by a community protection program does not engage in the behavior identified in WAC 388-831-0030 and RCW 71A.-12.210.

"Opportunistic behavior" means an act committed on impulse, which is not premeditated. In determining whether an act is opportunistic, the original motive or intent of the offense or crime will be considered.

"Predatory" means acts directed toward strangers, individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or casual acquaintances with whom no substantial personal relationship exists. Predatory behavior may be characterized by planning and/or rehearsing the act, stalking, and/or grooming the victim.

"Program participant" means a person who has agreed to and is receiving services and supports in the community protection program.

"Qualified professional" means a licensed psychologist, psychiatrist, or a certified or affiliate sex offender treatment provider with at least three years prior experience working with individuals with developmental disabilities, and:

- If the person being assessed has demonstrated sexually aggressive or sexually violent behavior, that person must be assessed by a certified sex offender treatment provider, or affiliate sex offender treatment provider working under the supervision of a certified sex offender treatment provider; or

- If the person being assessed has demonstrated violent, dangerous, or aggressive behavior, that person must be assessed by a licensed psychologist or psychiatrist who has received specialized training in the treatment of or has at least three years prior experience treating violent or aggressive behavior.

"Restrictive procedures" or "Restrictions" means procedures that restrict a client's freedom of movement, restrict access to client property, prevent a client from doing something the client wants to do, require a client to do something the client does not want to do, or remove something the client owns or has earned.

"Risk assessment" means the written opinion of a qualified professional stating, at a minimum:

- Whether a person meets the criteria in WAC 388-831-0030 and RCW 71A.12.210; and

- What restrictions are necessary to keep people safe.

"Service provider" means a person or agency contracted with the department or a sub-contractor who delivers services and supports to a community protection program participant.

"Specialized environment" means a place where the program participant has agreed to supervision in a safe, structured manner specifying rules, requirements, restrictions, and expectations for personal responsibility in order to maximize community safety.

"Treatment team" means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individual supports and services. This group may include, but is not limited to, the case resource manager, therapist, residential provider, employment/day program provider, and the person's legal representative and/or family, provided the person agrees to the family member's involvement.

"Violent offense" means any felony defined as a violent offense in RCW 9.94A.030.

"Waiver" means the community-based program funded under section 1915(c) of Title XIX of the federal social security act and chapter 388-845 WAC.

NEW SECTION

WAC 388-831-0020 What is the community protection program? (1) The community protection program is an array of services specifically designed to support persons who meet the definition of an "individual with community protection issues", as defined in WAC 388-831-0030.

(2) Community protection services and supports are designed to assist program participants to live safely and successfully in the community while minimizing the risk to public safety.

(3) Participation in the program is voluntary.

NEW SECTION

WAC 388-831-0030 Who are individuals with community protection issues? You are considered an individual with community protection issues if:

(1) You have been determined to have a developmental disability as defined in WAC 388-823-0040 and RCW 71A.-10.020(3); and

(2) You have been identified by DDD as a person who meets one or more of the following:

(a) You have been charged with or convicted of a crime of sexual violence as defined in chapter 9A.44 or 71.09 RCW;

(b) You have been charged with or convicted of a crime involving sexual acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;

(c) You have been charged with or convicted of one or more violent crimes as defined in RCW 9.94A.030(45);

(d) You have not been charged with or convicted of a crime identified in (2)(a), (b), or (c) above, but you have a history of stalking, sexually violent, predatory and/or opportunistic behavior which demonstrates a likelihood to commit a sexually violent and/or predatory act based on current behaviors that may escalate to violence, as determined by a qualified professional; and

(3) You constitute a current risk to others as determined by a qualified professional.

(4) Charges or crimes that result in acquittal are excluded.

NEW SECTION

WAC 388-831-0040 Who is covered by these rules?

These rules cover persons who are age eighteen or older and meet the criteria defined in WAC 388-831-0030.

NEW SECTION

WAC 388-831-0050 What steps are necessary for me to receive services through the community protection program? In order to receive services through the community protection program, you must:

(1) Receive an assessment of risk and/or dangerousness by a qualified professional, as specified in WAC 388-831-0060;

(a) You and your representative have the right to choose the qualified professional who is contracted with the state;

(b) The division will provide you with a list of these qualified professionals; and

(2) Be informed of the information contained in WAC 388-831-0070.

NEW SECTION

WAC 388-831-0060 What is contained in the risk assessment? (1) The risk assessment must be consistent with the guidelines for risk assessments and psychological or psychosexual evaluations developed by the division.

(2) The risk assessment must contain:

(a) A determination by a qualified professional whether your behaviors can be managed successfully in the community with reasonably available safeguards;

(b) A determination that lesser restrictive residential placement alternatives have been considered and would not be reasonable for your situation;

(c) Recommendations for treatment; and

(d) A list of necessary restrictions and the reason for them.

(3) The division may request an additional evaluation by a qualified professional who is contracted with the state.

NEW SECTION

WAC 388-831-0065 What if I refuse to participate in the risk assessment? (1) If you refuse to participate in the risk assessment, the division cannot determine what your health and safety needs are, or whether you can be supported successfully in the community with reasonable safeguards. You will not be eligible for any division services except for case management and medicaid personal care (if eligible under chapter 388-106 WAC).

(2) Your name will be placed on the specialized client database. This database identifies individuals who may present a danger to their communities.

(3) If DDD determines it can provide only case management and personal care, you and your legal representative

will receive a notice of the determination that explains the decision and your right to appeal that decision.

NEW SECTION

WAC 388-831-0070 What type of information will I receive from the division when I am considered for placement in the community protection program? When you are considered for placement in the community protection program, the division will provide you and your legal representative the following information in writing:

(1) Limitations regarding the services that will be available due to your community protection issues;

(2) Disclosure requirements as a condition of receiving services other than case management;

(3) The requirement to engage in therapeutic treatment if it is a condition of receiving certain services;

(4) Anticipated restrictions that may be provided, such as intensive supervision and/or limited access to television viewing, reading material and videos;

(5) The right to decline services;

(6) The anticipated consequences of declining services, such as the loss of existing services and/or removal from waiver services;

(7) The right to an administrative hearing as specified in WAC 388-825-120 through WAC 388-825-165, including an emergency adjudicative proceeding as specified in RCW 34.05.479;

(8) The requirement to sign a preplacement agreement as a condition of receiving community protection program residential services;

(9) The right to retain current services as specified in WAC 388-825-145 or 388-825-150;

(10) The right to refuse to participate in the program; and

(11) Information about how to contact a disability rights organization.

NEW SECTION

WAC 388-831-0080 Will I be notified of the division's determination regarding placement in the community protection program? (1) If the division determines that you are appropriate for placement in the community protection program, you and your legal representative will receive in writing a determination by the division that you meet the criteria for placement within the community protection program and your right to appeal this decision.

(2) This notification does not guarantee placement within the community protection program.

(3) If the division determines that you are not appropriate for placement in the community protection program, you and your legal representative will receive a notice in writing of the determination by the division that you do not meet the criteria for placement within the community protection program.

NEW SECTION

WAC 388-831-0090 Will I be notified if the division determines that I cannot be managed successfully in the community protection program? If the division determines

that your health and safety needs cannot be met and you cannot be managed successfully in the community protection program with reasonably available safeguards, you and your legal representative will receive this determination in writing.

NEW SECTION

WAC 388-831-0100 How do I apply for the community protection program? (1) You may apply for the community protection program by calling the regional DDD office or a local DDD office. The toll free regional numbers are:

Region 1	Spokane	1-800-462-0624
Region 2	Yakima	1-800-822-7840
Region 3	Everett	1-800-788-2053
	Bellingham	1-800-239-8285
	Mount Vernon	1-800-491-5266
Region 4	Seattle	1-800-314-3296
Region 5	Tacoma	1-800-248-0949
	Bremerton	1-800-735-6740
Region 6	Port Angeles	1-877-601-2760
	Tumwater	1-800-339-8227
	Vancouver	1-888-877-3490

(2) DDD will make arrangements with you to complete the application for the eligibility determination by mail or over the phone.

NEW SECTION

WAC 388-831-0110 What information about me will be shared with others if I am offered services in the community protection program? (1) If you are offered services in the community protection program, the division will give information about you and your community protection issues to:

- (a) Prospective community protection service providers; and
 - (b) Your current service providers.
- (2) The division will not authorize any services without disclosure of your community protection issues.

NEW SECTION

WAC 388-831-0120 What will my services be like in the community protection program? Your community protection services will be:

- (1) Consistent with your individual support and supervision needs as specified in your individual support plan;
- (2) Consistent with your individual treatment plan, which includes your most recent treatment goals and current restrictions; and
- (3) Provided in the least restrictive manner and environment that minimizes the likelihood of offending behavior.

NEW SECTION

WAC 388-831-0130 What services may I receive in the community protection program? (1) The division will

only authorize services to program participants who follow the treatment recommendations made by the qualified professionals who assess and/or provide your treatment and are listed in WAC 388-845-0220.

(2) Your residential services must be provided by a certified community protection intensive supported living services provider. Community protection intensive supported living services provide:

- (a) An opportunity for you to live successfully in the community;
- (b) A specialized environment in which you are supported to make positive choices to reduce the behaviors that require intensive intervention and supervision.

(3) Your employment services as defined in WAC 388-845-1200, 388-845-1400, and 388-845-2100 must be provided by a qualified community protection employment program service provider.

NEW SECTION

WAC 388-831-0150 Who can provide my therapy in the community protection program? You and your representative have the right to choose the qualified professional to provide your therapy, subject to the following conditions:

- (1) Your therapy must be provided by a qualified professional who:
 - (a) Has at least three years experience treating individuals with developmental disabilities and community protection issues;
 - (b) Is in good standing with the department of health, health professions quality assurance division;
 - (c) Is within a reasonable distance of your residence; and
 - (d) Is contracted with the department.
- (2) Only a certified sex offender treatment provider (SOTP) or an affiliate sex offender treatment provider working under the supervision of a certified SOTP may provide sexual deviancy treatment.
- (3) Any restrictive procedures used during your therapy or as part of your treatment must follow requirements for restrictive procedures developed by the department.

NEW SECTION

WAC 388-831-0160 What services may I receive if I refuse placement in the community protection program? If you are offered and refuse community protection program residential services, you may only receive case management services and medicaid personal care (if eligible under chapter 388-106 WAC).

NEW SECTION

WAC 388-831-0200 How often will my progress be reviewed? (1) The treatment team will review your progress at least every ninety days.

(2) If a treatment team member has reason to believe that your circumstances have changed significantly, the team member may request that a risk reassessment be conducted at any time.

NEW SECTION**WAC 388-831-0210 What is included in the review of my progress?**

- (1) The review of your progress will include:
- Evaluating the use of less restrictive measures;
 - Making changes in your program as necessary;
 - Reviewing all restrictions and recommending reductions, if appropriate.
- (2) The therapist must write a report annually evaluating your risk of offense and/or risk of behaviors that are dangerous to you or others.

NEW SECTION**WAC 388-831-0220 When may I be considered for placement in a less restrictive residential setting?**

- (1) If you demonstrate success in complying with reduced restrictions and remain free of any offense that may indicate a relapse for at least twelve months, you may be considered for placement in a less restrictive residential setting.
- (2) If you request placement in a less restrictive residential setting and that request is denied, you and your legal representative will receive a notice of the determination by DDD, explaining the reason for the denial and your right to appeal this decision.

NEW SECTION**WAC 388-831-0230 What is the process to move me to a less restrictive residential setting?**

- (1) The process to move you to a less restrictive residential setting will include:
- Written verification of your treatment progress and an assessment of low risk of reoffense and/or dangerousness by your therapist;
 - A recommendation by your therapist that you are ready for reductions in supervision and restrictions;
 - Development of a gradual phase out plan by the treatment team, projected over a reasonable period of time, which includes specific criteria for evaluating reductions in restrictions, especially supervision;
 - Compliance with reduced restrictions;
 - The absence of any incidents that may indicate relapse for a period of twelve months;
 - An assessment by a qualified professional consistent with the division guidelines for risk assessment and psychosexual evaluations containing:
 - An evaluation of your risk of reoffense and/or dangerousness; and
 - An opinion as to whether or not you can be managed successfully in a less restrictive community residential setting; and
 - A recommendation as to suitable placement by the treatment team.
- (2) When the treatment team agrees that you are ready to move to a less restrictive community residential placement, you will receive a written plan that details what supports and services, including the level of supervision, you will receive in the less restrictive community residential placement.
- (3) If you meet the eligibility requirements described in WAC 388-845-0030, you are eligible for waiver services and will be placed on a waiver that meets your needs.

NEW SECTION**WAC 388-831-0240 Can I be terminated from the community protection program?**

- You may be terminated from the community protection program by the division if:
- You physically assault program participants, staff or others;
 - You repeatedly elope from the program or evade supervision;
 - You engage in illegal behavior of any kind; or
 - You refuse to comply with program and/or treatment guidelines to the extent that your therapist determines you are not amenable to treatment; or
 - The division determines that your health and safety needs cannot be met in the program.

NEW SECTION**WAC 388-831-0250 Can I leave the community protection program at any time?**

Your participation in the community protection program is voluntary. However, if you leave the community protection program and DDD determines that you require the community protection program to meet your health and safety needs and those of the community, you will not be eligible for other DDD residential services or employment/day program services.

NEW SECTION**WAC 388-831-0260 What enforcement actions may the division take against a provider of residential services and support?**

The rules regarding the enforcement actions that the division may take against a provider of residential services and support may be found in WAC 388-101-4150 through WAC 388-101-4190.

NEW SECTION**WAC 388-831-0300 What appeal rights do I have if I receive services through the division's community protection waiver?**

- (1) You have the right to appeal decisions made by the division in accordance with WAC 388-825-120 through WAC 388-825-165.
- (2) In addition to the right to appeal department actions described in WAC 388-825-120(3), if you receive services through the division's community protection waiver you have the right to appeal the following decisions by the division:
- Termination of community protection waiver eligibility;
 - Your assignment to the community protection waiver; and
 - Denial of a request for a less restrictive community residential placement.
- (3) You may appeal final administrative decisions pursuant to the provisions of RCW 34.05.510 through 34.05.598.
- (4) You do not have the right to an administrative hearing on the division's decision denying you placement on the community protection waiver.

NEW SECTION

WAC 388-831-0400 Am I entitled to placement on the community protection waiver? Nothing in these rules creates an entitlement to placement on the community protection waiver.

WSR 08-17-027

**WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Filed August 13, 2008, 10:33 a.m.]

The Washington department of fish and wildlife is withdrawing the CR-102 filed as WSR 08-14-148, on July 1, 2008. The department anticipates filing a new CR-102 within the next few months.

Loreva M. Preuss
Rules Coordinator

WSR 08-17-030

**PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed August 13, 2008, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-15-081.

Title of Rule and Other Identifying Information: Chapter 392-163 WAC, Special service program—Title 1 grants for improving LEA basic programs.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 Washington Street, Olympia, WA 98504, on September 25, 2008, at 11:30 a.m.

Date of Intended Adoption: September 26, 2008.

Submit Written Comments to: Gayle Pauley, P.O. Box 47200, Olympia, WA 98504-7200, e-mail gayle.pauley@k12.wa.us, fax (360) 725-6100, by September 24, 2008.

Assistance for Persons with Disabilities: Contact Penny Coker by September 24, 2008, TTY (360) 664-3631 or (360) 725-6142.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To repeal the WAC. It is no longer needed or appropriate.

Reasons Supporting Proposal: No longer current or needed.

Statutory Authority for Adoption: RCW 28A.300.070.

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

Name of Proponent: [OSPI], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Gayle Pauley, OSPI, (360) 725-6100.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

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

August 13, 2008
Dr. Terry Bergeson
Superintendent of
Public Instruction

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 392-163-700	Authority.
WAC 392-163-705	Purpose.
WAC 392-163-710	Adopting the terms and conditions of federal funding by reference.
WAC 392-163-715	Obtaining copies of federal statutes and rules.

WSR 08-17-031

**PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed August 13, 2008, 11:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-15-082.

Title of Rule and Other Identifying Information: Chapter 392-175 WAC, Special service program—Waiver of regulations pertaining to special education, chapter 1, and learning assistance program.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 Washington Street, Olympia, WA 98504, on September 25, 2008, at 11:30 a.m.

Date of Intended Adoption: September 26, 2008.

Submit Written Comments to: Gayle Pauley, P.O. Box 47200, Olympia, WA 98504-7200, e-mail gayle.pauley@k12.wa.us, fax (360) 725-6100, by September 24, 2008.

Assistance for Persons with Disabilities: Contact Penny Coker by September 24, 2008, TTY (360) 664-3631 or (360) 725-6142.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To repeal the WAC. It is no longer needed or appropriate.

Reasons Supporting Proposal: No longer current or needed.

Statutory Authority for Adoption: RCW 28A.155.090.

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

Name of Proponent: [OSPI], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Gayle Pauley, OSPI, (360) 725-6100.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

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

August 13, 2008
 Dr. Terry Bergeson
 Superintendent of
 Public Instruction

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 392-175-001	Authority.
WAC 392-175-005	Purpose.
WAC 392-175-010	Standards for the modification or waiver of the superintendent of public instruction's rules.
WAC 392-175-015	Waiver of state statutes.
WAC 392-175-025	Rules waiver procedures.

WSR 08-17-033
PROPOSED RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY
 [Filed August 13, 2008, 2:49 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: SRCAA Regulation I, Article VI, Section 6.01 - Outdoor Burning and SRCAA Regulation I, Article X, Section 10.13 - Outdoor Burning Permit Fees.

Hearing Location(s): Spokane County Public Works Building, Lower Level Hearing Room, 1026 West Broadway, Spokane, WA 99201, on October 2, 2008, at 9:00 a.m.

Date of Intended Adoption: October 2, 2008.

Submit Written Comments to: Matt Holmquist, 1101 West College, Suite 403, Spokane, WA 99201, e-mail mholmquist@spokanecleanair.org, fax (509) 477-6828, by 4:30 p.m. on September 23, 2008.

Assistance for Persons with Disabilities: Contact Barbara Nelson by 4:30 p.m. on September 25, 2008, (509) 477-4727.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In general, the proposed revisions are intended to streamline the outdoor burning program.

- Simplifies the regulation by not restating regulations already included in chapter 173-425 WAC;
- Alleviates written permits and reduces the fee for fire fighting instruction and fire extinguisher training fire permits;

- Allows the Spokane County Noxious Weed Control Board to issue noxious weed control burn permits directly;
- Removes Spokane clean air as the agency that implements residential (yard and garden) burning; and

In addition, it prohibits residential land-clearing burning permitted by Spokane clean air after December 31, 2010.

Reasons Supporting Proposal: The proposed revisions should streamline the outdoor burning program.

Statutory Authority for Adoption: RCW 70.94.141, 70.94.380(2), 70.94.755, chapter 173-425 WAC.

Statute Being Implemented: RCW 70.94.755, 70.94.-775, chapter 173-425 WAC.

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

Name of Proponent: Spokane Regional Clean Air Agency (SRCAA), formerly know as Spokane County Air Pollution Control Authority (SCAPCA), governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Matt Holmquist, SRCAA, 1101 West College, Suite 403, Spokane, WA 99201, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local clean air agency rule and as such, chapter 19.85 RCW does not apply.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule.

August 13, 2008
 Matt Holmquist
 Compliance Administrator

REPEALER

REGULATION I, ARTICLE VI, SECTION 6.01 - OUTDOOR BURNING

NEW SECTION

SECTION 6.01 OUTDOOR BURNING

A. Purpose.

This Section establishes controls for outdoor burning in Spokane County in order to:

1. Minimize outdoor burning to the greatest extent practicable, consistent with the laws and regulations of the State of Washington.
2. Minimize the impact of emissions from outdoor burning by burning only when weather and ventilation conditions are favorable.
3. Define conditions under which outdoor burning may be conducted.
4. Encourage the development and specify the use of reasonable alternatives to outdoor burning.
5. Geographically limit outdoor burning in order to assure continued attainment of the National Ambient Air Quality Standards for carbon monoxide and fine particulate matter (PM_{2.5}).

B. Applicability.

This Section applies to outdoor burning in all areas of Spokane County. This Section does not apply to Silvicultural Burning (see Chapter 332-24 WAC) or Agricultural Burning (see Section 6.11).

1. The provisions of Chapter 173-425 WAC (Outdoor Burning) are herein incorporated by reference. It shall be unlawful for any person to not comply with Chapter 173-425 WAC, this Section, and applicable permit conditions.

2. The provisions of this Section are severable. If any phrase, sentence, paragraph, or provision is held invalid, the application of such phrase, sentence, paragraph, or provision to other circumstances and the remainder of this Section shall not be affected.

3. Nothing contained in this Section shall apply to burning of combustible material in a multiple-chambered unit, such as in a multiple-chambered incinerator, as long as the unit is registered with the Agency pursuant to Article IV or the operator possesses a valid Notice of Construction approval issued pursuant to Article V and the unit complies with all applicable regulations.

4. Nothing contained in this Section shall relieve any person from obtaining permits required by any state or local fire protection agency or from compliance with the Uniform Fire Code.

C. Definitions.

Words and phrases used in this Section shall have the meaning defined in Chapter 173-425 WAC, unless a different meaning is clearly required by context or is otherwise defined in this Section.

1. **Agricultural Burning** means burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, necessary to destroy weeds or crop residue along farm fence rows, irrigation ditches, or farm drainage ditches, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW 70.94.650 or other authoritative source on agricultural practices.

2. **Permitting Agency** means the Spokane Regional Clean Air Agency (Spokane Clean Air), or one or more of the following entities, whenever the Agency and an entity have signed an agreement regarding a permitting program or the Agency has delegated administration of the permitting program, pursuant to RCW 70.94.654, to one or more of the referenced entities, provided such delegation of authority has not been withdrawn: Spokane County, any fire protection agency within Spokane County, Department of Natural Resources, or the Spokane County Conservation District.

3. **Person** means any individual(s), firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency. It includes any person who has applied for and received a permit for outdoor burning; any person allowing, igniting or attending an outdoor fire; or any person who owns or controls property on which an outdoor fire occurs.

4. **Silvicultural Burning** means burning on unimproved land the Department of Natural Resources protects pursuant to RCW 70.94.030(20), 70.94.660, and 70.94.690, and pursuant to Chapter 76.04 RCW.

D. Areas Where Outdoor Burning is Prohibited.

The permitting agency shall not permit/allow any outdoor burning if it determines that the proposed burning will cause or is likely to cause a nuisance. Except for recreational fires and other outdoor burning (as defined in Chapter 173-425 WAC and when authorized by Spokane Clean Air), outdoor burning shall not be allowed in the following areas:

1. Within the No Burn Area as defined by Resolution of the Board of Directors of Spokane Clean Air.

2. Within any Urban Growth Area or any area completely surrounded by any Urban Growth Area (e.g., "islands" of land within Urban Growth Areas).

3. Within any area where outdoor burning is otherwise prohibited by ordinance, regulation, or law.

E. Outdoor Burning Permitted by Others.

Outdoor burning permitted by permitting agencies other than Spokane Clean Air is limited to the following:

1. Fire hazard abatement burning. A written permit is required.

2. Residential (yard and garden) burning. A verbal, electronic, written, or general permit established by rule may be used (Chapter 173-425 WAC).

3. Weed abatement fires for noxious weed control. A written permit is required.

F. Outdoor Burning Permitted by Spokane Clean Air.

Outdoor burning permitted by Spokane Clean Air includes, but is not limited to, the following:

1. Land clearing burning (limited to residential land clearing burning). Residential land clearing burning may be allowed prior to January 1, 2011, provided the fire consists of natural vegetation cleared from less than one acre of forested land on a five acre or larger parcel of land in non-commercial ownership. A written permit is required.

2. Recreational fires (including those for social events) with a total fuel area greater than 3 feet in diameter and/or greater than 2 feet in height. A written permit is required.

4. Storm or flood debris burning. A written permit is required.

G. Requirements for Written Outdoor Burning Permits.

In addition to the prohibitions/requirements in WAC 173-425-050 that apply to all outdoor burning, outdoor burning requiring a written permit is subject to the following requirements:

1. It shall be unlawful for any person to cause or allow an outdoor fire unless an application for a written permit, including the required nonrefundable fee specified by the permitting agency and any additional information requested by the permitting agency, has been submitted to the permitting agency on approved forms, in accordance with the advance application period as specified by the permitting agency.

2. The permitting agency may deny an application or revoke a previously issued permit if it is determined by the permitting agency that the application contained inaccurate information, or failed to contain pertinent information, which information is deemed by the permitting agency to be significant enough to have a bearing on the permitting agency's decision to grant a permit.

3. No permit for outdoor burning shall be granted on the basis of a previous permit history.

4. A copy of the permit must be kept at the permitted burn site during the permitted burn, and made available for review upon request of the permitting agency.

5. Unless otherwise approved by the permitting agency, applications will be accepted no more than 180 days prior to the first proposed burn date; and written permits shall expire 29 consecutive calendar days after the first proposed burn date indicated on the permit.

6. A separate application must be completed and submitted to the appropriate permitting agency for each outdoor burn permit requested.

H. Fire Extinguisher Training.

Fire extinguisher training fires of short-duration for instruction on the proper use of hand-held fire extinguishers may be conducted provided all of the following requirements are met:

1. Training shall not occur during any stage of an air pollution episode or period of impaired air quality.

2. Flammable or combustible materials used during the fire extinguisher training shall be limited to:

a. Less than 2 gallons of clean kerosene or diesel fuel oil per training exercise, provided that gasoline or gasoline mixed with diesel or kerosene may be used only by local fire departments, fire protection agencies, fire marshals, or fire districts;

b. As much gaseous fuel (propane or natural gas) as required for the training exercise; or

c. Less than 0.5 cubic yards of clean, solid combustible materials per training exercise. Examples of solid combustible materials are seasoned wood, untreated scrap lumber and unused paper.

3. All training must be conducted by local fire officials or a qualified instructor. Instructor qualifications and a training plan must be made available to Spokane Clean Air upon request.

4. Prior to the training, the person(s) conducting the exercise must notify the local fire department, fire marshal, or fire district and meet all applicable local ordinances and permitting requirements.

5. Person(s) conducting hand-held fire extinguisher training shall be responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

6. The permitting agency shall not permit/allow burning if it determines that the proposed burning will cause or is likely to cause a nuisance.

I. Fire Fighting Instruction Fires.

1. A fire protection agency may conduct structural fire training provided all of the following requirements are met:

a. Fire training shall not occur during any stage of an air pollution episode or period of impaired air quality.

b. The owner and fire protection agency must meet the requirements in SRCAA Regulation I, Article IX and Section 10.09 prior to conducting the training.

c. The fire protection agency conducting the fire training must have a fire-training plan available to Spokane Clean Air upon request, and the purpose of the structural fire must be to train fire fighters.

d. Composition roofing, asphalt roofing shingles, asphalt siding materials, miscellaneous debris from inside the structure, carpet, linoleum, and floor tile, shall not be burned unless such materials are identified by the fire protection agency as being an essential part of the fire training exercise and are described as such in the fire-training plan. Materials removed from the structure(s) must be disposed of in a lawful manner prior to the training exercise.

e. The fire protection agency conducting the training fire shall obtain any permits, licenses, or other approvals required by any entity for such training fires. All permits, licenses, and approvals must be kept on-site and available for inspection.

f. Structural fire training shall be performed in accordance with RCW 52.12.150.

g. The permitting agency shall not permit burning if it determines that the proposed burning will cause or is likely to cause a nuisance.

h. Nuisance complaints or citizen inquiries relating to any training fire shall be resolved by the fire protection agency conducting the fire training.

2. A fire protection agency may conduct aircraft crash rescue training fires if performed in accordance with RCW 70.94.650(5).

Reviser's note: The typographical error in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 10.13 OUTDOOR BURNING PERMIT FEES

For outdoor burning permit applications, submitted to the Authority pursuant to Section 6.01 of this Regulation, a nonrefundable fee shall accompany the application. Fees shall be paid without regard to whether the associated request(s) are approved or denied. The applicant shall pay a fee at the time of application (except for hourly fees, which will result in a billing invoice being sent to the applicant from the Agency) pursuant to the fee schedule as indicated in the table below and shall submit a complete application pursuant to the advance application period indicated in the table below. ((The fee is as follows:

A. A \$10 fee shall be submitted with each 30-day permit application.

B. A \$25 fee shall be submitted with each annual permit application.

~~C. Fees shall be paid without regard to whether the request(s) associated with this Section are approved or denied.~~

Type of Outdoor Burning	Advance Application Period	Fee
Residential Land Clearing	10 working days	\$200
Recreational (>3' in diameter or >2' in height)	3 working days	\$50
Storm or Flood Debris	5 working days	\$200
Other Outdoor Burning as defined in Chapter 173-425 WAC	10 working days	\$65/hr

WSR 08-17-055
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed August 15, 2008, 1:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-17-071.

Title of Rule and Other Identifying Information: Rule changes relating to hydraulic project approvals for mineral prospecting activities. Includes WAC 220-110-020, 220-110-030, 220-110-031, 220-110-200, 220-110-201, 220-110-202, 220-110-206, 220-110-340, 220-110-350, and 220-110-360. Also repeals WAC 220-110-203, 220-110-204, 220-110-205, 220-110-207, 220-110-208, and 220-110-209.

Hearing Location(s): Quality Inn, 1700 Canyon Road, Ellensburg, WA 98926, on October 3-4, 2008, at 8:30 a.m.

Date of Intended Adoption: November 7-8, 2008.

Submit Written Comments to: Lisa Wood, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail sepadesk@dfw.wa.gov, fax (360) 902-2946, by September 26, 2008.

Assistance for Persons with Disabilities: Contact Susan Yeager, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current rules on this subject were adopted in 1998 and do not reflect the current knowledge of impacts to fish life and habitat caused by mineral prospecting. The proposed rules modify permitted activities, equipment and tools, timing and location of authorized mineral prospecting activities under authority of the Gold and Fish pamphlet, application procedures for standard and pamphlet hydraulic project approvals, appeal procedures, and violation penalties.

Reasons Supporting Proposal: The proposed rules reflect the most reasonable methods of allowing mineral prospecting activities as required by RCW 77.55.091 while also protecting fish life from the impacts of those activities. The proposed rules also clarify various administrative procedures associated with applying for, or appealing, standard and pamphlet hydraulic project approvals.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Statute Being Implemented: RCW 77.55.091.

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

Name of Proponent: Washington department of fish and wildlife (WDFW), governmental.

Name of Agency Personnel Responsible for Drafting: Pat Chapman, 1111 Washington Street, Olympia, (360) 902-2571; Implementation: Greg Hueckel, 1111 Washington Street, Olympia, (360) 902-2416; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. In conjunction with the group of stakeholders who helped develop the proposed rules, WDFW determined that the rules will not significantly impact businesses required to follow the rules.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Lisa Wood, 600 Capitol Way North,

Olympia, WA 98501-1091, phone (360) 902-2260, fax (360) 902-2946, e-mail sepadesk@dfw.wa.gov.

August 15, 2008

Loreva M. Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 98-252, filed 12/16/98, effective 1/16/99)

WAC 220-110-020 Definitions. As used in this chapter, unless the context clearly requires otherwise:

(1) "Abandoning an excavation site" means not working an excavation site for forty-eight hours or longer.

(2) "Aggregate" means a mixture of minerals separable by mechanical or physical means.

((2)) (3) "Aquatic beneficial plant" means native and nonnative aquatic plants not prescribed by RCW 17.10.010 (10), and that are of value to fish life.

((3)) (4) "Aquatic noxious weed" means an aquatic weed on the state noxious weed list as prescribed by RCW 17.10.010(10).

((4)) (5) "Aquatic plant" means any aquatic noxious weed and aquatic beneficial plant that occurs within the ordinary high water line of waters of the state.

((5)) (6) "Artificial materials" means clean, inert materials that you use to construct diversion structures for mineral prospecting.

(7) "Bank" means any land surface above the ordinary high water line that adjoins a body of water and contains it except during floods. Bank also includes all land surfaces of islands above the ordinary high water line that adjoin a ((water)) body of water and that are below the flood elevation of their surrounding ((water)) body of water.

((6)) (8) "Beach area" means the beds between the ordinary high water line and extreme low tide.

((7)) (9) "Bed" means the land below the ordinary high water lines of state waters. This definition shall not include irrigation ditches, canals, storm water run-off devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered by man.

((8)) (10) "Bed materials" means naturally occurring material, including, but not limited to, gravel, cobble, rock, rubble, sand, mud and aquatic plants, found in the beds of state waters. Bed materials may be found in deposits or bars above the wetted perimeter of water bodies.

((9)) (11) "Biodegradable" means material that is capable of being readily decomposed by biological means, such as by bacteria.

((10)) (12) "Bioengineering" means project designs or construction methods which use live woody vegetation or a combination of live woody vegetation and specially developed natural or synthetic materials to establish a complex root grid within the existing bank which is resistant to erosion, provides bank stability, and maintains a healthy riparian environment with habitat features important to fish life. Use of wood structures or limited use of clean angular rock may be allowable to provide stability for establishment of the vegetation.

~~((11))~~ (13) "Bottom barrier or screen" means synthetic or natural fiber sheets of material used to cover and kill plants growing on the bottom of a watercourse.

~~((12))~~ (14) "Boulder" means a stream substrate particle larger than ten inches in diameter.

~~((13))~~ (15) "Bulkhead" means a vertical or nearly vertical erosion protection structure placed parallel to the shoreline consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.

~~((14))~~ (16) "Classify" means to sort aggregate by hand or through a screen, grizzly, or similar device to remove the larger material and concentrate the remaining aggregate.

(17) "Cofferdam" means a temporary enclosure used to keep water from a work area.

(18) "Complete written application" means any document that serves as application for a written hydraulic project approval under WAC 220-110-030 which is signed and dated by the applicant and authorized agent, if one is acting for the applicant, and contains general plans for the overall project, complete plans and specifications for the proposed construction or work waterward of the mean higher high water line in salt water, or waterward of the ordinary high water line in fresh water, complete plans and specifications for the proper protection of fish life, and notice of compliance with any applicable requirements of the State Environmental Policy Act, chapter 43.21C RCW, unless otherwise provided for in chapter 77.55 RCW.

(19) "Concentrator" means a device used to physically or mechanically separate ~~((and enrich))~~ the valuable mineral content ~~((of))~~ from aggregate. ~~((Pans, sluice boxes and mini-rocker boxes are examples of concentrators.))~~

~~((15))~~ "Cofferdam" means a temporary enclosure used to keep water from a work area.

~~((16))~~ (20) "Control" means level of treatment of aquatic noxious weeds as prescribed by RCW 17.10.010(5).

~~((17))~~ (21) "Crevicing" means removing aggregate from cracks and crevices using hand-held mineral prospecting tools or water pressure.

(22) "Department" means the Washington department of fish and wildlife.

~~((18))~~ (23) "Diver-operated dredging" means the use of portable suction or hydraulic dredges held by SCUBA divers to remove aquatic plants.

~~((19))~~ (24) "Drawdown" means decreasing the level of standing water in a watercourse to expose bottom sediments and rooted plants.

~~((20))~~ (25) "Dredging" means removal of bed material using other than hand-held tools.

~~((21))~~ (26) "Early infestation" means an aquatic noxious weed whose stage of development, life history, or area of coverage makes one hundred percent control and eradication as prescribed by RCW 17.10.010(5) likely to occur.

~~((22))~~ (27) "Emergency" means an immediate threat to life, public or private property, or an immediate threat of serious environmental degradation, arising from weather or stream flow conditions, other natural conditions, or fire.

~~((23))~~ (28) "Entrained" means the entrapment of fish into a watercourse diversion without the presence of a screen, into high velocity water along the face of an improperly

designed screen, or into the vegetation cut by a mechanical harvester.

~~((24))~~ (29) "Equipment" means any device powered by internal combustion; hydraulics; electricity, except less than one horsepower; or livestock used as draft animals, except saddle horses; and the lines, cables, arms, or extensions associated with the device.

~~((25))~~ (30) "Eradication((-))": See "control."

~~((26))~~ (31) "Established ford" means a crossing place in a watercourse that was in existence and annually used prior to 1986 or subsequently permitted by the department, and((-)) has identifiable approaches on the banks.

~~((27))~~ (32) "Excavation site" means the pit, furrow, or hole from which ~~((aggregate is being removed for the processing and recovery of))~~ you remove aggregate in order to process and recover minerals.

~~((28))~~ (33) "Extreme low tide" means the lowest level reached by a receding tide.

~~((29))~~ (34) "Farm and agricultural land" means those lands identified as such in RCW 84.34.020.

~~((30))~~ (35) "Filter blanket" means a layer or combination of layers of pervious materials (organic, mineral, or synthetic) designed and installed in such a manner as to provide drainage, yet prevent the movement of soil particles due to flowing water.

~~((31))~~ (36) "Fish life" means all fish species, including but not limited to food fish, shellfish, game fish, and other nonclassified fish species and all stages of development of those species.

~~((32))~~ (37) "Fishway" means any facility or device that is designed to enable fish to effectively pass around or through an obstruction without undue stress or delay.

~~((33))~~ (38) "Food fish" means those species of the classes Osteichthyes, Agnatha, and Chondrichthyes that shall not be fished for except as authorized by rule of the director of the Washington department of fish and wildlife.

~~((34))~~ (39) "Frequent scour zone" means the area between the wetted perimeter and the toe of the slope, comprised of aggregate, boulders, or bedrock. Organic soils are not present in the frequent scour zone.

(40) "Freshwater area" means those state waters and associated beds below the ordinary high water line that are upstream of river mouths including all lakes, ponds, and streams.

~~((35))~~ (41) "Game fish" means those species of the class Osteichthyes that shall not be fished for except as authorized by rule of the Washington fish and wildlife commission.

~~((36))~~ (42) "Ganged equipment" means two or more pieces of mineral prospecting equipment coupled together to increase efficiency. An example is adding a second sluice to a high-banker within the flow of water and aggregate.

(43) "General provisions" means those provisions that are contained in every HPA.

~~((37))~~ (44) "Gold and Fish pamphlet" means a document that details the rules for conducting small-scale and other prospecting and mining activities, and which serves as the hydraulic project approval for certain mineral prospecting and mining activities in Washington state.

(45) "Habitat improvement structures or stream channel improvements" means natural or human-made materials placed in or next to bodies of water to make existing conditions better. Rock flow deflectors, engineered logjams, and artificial riffles are examples.

(46) "Hand cutting" means the removal or control of aquatic plants with the use of hand-held tools or equipment, or equipment that is carried by a person when used.

~~((38))~~ (47) "Hand-held tools" means tools that are held by hand and are not powered by internal combustion, hydraulics, pneumatics, or electricity. Some examples of hand-held tools are shovels, rakes, hammers, pry bars and cable winches. This definition does not apply to hand-held tools used for mineral prospecting. See "hand-held mineral prospecting tools."

~~((39))~~ (48) "Hand-held mineral prospecting tools" means:

(a) Tools that you hold by hand and are not powered by internal combustion, hydraulics, or pneumatics. Examples include metal detectors, shovels, picks, trowels, hammers, pry bars, hand-operated winches, and battery-operated pumps specific to prospecting; and

(b) Vac-pacs.

(49) "Hatchery" means any water impoundment or facility used for the captive spawning, hatching, or rearing of fish and shellfish.

~~((40)) "Highbanker" means a stationary concentrator capable of being operated outside the wetted perimeter of the water body from which water is removed, and which is used to separate gold and other minerals from aggregate with the use of water supplied by hand or pumping, and consisting of a sluice box, hopper, and water supply. Aggregate is supplied to the highbanker by means other than suction dredging. This definition excludes mini-rocker boxes.~~

(41) "Highbanking" means the use of a highbanker for the recovery of minerals.

~~((42))~~ (50) "High-banker" means a stationary concentrator that you can operate outside the wetted perimeter of the body of water from which the water is removed, using water supplied by hand or by pumping. A high-banker consists of a sluice box, hopper, and water supply. You supply aggregate to the high-banker by means other than suction dredging. This definition excludes rocker boxes. See Figure 1.



Figure 1: Highbanker

(51) "High-banking" means using a high-banker to recover minerals.

(52) "Hydraulic project" means construction or performance of other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. Hydraulic projects include forest practice activities, conducted pursuant to the forest practices rules (Title 222 WAC), that involve construction or performance of other work in or across the ordinary high water line of:

(a) Type 1-3 waters; or

(b) Type 4 and 5 waters with identifiable bed or banks where there is a hatchery water intake within two miles downstream; or

(c) Type 4 and 5 waters with identifiable bed or banks within one-fourth mile of Type 1-3 waters where any of the following conditions apply:

(i) Where the removal of timber adjacent to the stream is likely to result in entry of felled trees into flowing channels;

(ii) Where there is any felling, skidding, or ground lead yarding through flowing water, or through dry channels with identifiable bed or banks with gradient greater than twenty percent;

(iii) Where riparian or wetland leave trees are required and cable tailholds are on the opposite side of the channel;

(iv) Where road construction or placement of culverts occurs in flowing water;

(v) Where timber is yarded in or across flowing water;

(d) Type 4 and 5 waters with identifiable bed or banks that are likely to adversely affect fish life, where the HPA requirement is noted by the department in response to the forest practice application.

Hydraulic projects and associated permit requirements for specific project types are further defined in other sections of this chapter.

~~((43)) "Hydraulic project application" means a form provided by and submitted to the department of fish and wildlife accompanied by plans and specifications of the proposed hydraulic project.~~

(44)) (53) "Hydraulic project approval" ((HPA)) or "HPA" means:

(a) A written approval for a hydraulic project signed by the director of the department of fish and wildlife, or the director's designates; or

(b) A verbal approval for an emergency hydraulic project from the director of the department of fish and wildlife, or the director's designates; or

(c) The following printed pamphlet approvals ((and any supplemental approvals to them. See "supplemental approval")):

(i) A "Gold and Fish" pamphlet issued by the department, which identifies and authorizes specific minor hydraulic project activities for mineral prospecting and placer mining; or

(ii) An "Irrigation and Fish" pamphlet issued by the department, which identifies and authorizes specific minor hydraulic project activities; or

(iii) An "Aquatic Plants and Fish" pamphlet and any supplemental approvals to it issued by the department, which identifies and authorizes specific aquatic noxious weed and aquatic beneficial plant removal and control activities.

~~((45))~~ "Hydraulic" means the use of water spray or water under pressure to dislodge minerals and other material.

~~((46))~~ ~~((54))~~ "Job site" means the space of ground including and immediately adjacent to the area where work is conducted under the authority of ~~((a hydraulic project approval))~~ an HPA. For mineral prospecting and placer mining projects, the job site includes the excavation site.

~~((47))~~ ~~((55))~~ "Joint aquatic resources project application" or "JARPA" means a form provided by the department and other agencies which an applicant submits when requesting a written HPA for a hydraulic project.

~~((56))~~ "Lake" means any natural or impounded body of standing freshwater, except impoundments of the Columbia and Snake rivers.

~~((48))~~ ~~((57))~~ "Large woody material" means trees or tree parts larger than four inches in diameter and longer than six feet, and rootwads, wholly or partially waterward of the ordinary high water line.

~~((49))~~ ~~((58))~~ "Mean higher high water" or "MHHW" means the tidal elevation obtained by averaging each day's highest tide at a particular location over a period of nineteen years. It is measured from the ~~((MLLW))~~ mean lower low water = 0.0 tidal elevation.

~~((50))~~ ~~((59))~~ "Mean lower low water" or "MLLW" means the 0.0 tidal elevation. It is determined by averaging each ~~((days'))~~ day's lowest tide at a particular location over a period of nineteen years. It is the tidal datum for vertical tidal references in the saltwater area.

~~((51))~~ ~~((60))~~ "Mechanical harvesting and cutting" means the partial removal or control of aquatic plants with the use of aquatic mechanical harvesters, which cut and collect aquatic plants, and mechanical cutters, which only cut aquatic plants.

~~((52))~~ "Mineral prospecting equipment" means any natural or manufactured device, implement, or animal other than the human body used in any aspect of prospecting for or recovering minerals. Classifications of mineral prospecting equipment are as follows:

(a) Class 0 – nonmotorized pans;

(b) Class I:

(i) Pans;

(ii) Nonmotorized sluice boxes, concentrators and mini-rocker boxes with a riffle area not exceeding ten square feet, and not exceeding fifty percent of the width of the wetted perimeter of the stream;

(c) Class II:

(i) Suction dredges with a maximum nozzle size of four inches inside diameter;

(ii) Highbankers or suction dredge/highbanker combinations with a maximum water intake size of two and one-half inches inside diameter, when operated wholly below the ordinary high water line;

(d) Class III:

(i) Highbankers supplied with water from a pump with a maximum water intake size of two and one-half inches inside diameter, when used to process aggregate at locations two hundred feet or greater landward of the ordinary high water line;

(ii) Suction dredge/highbanker combinations supplied with water from a pump with a maximum water intake size of two and one-half inches inside diameter, when used to pro-

cess aggregate at locations two hundred feet or greater landward of the ordinary high water line.

~~((iii))~~ Other concentrators supplied with water from a pump with a maximum water intake size of two and one-half inches inside diameter, when used to process aggregate at locations two hundred feet or greater landward of the ordinary high water line.

~~((53))~~ ~~((61))~~ "Mineral prospect" means to excavate, process, or classify aggregate using hand-held mineral prospecting tools and mineral prospecting equipment.

~~((62))~~ "Mineral prospecting equipment" means any natural or manufactured device, implement, or animal (other than the human body) that you use in any aspect of prospecting for or recovering minerals.

~~((63))~~ "Mini high-banker" means a high-banker with a riffle area of three square feet or less. See Figure 2.



Figure 2: Mini high-banker

~~((64))~~ "Mini(-)rocker box" means a ~~((nonmotorized concentrator operated with a rocking motion and consisting of a hopper attached to a cradle and a sluice box with a riffle area not exceeding ten square feet. The mini-rocker box shall only be supplied with water by hand and be capable of being carried by one individual. A mini-rocker box shall not be considered a highbanker.~~

~~((54))~~ rocker box with a riffle area of three square feet or less. See Figure 3.

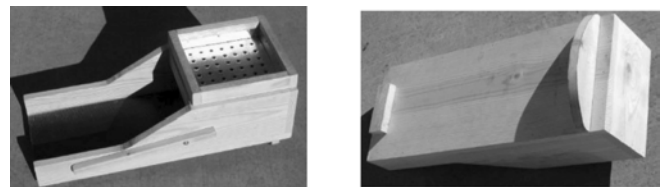


Figure 3: Mini rocker box (top view and bottom view)

~~((65))~~ "Mining" means the production activity that follows mineral prospecting.

~~((66))~~ "Mitigation" means actions ~~((which))~~ that shall be required as provisions of the HPA to avoid or compensate for impacts to fish life resulting from the proposed project activity. The type(s) of mitigation required shall be considered and

implemented, where feasible, in the following sequential order of preference:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- (e) Compensating for the impact by replacing or providing substitute resources or environments; or
- (f) Monitoring the impact and taking appropriate corrective measures to achieve the identified goal.

For projects with potentially significant impacts, a mitigation agreement may be required prior to approval. Replacement mitigation may be required to be established and functional prior to project construction.

~~((55))~~ (67) "Natural conditions" means those conditions ~~((which))~~ that arise in or are found in nature. This is not meant to include artificial or manufactured conditions.

~~((56))~~ (68) "No-net-loss" means:

- (a) Avoidance or mitigation of adverse impacts to fish life; or
- (b) Avoidance or mitigation of net loss of habitat functions necessary to sustain fish life; or
- (c) Avoidance or mitigation of loss of area by habitat type.

Mitigation to achieve no-net-loss should benefit those organisms being impacted.

~~((57))~~ (69) "Ordinary high water line" or "OHWL" means the mark on the shores of all waters that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in ordinary years, as to mark upon the soil or vegetation a character distinct from that of the abutting upland~~((:))~~, provided~~((:))~~ that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater shall be the line of mean higher high water, and the ordinary high water line adjoining freshwater shall be the elevation of the mean annual flood.

~~((58))~~ (70) "Pan" means ~~((the following equipment used to separate gold or other metal from aggregate by washing:~~

- ~~(a) An open, metal or plastic dish operated by hand; or~~
- ~~(b) A motorized rotating open, metal or plastic dish without pumped or gravity-fed water supplies.~~

~~(59))~~ an open metal or plastic dish that you operate by hand to separate gold or other minerals from aggregate by washing the aggregate. See Figure 4.



Figure 4: Pan

~~((61))~~ (71) "Panning" means ~~((the use of))~~ using a pan to wash aggregate.

~~((60))~~ (72) "Person" means an individual or a public or private entity or organization. The term "person" includes local, state, and federal government agencies, and all business organizations.

~~((61))~~ (73) "Placer" means a glacial or alluvial deposit of gravel or sand containing eroded particles of minerals.

~~((62))~~ (74) "Pool" means a portion of the stream with reduced current velocity, often with water deeper than the surrounding areas.

~~((63))~~ (75) "Power sluice" means "high-banker."

~~((64))~~ (76) "Power sluice/suction dredge combination" means a machine that can be used as a power sluice, or with minor modifications, as a suction dredge. See Figure 5.



Figure 5: Power sluice/suction dredge combination

~~((65))~~ (77) "Process aggregate" or "processing aggregate" means the physical or mechanical separation of the valuable mineral content within aggregate.

~~((66))~~ (78) "Prospecting" means the exploration for minerals and mineral deposits.

~~((67))~~ (79) "Protection of fish life" means prevention of loss or injury to fish or shellfish, and protection of the habitat that supports fish and shellfish populations.

~~((64))~~ (80) "Purple loosestrife" means *Lythrum salicaria* and *Lythrum virgatum* as prescribed in RCW 17.10.010 (10) and defined in RCW 17.26.020 (5)(b).

~~((65))~~ (81) "Redd" means a nest made in gravel, consisting of a depression dug by a fish for egg deposition, and associated gravel mounds. See Figure 6.

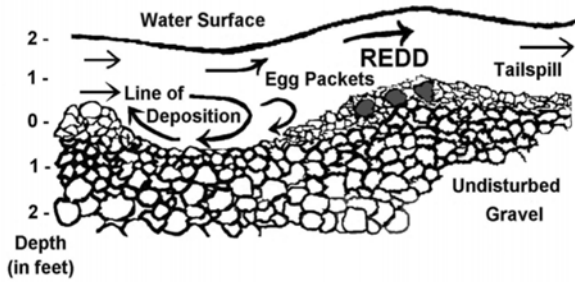


Figure 6: Cross section of a typical redd

(82) "Riffle" means the bottom of a concentrator containing a series of interstices or grooves to catch and retain a mineral such as gold.

((66)) (83) "River or stream." See "watercourse."

((67)) (84) "Rocker box" means a nonmotorized concentrator consisting of a hopper attached to a cradle and a sluice box that you operate with a rocking motion. See Figure 7.

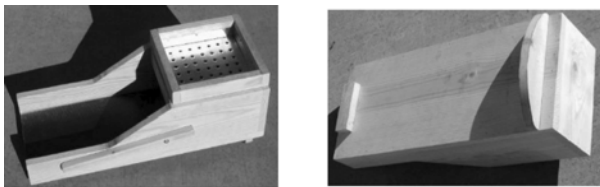


Figure 7: Rocker box (top view and bottom view)

(85) "Rotovation" means the use of aquatic rotovators which have underwater rototiller-like blades to uproot aquatic plants as a means of plant control.

((68)) (86) "Saltwater area" means those state waters and associated beds below the ordinary high water line and downstream of river mouths.

((69)) (87) "Shellfish" means those species of saltwater and freshwater invertebrates that shall not be taken except as authorized by rule of the director of the department of fish and wildlife. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

((70)) (88) "Slope" means:

(a) Any land surface above the frequent scour zone and wetted perimeter that adjoins a body of water. Slope also includes land surfaces of islands above the frequent scour zone that adjoin a body of water; or

(b) A stretch of ground forming a natural or artificial incline.

(89) "Sluice ((60))" means a trough equipped with riffles across its bottom, ((used to recover gold and other minerals with the use of water.

(71) "Sluicing" means the use of a sluice box for the recovery of gold and other minerals.

(72) "Small scale mineral prospecting equipment" encompasses the equipment included in "mineral prospecting equipment, Class I."

(73)) which you use to recover gold and other minerals with the use of flowing water. See Figure 8.

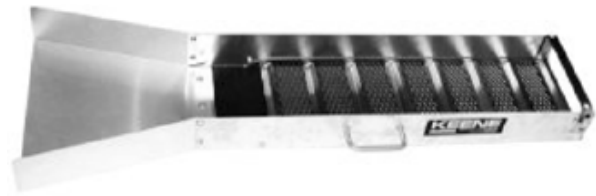


Figure 8: Sluice

(90) "Spartina" means *Spartina alterniflora*, *Spartina anglica*, *Spartina x townsendii*, and *Spartina patens* as prescribed in RCW 17.10.010(10) and defined in RCW 17.26.020 (5)(a).

((74)) (91) "Special provisions" means those conditions that are a part of the HPA, but are site- or project-specific, and are used to supplement or amend the technical provisions.

((75)) (92) "Spiral wheel" means a hand-operated or battery powered rotating pan that you use to recover gold and minerals with the use of water. See Figure 9.



Figure 9: Spiral wheel

(93) "Stream-bank stabilization" means those projects which prevent or limit erosion, slippage, and mass wasting((;)), including, but not limited to, bank resloping, log and debris relocation or removal, planting of woody vegetation, bank protection (physical armoring of banks using rock or woody material, or placement of jetties or groins), gravel removal, or erosion control.

((76)) (94) "Suction dredge" means a machine ((equipped with an internal combustion engine or electric motor powering a water pump which is used)) that you use to move submerged ((bed materials by means of)) aggregate via hydraulic suction. ((These bed materials are processed)) You process the aggregate through an attached sluice box for the recovery of gold and other minerals. See Figure 10.



Figure 10: Suction dredge

~~((77))~~ (95) "Suction dredging" means ~~((the use of))~~ using a suction dredge for the recovery of gold and other minerals.

~~((78))~~ (96) "Supplemental approval" means a written addendum issued by the department to ~~((a))~~ an *Aquatic Plants and Fish* pamphlet HPA for approved exceptions to conditions of that pamphlet HPA or for any additional authorization by the department when required by ~~((a))~~ the pamphlet HPA. See "hydraulic project approval."

~~((79))~~ (97) "Tailings" means the waste material ~~((remaining))~~ that remains after ~~((processing))~~ you process aggregate for minerals.

~~((80))~~ (98) "Technical provisions" means those conditions that are a part of the HPA and apply to most projects of that nature.

~~((81))~~ (99) "Toe of the bank" means the distinct break in slope between the stream bank or shoreline and the stream bottom or marine beach or bed, excluding areas of sloughing. For steep banks that extend into the water, the toe may be submerged below the ordinary high water line. For artificial structures, such as jetties or bulkheads, the toe refers to the base of the structure, where it meets the stream bed or marine beach or bed.

~~((82))~~ (100) "Toe of the slope" means the base or bottom of a slope at the point where the ground surface abruptly changes to a significantly flatter grade.

(101) "Unstable slope" means a slope with visible evidence of slumping, sloughing or other movement. Evidence of unstable slopes includes landslides, uprooted or tilted trees, exposed soils, water-saturated soils, and mud, or the recent erosion of soils and sediment. Woody vegetation is typically not present on unstable slopes.

(102) "Vac-pac" means a motorized, portable vacuum used for prospecting. See Figure 11.



Figure 11: Vac pac

(103) "Viable" means that any plant or plant part is capable of taking root or living when introduced into a body of water.

~~((83))~~ (104) "Watercourse" and "river or stream" means any portion of a channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state, including areas in which fish may spawn, reside, or ~~((through which they may))~~ pass, and tributary waters with defined bed or banks, which influence the quality of fish habitat downstream. This includes watercourses which flow on an intermittent basis or which fluctuate in level during the year and applies to the entire bed of such watercourse whether or not the water is at peak level. This definition does not include irrigation ditches, canals, storm water run-off devices, or other entirely artificial watercourses, except where they exist in a natural watercourse ~~((which))~~ that has been altered by humans.

~~((84))~~ (105) "Water right" means a certificate of water right, a vested water right or a claim to a valid vested water right, or a water permit, pursuant to Title 90 RCW.

~~((85))~~ (106) "Waters of the state" or "state waters" means all salt waters and fresh waters waterward of ordinary high water lines and within the territorial boundaries of the state.

~~((86))~~ (107) "Water type" means water categories as defined in WAC 222-16-030 of the forest practice rules and regulations.

~~((87))~~ (108) "Weed rolling" means the use of a mechanical roller designed to control aquatic plant growth.

~~((88))~~ (109) "Wetted perimeter" means the areas of a watercourse covered with flowing or nonflowing water~~((; flowing or nonflowing)).~~

(110) "Woody vegetation" means perennial trees and shrubs having stiff stems and bark. Woody vegetation does not include grasses, forbs, or annual plants.

AMENDATORY SECTION (Amending Order 94-160, filed 11/14/94, effective 12/15/94)

WAC 220-110-030 Hydraulic project approvals—Procedures. (1) A person shall obtain an HPA before conducting a hydraulic project.

(2) ~~((A person seeking an HPA shall submit))~~ Receipt by the department of any one of the following documents constitutes an application for a written HPA:

(a) A joint aquatic resources permit application (JARPA) submitted to the department;

(b) A forest practice application submitted to the department of natural resources, if the hydraulic project is part of a forest practice as defined in WAC 222-16-010; or

(c) A section 10 or 404 public notice circulated by the United States Army Corps of Engineers or United States Coast Guard.

(3) You shall request a written HPA by submitting a complete written application to the department. ~~((The))~~ You shall request a pamphlet HPA by following the procedures in WAC 220-110-031. Your application for a written HPA shall contain general plans for the overall project, complete plans and specifications for the proposed construction or work waterward of the ~~((mean higher high water))~~ MHHW line in salt water, or waterward of the ~~((ordinary high water line))~~ OHWL in fresh water, ~~((and))~~ complete plans and specifications for the proper protection of fish life, and notice of compliance with any applicable requirements of the State Environmental Policy Act, chapter 43.21C RCW, unless otherwise provided for in chapter 77.55 RCW. You and your authorized agent, if one is acting for you, must sign and date the application ~~((shall be signed and dated by the applicant or their agent.~~

~~(3) Receipt of any one of the following documents constitutes application for an HPA:~~

~~(a) A completed hydraulic project application submitted to the department;~~

~~(b) A completed forest practice application submitted to the department of natural resources, if the hydraulic project is part of a forest practice as defined in WAC 222-16-010; or~~

~~(c) A section 10 or 404 public notice circulated by the United States Army Corps of Engineers or United States Coast Guard).~~

(4) The department shall grant or deny approval within forty-five calendar days of the receipt of a complete written application ~~((and notice of compliance with any applicable requirements of the State Environmental Policy Act (SEPA) (chapter 43.21C RCW))).~~ The department shall strive to issue HPAs in less than thirty days. The forty-five day requirement shall be suspended if:

(a) ~~((An incomplete application is received;~~

~~((b))~~ The site is physically inaccessible for inspection;

~~((c))~~ (b) You or your authorized agent, if one is acting for you, remains unavailable or unable to arrange for a timely field evaluation of the proposed project after ten working days of the department's receipt of the application ~~((, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project))~~;

~~((d) The applicant))~~ (c) You or your authorized agent, if one is acting for you, requests a delay;

(d) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161 (3)(b); or

(e) The department is reviewing the application as part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(5) Immediately upon determination that the forty-five day period is suspended, the department shall notify the applicant in writing of the reasons for the delay.

(6) The department or the county legislative authority may determine an imminent danger exists. The county legislative authority shall notify the department, in writing, if it determines that an imminent danger exists. In cases of imminent danger, the department shall issue an expedited written permit, upon request, for work to remove any obstructions, repair existing structures, restore banks, protect fish resources, or protect property.

(7) The department may issue an expedited written HPA in those instances where normal processing would result in ~~((unanticipated extreme))~~ significant hardship for the applicant, or unacceptable environmental damage would occur. ~~((An expedited HPA may be granted upon request for work to repair existing structures, move obstructions, restore banks, protect property, or protect fish resources that are subject to imminent danger by weather, flow, or other natural conditions.))~~

(8) Expedited HPA requests require a complete written application and shall take precedence over other nonemergency applications ~~((and))~~. These will ~~((normally))~~ be issued within ~~((ten))~~ fifteen calendar days of ~~((request))~~ receipt of a complete written application. ~~((All SEPA requirements shall be met prior to issuance of an expedited HPA.))~~ The provisions of the State Environmental Policy Act, chapter 43.21C RCW, are not required for expedited written HPAs.

~~((7))~~ (9) The county legislative authority or the department may declare an emergency or continue an existing declaration of an emergency where there is an immediate threat to life, the public, property, or of environmental degradation. Upon the declaration of an emergency, the department shall grant verbal approval ~~((shall be granted))~~ immediately upon request for ~~((emergency work to repair existing structures, move obstructions, restore banks, or protect property that is subject to imminent danger by weather, flow, or other natural conditions. Verbal approval shall be granted immediately upon request for driving across a stream during an emergency, as defined in WAC 220-110-020))~~ a stream crossing, or work to remove any obstructions, repair existing obstructions, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow. The verbal approval shall be obtained prior to commencing emergency work and the department must issue a written HPA reflecting the conditions of the verbal approval within thirty days. The provisions of the State Environmental Policy Act, chapter 43.21C RCW, are not required for emergency HPAs.

~~((8))~~ (10) The department may accept written or verbal requests for time extensions, renewals, or alterations of an existing HPA. The request must be processed within forty-five calendar days of receipt of the request. Approvals of

such requests shall be in writing. Transfer of an HPA to a new permittee requires written request by the original permittee or their authorized agent, if one is acting for the permittee, and such request shall include the HPA number. This written request shall be in a form acceptable to the department and shall ~~((contain an affirmation by))~~ include a statement that the new permittee ~~((that he/she))~~ agrees to be bound by the conditions ~~((on))~~ in the HPA. ~~((Project activity))~~ The new permittee shall not ~~((be conducted by the new permittee))~~ conduct any project activities until ~~((approval has been issued by))~~ the department has issued approval.

~~((9))~~ (11) Each HPA is usually specific to a watercourse, stating the exact location of the project site, and usually consists of general, technical, and special provisions.

~~((10))~~ (12) The written HPA, or clear reproduction, shall be on the project site when work is being conducted and shall be immediately available for inspection.

~~((11-All))~~ (13) The department may grant HPAs ~~((may be granted))~~ for a period of up to five years. Permittees shall demonstrate substantial progress on construction of that portion of the project relating to the (HPA) within two years of the date of issuance. The following types of HPAs issued under RCW ~~((75.20.103))~~ 77.55.021 shall remain in effect without the need for periodic renewal, provided the permittee notifies the department before commencing ~~((the))~~ work each year~~((:))~~:

(a) Work of a seasonal nature that diverts water for irrigation or stock watering purposes~~((:))~~; and

(b) Stream-bank stabilization projects if the problem causing the erosion occurs on an annual or more frequent basis as demonstrated by the applicant. Evidence of erosion may include, but is not limited to, history of permit application, approval, or photographs. Periodic ~~((flood waters))~~ floodwaters by themselves do not constitute ~~((the))~~ a problem that requires ~~((a))~~ an HPA.

~~((12- A hydraulic project application))~~ (14) An HPA shall be denied when, in the judgment of the department, the project will result in direct or indirect harm to fish life, unless adequate mitigation can be assured by conditioning the HPA or modifying the proposal. If approval is denied, the department shall provide the applicant, in writing, a statement of the specific reason(s) why and how the proposed project would adversely affect fish life.

~~((13))~~ (15) Protection of fish life shall be the only grounds upon which the department may deny or condition an HPA ~~((may be denied or conditioned))~~.

~~((14))~~ (16) The department may place specific time limitations on project activities in HPAs ~~((may have specific time limitations on project activities))~~ to protect fish life.

~~((15))~~ (17) HPAs do not exempt the applicant from obtaining other appropriate permits and following the rules or regulations of local, federal, and other Washington state agencies.

~~((16- Administration of))~~ (18) The department shall administer this chapter ~~((shall be conducted))~~ in compliance with SEPA, chapter 43.21C RCW, and chapters 197-11, 220-100, and 232-19 WAC.

~~((17- All HPAs issued pursuant to RCW 75.20.100 and 75.20.160 may be subject to additional restrictions, conditions, or revocation if the department determines that new~~

biological or physical information indicates the need for such action. The permittee has the right to request an informal or formal appeal in accordance with chapter 34.05 RCW. All HPAs issued pursuant to RCW 75.20.103 may be modified by the department due to changed conditions after consultation with the permittee. Provided however, That modifications of HPAs issued pursuant to RCW 75.20.103 and 75.20.160 shall be subject to appeal to the hydraulic appeals board established in RCW 75.20.130.) (19) The department may, after consultation with the permittee, modify an HPA due to changed conditions. The modification becomes effective unless appealed to the department or the hydraulic appeals board as specified in RCW 77.55.021(4), 77.55.301(5), WAC 220-110-340 and 220-110-350.

AMENDATORY SECTION (Amending Order 98-252, filed 12/16/98, effective 1/16/99)

WAC 220-110-031 Pamphlet hydraulic project approvals—Procedures. (1) In those instances where a pamphlet is the equivalent of ~~((an HPA))~~ a hydraulic project approval (HPA) as defined in WAC 220-110-020~~((44))~~ (53), a person shall obtain a pamphlet HPA issued by the department, which identifies and authorizes specific minor hydraulic project activities before conducting a hydraulic project.

(2) You may submit requests for pamphlet HPAs to the department verbally or in writing.

(3) The department may grant exceptions to a pamphlet HPA if you apply for a written HPA as described in WAC 220-110-030, or for supplemental approvals to the *Aquatic Plants and Fish* pamphlet HPA as defined in WAC 220-110-020~~((44))~~ (53) and 220-110-020~~((78))~~ (96). Exceptions to a pamphlet HPA shall require written authorization by the department.

~~((3))~~ (4) You may submit applications ~~((submitted to the department))~~ for *Aquatic Plants and Fish* pamphlet supplemental approvals ~~((may be verbal or written))~~ verbally or in writing to the department.

(a) Your supplemental approval application~~((s))~~ shall specify the requested exception or request for additional authorization and shall include ~~((the applicant's))~~ your name, address and phone number. You shall sign and date written applications ~~((shall be signed and dated))~~.

(b) The department shall grant or deny a request for a supplemental approval within forty-five calendar days of the receipt of a request for supplemental approval.

~~((4- The supplemental approval shall be attached to the pamphlet HPA and shall be on the job site when work is being conducted and shall be immediately available for inspection.))~~

(5) Except as provided in WAC 220-110-201, you shall have the pamphlet HPA, ~~((or clear reproduction, shall be))~~ and any supplemental approvals to it on the job site when work is being conducted and shall ~~((be))~~ make them immediately available for inspection upon request.

(6) ~~((The pamphlet HPA shall be conditioned to ensure protection of fish life.))~~

~~((7))~~ Pamphlet HPAs do not exempt ~~((the applicant))~~ you from obtaining other appropriate permits and following the

rules ~~((or))~~ and regulations of local, federal, and other Washington state agencies.

~~((8))~~ Administration of this chapter shall be conducted in compliance with SEPA, chapter 43.21C RCW, and chapters 197-11, 220-100, and 232-19 WAC.)

AMENDATORY SECTION (Amending Order 98-252, filed 12/16/98, effective 1/16/99)

WAC 220-110-200 Mineral prospecting ~~((technical provisions))~~. ~~(1)~~ WAC 220-110-201 through ~~((220-110-205))~~ 220-110-206 set forth ~~((technical provisions))~~ the rules necessary to protect fish life that ~~((shall))~~ apply to mineral prospecting and placer mining projects ~~((as necessary to protect fish life))~~. Additional special provisions may be included in written HPAs as necessary to address site-specific conditions. Written HPAs shall also have specific time limitations on project activities to protect fish life. Timing limitations for projects conducted under authority of the *Gold and Fish* pamphlet are found in WAC 220-110-206 through 220-110-209. Saltwater provisions may be applied to tidally influenced areas upstream of river mouths and the mainstem Columbia River downstream of Bonneville Dam where applicable in written HPAs). A copy of the current *Gold and Fish* pamphlet is available from the department, and it contains the rules which you must follow when mineral prospecting under its authority.

(2) Alternatively, you may request exceptions to the *Gold and Fish* pamphlet by applying for an individual written HPA as indicated in WAC 220-110-031. An HPA shall be denied when, in the judgment of the department, the project will result in direct or indirect harm to fish life, unless adequate mitigation can be assured by conditioning the HPA or modifying the proposal. The department may apply saltwater provisions to written HPAs for tidally influenced areas upstream of river mouths and the mainstem Columbia River downstream of Bonneville Dam where applicable.

AMENDATORY SECTION (Amending Order 98-252, filed 12/16/98, effective 1/16/99)

WAC 220-110-201 ~~((Common))~~ mineral prospecting ~~((technical provisions))~~ without timing restrictions. ~~((A copy of the current *Gold and Fish* pamphlet available from the department shall serve as an HPA, unless otherwise indicated, and be on the job site at all times. Mineral prospecting and placer mining projects authorized through a written HPA may incorporate additional mitigation measures as necessary to achieve no-net-loss of productive capacity of fish and shellfish habitat. Project activities may be prohibited where project impacts adversely affect fish habitats for which no proven mitigation methods are available. The following technical provisions shall apply to all mineral prospecting and placer mining projects.~~

(1) Excavation, collection and processing of aggregate from the bed shall comply with the timing and location restrictions specified in WAC 220-110-206 through 220-110-209. Excavation, collection and processing of aggregate within the wetted perimeter shall only occur between 5:00 a.m. and 11:00 p.m.

(2) Excavation sites shall be separated by at least two hundred feet.

(3) There shall be no excavation, collection or processing of aggregate within four hundred feet of any fishway, dam or hatchery water intake.

(4) Except as specified in WAC 220-110-203, aggregate collected from outside the bed shall not be washed, sluiced, processed or deposited within two hundred feet landward of the ordinary high water line.

(5) A maximum of five individuals eight years of age and over may collect and process aggregate from any excavation site. No more than one pit, furrow or pothole at a time shall be excavated by any one individual.

(6) Excavations shall not occur between the ordinary high water line and two hundred feet landward of the ordinary high water line. Excavations between the ordinary high water line and the toe of the bank shall not result in undercutting below the ordinary high water line or in disturbance of land surfaces above the ordinary high water line.

(7) There shall be no disturbance of live rooted vegetation of any kind. Woody debris jams and large woody material shall not be disturbed in any manner.

(8) With the exception of aggregate excavated by a suction dredge, all excavations of aggregate shall only be performed by hand or with hand-held tools. A maximum of one hand-operated cable, chain or rope winch may be used to move bed material below the ordinary high water line. Additional safety cables, chains or ropes may be attached to this material provided they do not offer a mechanical advantage and are used solely to hold material in place. The use of horses, other livestock or motorized mineral prospecting equipment, except those specifically authorized under WAC 220-110-203 through 220-110-205, is prohibited. Materials too large to be moved with a single hand-operated cable, chain or rope winch shall not be disturbed.

(9) Boulders may be moved only to facilitate collection of aggregate underneath them. Boulders shall be immediately replaced in their original location prior to working another excavation site or leaving the excavation site. Not working the excavation site for more than sixteen hours constitutes leaving the site.

(10) Only equipment, methods, locations and timing for processing aggregate specified in WAC 220-110-201 through 220-110-209 are authorized. Exceptions shall require additional authorization from the department in the form of a supplemental approval to the *Gold and Fish* pamphlet or a written HPA. A written HPA shall be required for exceptions in cases where "submit application" or "closed" is listed for state waters in WAC 220-110-206 through 220-110-209. Only the following exceptions may be authorized through a supplemental approval to the *Gold and Fish* pamphlet:

(a) Timing and location only for Class I and Class II mineral prospecting equipment.

(b) Location only for Class III mineral prospecting equipment.

(11) With the exception of sieves for classifying aggregate, mineral prospecting equipment shall not be combined in series, joined or ganged with additional mineral prospecting

equipment to increase the riffle area or efficiency of mineral recovery of a single piece of mineral prospecting equipment.

(12) There shall be no damming or diversion of the flowing stream except as provided in WAC 220-110-203 (4)(d).

(13) Prior to working another excavation site or leaving the excavation site, tailings of aggregate collected from below the ordinary high water line shall be returned to the location from which the aggregate was originally collected. Sand and lighter material washed away by the streamflow during aggregate processing and tailings resulting from suction dredging may be left where processed.

(14) Except as required in subsection (13) of this section, tailings shall not be deposited in existing pools.

(15) Incubating fish eggs or fry shall not be disturbed. If fish eggs or fry are encountered during excavation of the bed, operations shall immediately cease and the department shall be notified immediately. No further excavations shall occur until all eggs and fry have emerged from the gravel. Further approval shall be required by the department prior to resuming mineral prospecting or placer mining activities in that stream.

(16) Beds containing live freshwater mussels shall not be disturbed. If live mussels are encountered during excavation of the bed, operations shall immediately cease and shall be relocated a minimum of two hundred feet from them.

(17) All pits, furrows, tailing piles, and potholes created during excavation or processing of aggregate shall be leveled or refilled with bed materials or tailings prior to working another excavation site or leaving the excavation site. Not working the excavation site for more than sixteen hours constitutes leaving the site. No more than one pit, furrow or pothole at a time shall be excavated.

(18) Fish entrapped within pits, furrows or potholes created during excavation or processing of aggregate shall immediately be safely collected and returned to flowing waters and the pits, furrows or potholes leveled or filled.

(19) At no time shall mining or prospecting activity create a blockage or hindrance to either the upstream or downstream passage of fish.

(20) If at any time as a result of project activities or water quality problems, fish life are observed in distress or a fish kill occurs, operations shall cease and both the department and the department of ecology shall be notified of the problem immediately. Work shall not resume until further approval is given by the department. Additional measures to mitigate impacts may be required.

(21) No motorized, tracked, or wheeled vehicles shall be:

(a) Operated or allowed below the ordinary high water line of the stream; or

(b) Be operated so as to affect the bed or flow of waters of the state in any way.

(22) Entry onto private property or removal of minerals from an existing mining claim or state-owned lands without the permission of the landowner or claim holder is not authorized. The permittee is responsible for determining land ownership, land status (i.e., open to entry under the mining laws) and the status and ownership of any mining claims.

(23) Mercury and other hazardous materials shall not be used on the job site for amalgamating minerals.

(24) Mercury, lead and other hazardous materials removed from aggregate or collected in concentrators during processing of aggregate shall not be returned to waters of the state and shall be disposed of as specified by the department of ecology. Contact the department of ecology for direction on disposal.

(25) Once mining or prospecting at a job site is completed, or mining or prospecting is not conducted at the job site for more than one week, the job site shall be restored to preproject conditions, all disturbed areas shall be protected from erosion and revegetated with native plants, and all pits, furrows, tailing piles, and potholes shall be leveled or refilled as required in subsection (17) of this section.)) You may mineral prospect year-round in all waters of the state, except lakes or salt waters. You must follow the rules listed below, but you do not need to have the rules with you or on the job site.

(1) You may use only hand-held mineral prospecting tools and the following mineral prospecting equipment when mineral prospecting without timing restrictions:

(a) Pans;

(b) Spiral wheels;

(c) Sluices, concentrators, mini rocker boxes, and mini high-bankers with riffle areas totaling three square feet or less, including ganged equipment.

(2) You may not use vehicle-mounted winches. You may use one hand-operated winch to move boulders, or large woody material that is not embedded. You may use additional cables, chains, or ropes to stabilize boulders, or large woody material that is not embedded.

(3) You may work within the wetted perimeter only from one-half hour before official sunrise to one-half hour after official sunset. If your mineral prospecting equipment exceeds one-half the width of the wetted perimeter of the stream, you must remove the equipment from the wetted perimeter or move it so that a minimum of fifty percent of the wetted perimeter is free of equipment between one-half hour after official sunset to one-half hour prior to official sunrise.

(4) You may not disturb fish life or redds within the bed. If you observe or encounter fish life or redds within the bed, or actively spawning fish when collecting or processing aggregate, you must relocate your operations.

(5) Rules for excavating:

(a) You may excavate only by hand or with hand-held mineral prospecting tools.

(b) You may not excavate, collect, or remove aggregate from within the wetted perimeter. See Figures 1 and 2.

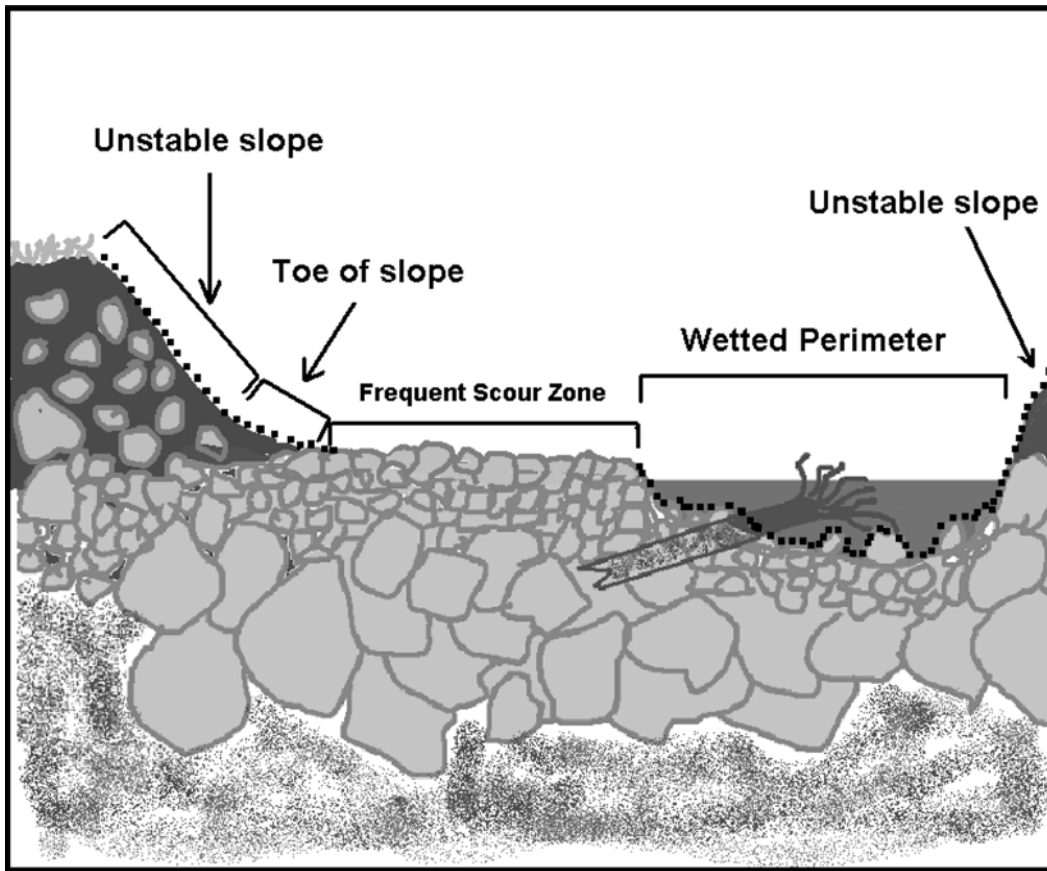


Figure 1: Cross section of a typical body of water, showing areas where excavation is not permitted under rules for mineral prospecting without timing restrictions. Dashed lines indicate areas where excavation is not permitted.

(c) Only one excavation site per individual is allowed. However, you may use a second excavation site as a settling pond. Multiple individuals may work within a single excavation site.

(d) You may not stand within, or allow aggregate to enter, the wetted perimeter when collecting or excavating aggregate.

(e) You must fill all excavation sites and level all tailing piles prior to moving to a new excavation site or abandoning an excavation site. If you move boulders, you must return them, as best as you can, to their approximate, original location.

(f) You may not undermine, move, or disturb large woody material embedded in the slopes or located wholly or partially within the wetted perimeter. You may move large woody material and boulders located entirely within the frequent scour zone, but you must keep them within the frequent scour zone. You may not cut large woody material. See Figure 2.

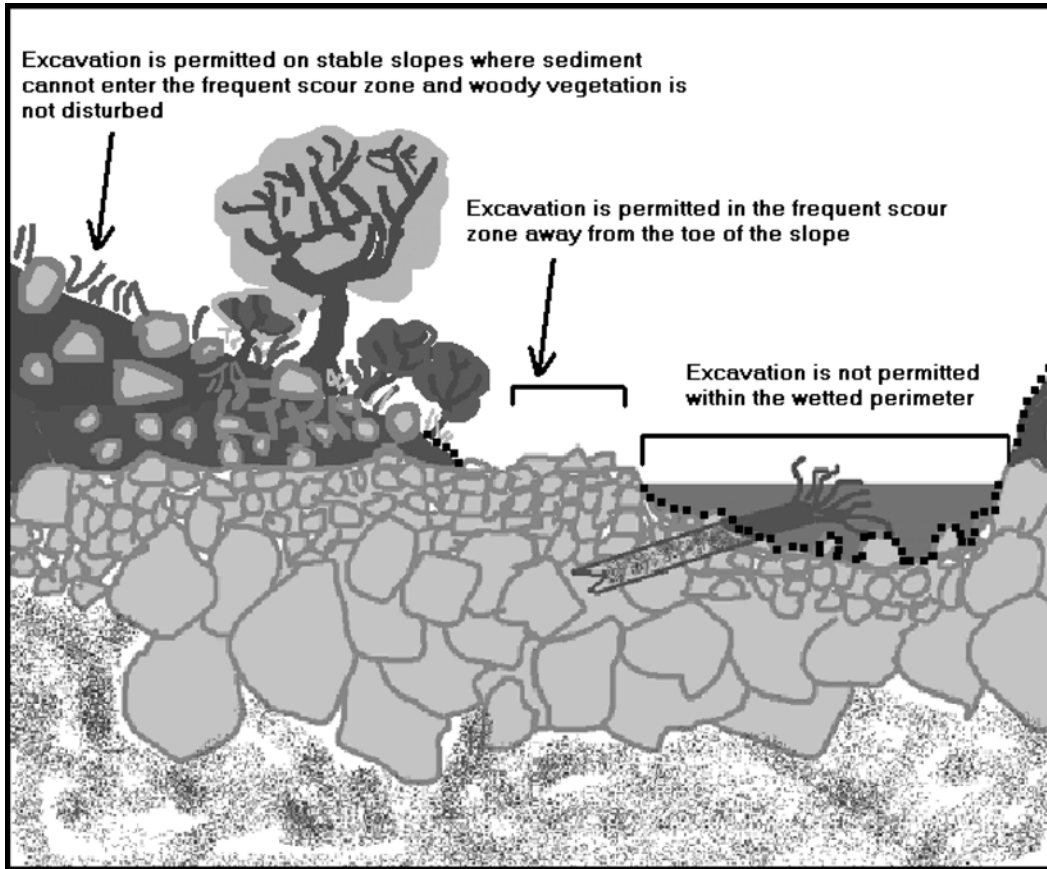


Figure 2: Permitted and prohibited excavation sites in a typical body of water under rules for mineral prospecting without timing restrictions. Dashed lines indicate areas where excavation is not permitted.

(g) You may not undermine, cut, or disturb live, rooted woody vegetation of any kind.

(h) You may not excavate, collect, or remove aggregate from the toe of the slope. You also may not excavate, collect, or remove aggregate from any slope that delivers, or has the potential to deliver, sediment to the wetted perimeter or frequent scour zone. See Figures 3 and 4.

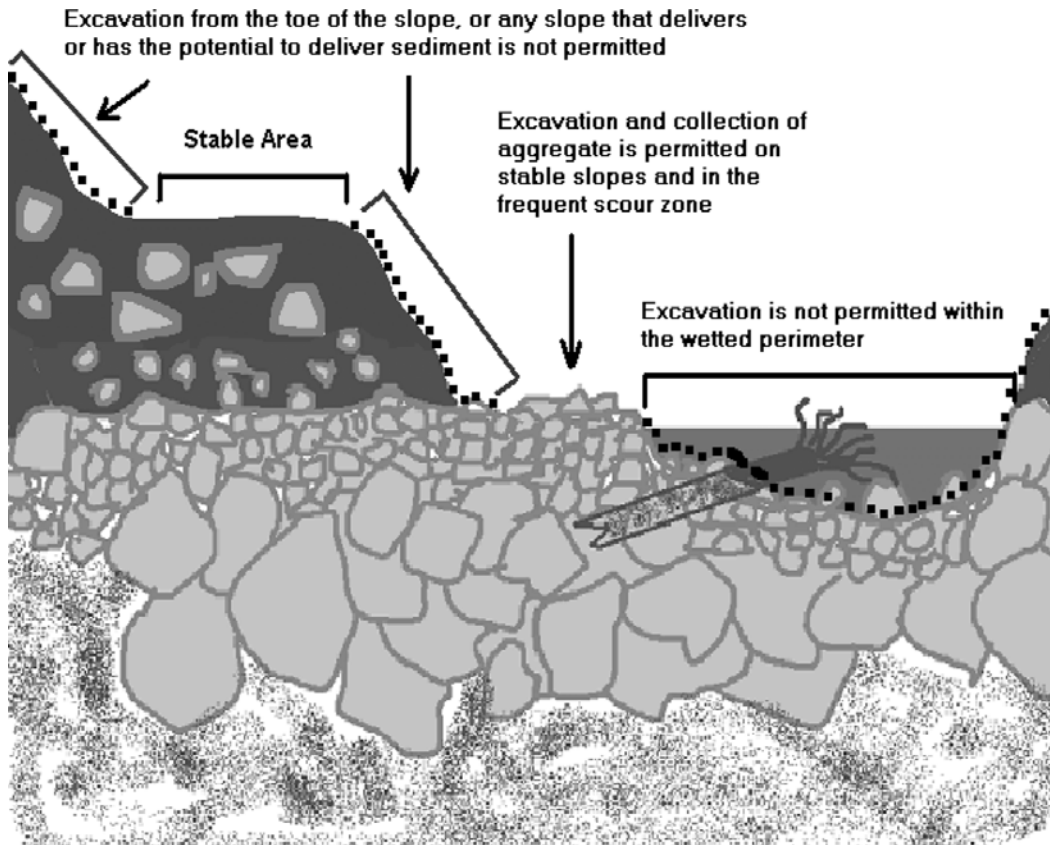


Figure 3: Cross section of a typical body of water, showing unstable slopes, stable areas, and permissible or prohibited excavation sites under rules for mineral prospecting without timing restrictions. Dashed line indicates areas where excavation is not permitted.

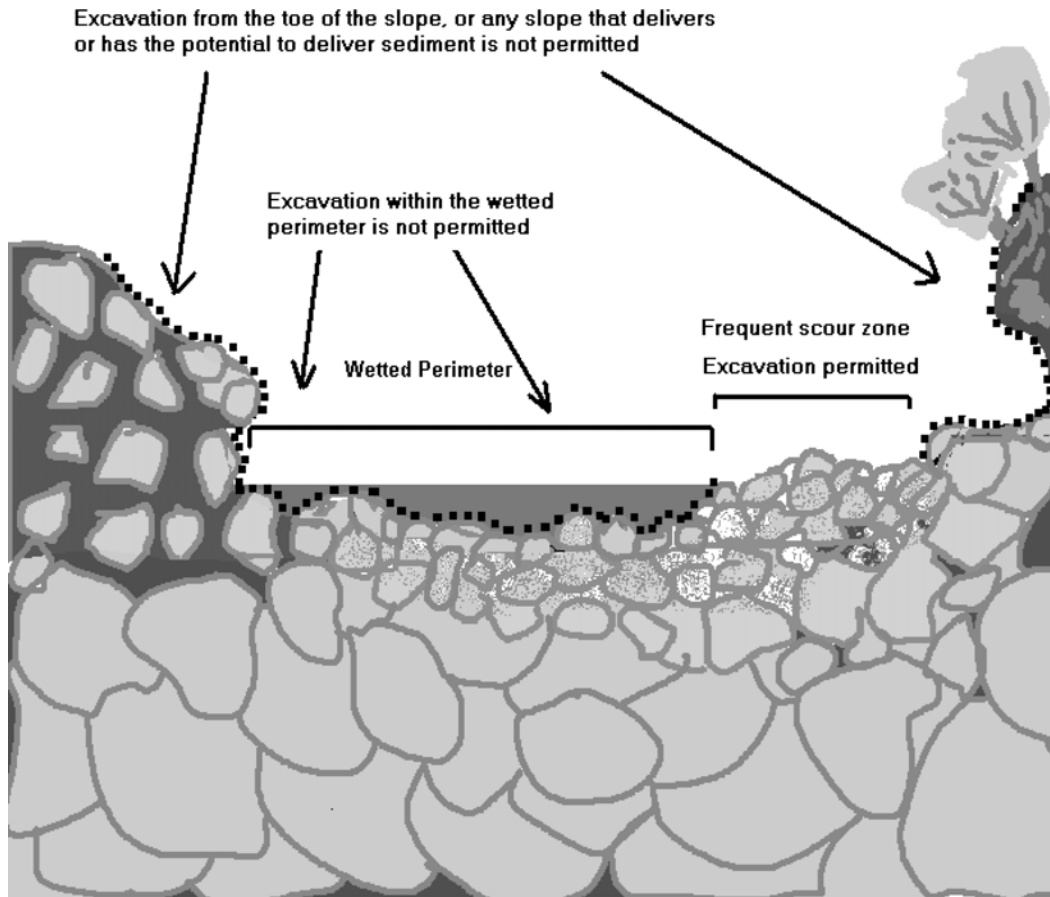


Figure 4: Cross section of a typical body of water showing unstable slopes, stable areas, and permissible or prohibited excavation sites under rules for mineral prospecting without timing restrictions. Dashed line indicates areas where excavation is not permitted.

(6) Rules for processing aggregate:

(a) You may stand within the wetted perimeter when processing aggregate with pans; spiral wheels; and sluices.

(b) You may not stand on or process directly on redds or disturb incubating fish life. You may not allow tailings, or visible sediment plumes (visibly muddy water), to enter redds or areas where fish life are located within the bed.

(c) You may not level or disturb tailing piles that remain within the wetted perimeter after processing aggregate.

(d) You must classify aggregate at the collection or excavation site prior to processing, if you collected or excavated it outside the frequent scour zone.

(e) You may process only classified aggregate within the wetted perimeter when using a sluice.

(f) The maximum width of a sluice, measured at its widest point, including attachments, shall not exceed twenty-five percent of the width of the wetted perimeter at the point of placement.

(g) You may process with a sluice only in areas within the wetted perimeter that are composed primarily of boulders and bedrock. You must separate sluice locations by at least

fifty feet. You may not place structures within the wetted perimeter to check or divert the water flow.

(h) You may operate mini high-bankers or other concentrators only outside the wetted perimeter. You may only supply water to this equipment by hand or by a battery-operated pump with a screened intake. You may not allow visible sediment or muddy water to enter the wetted perimeter. A second excavation site may be used as a settling pond.

(i) Under RCW 77.57.010 and 77.57.070, any device you use for pumping water from fish-bearing waters must be equipped with a fish guard to prevent passage of fish into the pump intake. You must screen the pump intake with material that has openings no larger than five sixty-fourths inch for square openings, measured side to side, or three thirty-seconds inch diameter for round openings, and the screen must have at least one square inch of functional screen area for every gallon per minute (gpm) of water drawn through it. For example, a one hundred gpm rated pump would require at least a one hundred square inch screen.

(j) You may not excavate, collect, remove, or process aggregate within four hundred feet of any fishway, dam, or hatchery water intake.

(k) You may not disturb existing habitat improvement structures or stream channel improvements.

(l) If at any time, as a result of project activities, you observe a fish kill or fish life in distress, you must immediately cease operations and notify the Washington department of fish and wildlife, and the Washington military department emergency management division, of the problem. You may not resume work until the Washington department of fish and wildlife gives approval. The Washington department of fish and wildlife may require additional measures to mitigate the prospecting impacts.

AMENDATORY SECTION (Amending Order 98-252, filed 12/16/98, effective 1/16/99)

WAC 220-110-202 ((Use of Class 0 mineral prospecting equipment.)) Mineral prospecting with timing restrictions. ((A copy of the current *Gold and Fish* pamphlet available from the department contains the rules which shall be followed when using Class 0 mineral prospecting equipment. A copy of the current *Gold and Fish* pamphlet shall be on the job site at all times. Mineral prospecting and placer mining projects authorized through a written HPA may incorporate additional mitigation measures as necessary to achieve no net loss of productive capacity of fish and shellfish habitat. Project activities may be prohibited where project impacts adversely affect fish habitats for which no proven mitigation methods are available. The following technical provisions shall apply to all Class 0 mineral prospecting and placer mining projects:

(1) The common technical provisions as specified in WAC 220-110-201 and the timing and location restrictions as specified in WAC 220-110-209 shall apply to all mineral prospecting and placer mining projects conducted with Class 0 equipment.

(2) The use of a single hand-operated nonmotorized pan is authorized.

(3) Collection and processing of aggregate shall be limited to that portion of the bed above the wetted perimeter.)) You may mineral prospect only in the waters, during the times, and with the mineral prospecting equipment limitations identified in WAC 220-110-206. You must follow the rules listed below, and you must have the rules with you or on the job site.

(1) You may use only hand-held mineral prospecting tools and the following mineral prospecting equipment when mineral prospecting with timing restrictions:

(a) Pans;

(b) Spiral wheels;

(c) Sluices, concentrators, rocker boxes, and high-bankers with riffle areas totaling ten square feet or less, including ganged equipment;

(d) Suction dredges should have suction intake nozzles with inside diameters of five inches or less, but shall be no greater than five and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the suction intake nozzle size. See Figure 1.



Figure 1: Dredge intake nozzle

(e) Power sluice/suction dredge combinations that have riffle areas totaling ten square feet or less, including ganged equipment, suction intake nozzles with inside diameters that should be five inches or less, but shall be no greater than five and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle, and pump intake hoses with inside diameters of four inches or less. The inside diameter of the dredge hose attached to the suction intake nozzle may be no greater than one inch larger than the suction intake nozzle size.

(f) High-bankers and power sluices that have riffle areas totaling ten square feet or less, including ganged equipment, and pump intake hoses with inside diameters of four inches or less.

(2) The widest point of a sluice, including attachments, shall not exceed twenty-five percent of the wetted perimeter at the point of placement.

(3) The suction intake hose diameter of suction dredges and power sluice/suction dredge combinations must not exceed the diameter allowed in the listing for the stream or stream reach where you are operating, as identified in WAC 220-110-206.

(4) You may not use vehicle-mounted winches. You may use one motorized winch and one hand-operated winch to move boulders and large woody material that is not embedded, and additional cables, chains, or ropes to stabilize them.

(5) Equipment separation:

(a) You may use hand-held mineral prospecting tools: pans; spiral wheels; or sluices, mini rocker boxes, or mini high-bankers with riffle areas totaling three square feet or less, including ganged equipment, as close to other mineral prospecting equipment as desired.

(b) When operating any sluice or rocker box with a riffle area exceeding three square feet (including ganged equipment), suction dredge, power sluice/suction dredge combination, high-banker, or power sluice within the wetted perimeter, you must be at least two hundred feet from all others also operating this type of equipment. This separation is measured as a radius from the equipment you are operating. You may locate this equipment closer than two hundred feet if only one piece of equipment is operating within that two hundred foot radius. See Figure 2.

(c) When operating any sluice or rocker box with a riffle area exceeding three square feet (including ganged equipment), suction dredge, power sluice/suction dredge combinations, high-banker, or power sluice outside of the wetted perimeter that discharges tailings or wastewater to the wetted perimeter you must be at least two hundred feet from all others also operating this type of equipment. This separation is measured as a radius from the equipment you are operating. You may locate this equipment closer than two hundred feet if only one piece of equipment is operating within that two hundred foot radius. See Figure 2.

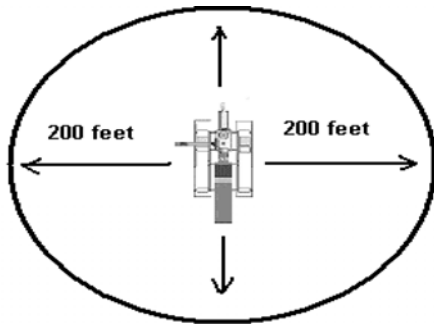


Figure 2: Equipment separation requirement

(6) Under RCW 77.57.010 and 77.57.070, any device you use for pumping water from fish-bearing waters must be equipped with a fish guard to prevent passage of fish into the pump intake. You must screen the pump intake with material that has openings no larger than five sixty-fourths inch for square openings, measured side to side, or three thirty-seconds inch diameter for round openings, and the screen must have at least one square inch of functional screen area for every gallon per minute (gpm) of water drawn through it. For example, a one hundred gpm rated pump would require at least a one hundred square inch screen.

(7) All equipment fueling and servicing must be done so that petroleum products do not get into the body of water or frequent scour zone. If a petroleum sheen or spill is observed, you must contact the Washington military department emergency management division. You must immediately stop your activities, remove your equipment from the body of water, and correct the source of the petroleum leak. You may not return your equipment to the water until the problem is corrected. You must store fuel and lubricants outside the frequent scour zone, and in the shade when possible.

(8) You may work within the wetted perimeter or frequent scour zone only from one-half hour before official sunrise to one-half hour after official sunset. If your mineral prospecting equipment exceeds one-half the width of the wetted perimeter of the stream, you must remove the equipment from the wetted perimeter or move it so that a minimum of fifty percent of the wetted perimeter is free of equipment between one-half hour after official sunset to one-half hour prior to official sunrise.

(9) You may not excavate, collect, remove, or process aggregate within four hundred feet of any fishway, dam, or hatchery water intake.

(10) You must not disturb existing habitat improvement structures or stream channel improvements.

(11) You may not undermine, move, or disturb large woody material embedded in the slopes or located wholly or partially within the wetted perimeter. You may move large woody material and boulders located entirely within the frequent scour zone, but you must keep them within the frequent scour zone. You may not cut large woody material.

(12) You may not undermine, cut, or disturb live, rooted woody vegetation of any kind.

(13) Only one excavation site per individual is permitted. However, you may use a second excavation site as a settling pond. Multiple individuals may work within a single excavation site.

(14) You must fill all excavation sites and level all tailing piles prior to working another excavation site or abandoning the excavation site.

(15) You may not excavate, collect, or remove aggregate from the toe of the slope. You also may not excavate, collect, or remove aggregate from any slope that delivers, or has the potential to deliver, sediment to the wetted perimeter or frequent scour zone. See Figures 3 and 4.

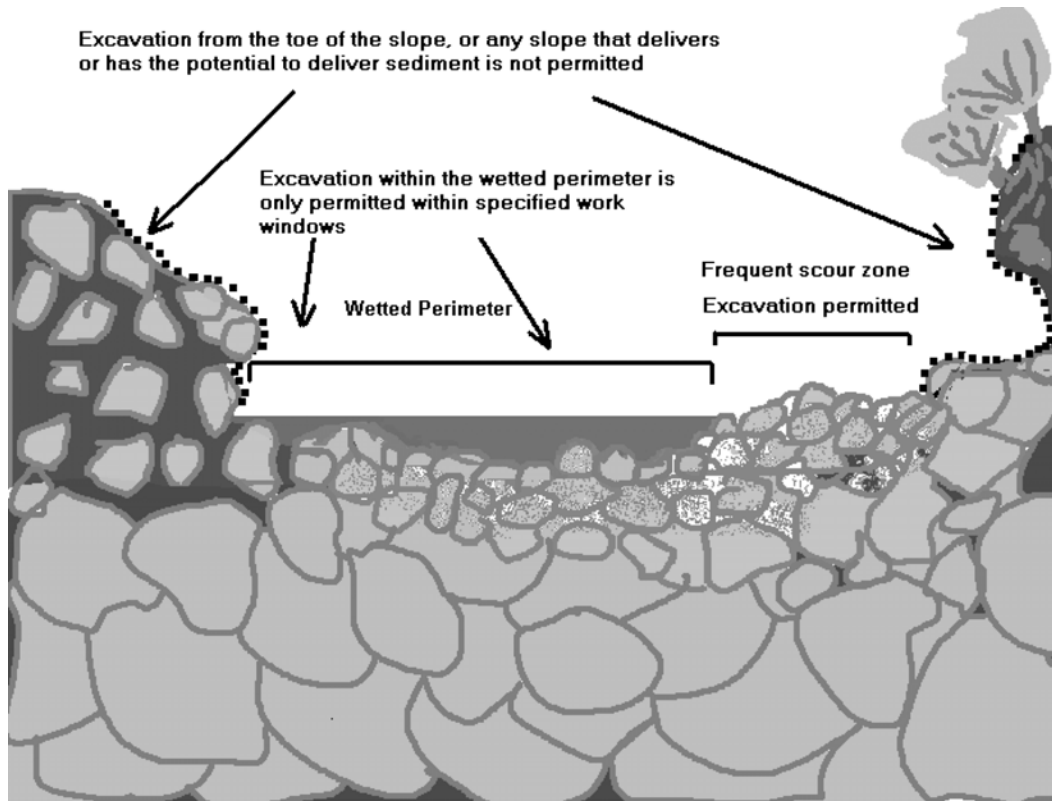


Figure 3: Cross section of a typical body of water showing unstable slopes, stable areas, and permissible or prohibited excavation sites under rules for mineral prospecting with timing restrictions. Dashed line indicates areas where excavation is not permitted.

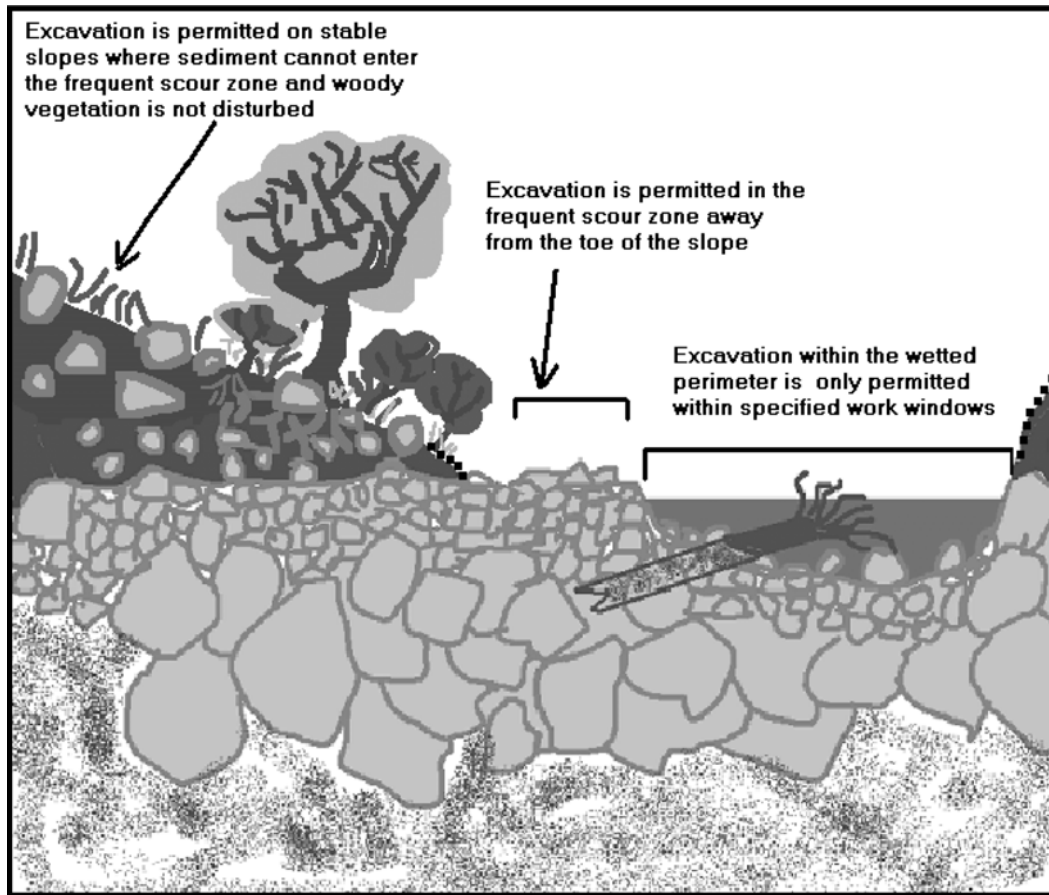


Figure 4: Permitted and prohibited excavation sites in a typical body of water under rules for mineral prospecting with timing restrictions. Dashed lines indicate areas where excavation is not permitted.

(16) You may partially divert a body of water into mineral prospecting equipment. However, at no time may the diversion structure be greater than fifty percent of the width of the wetted perimeter, including the width of the equipment. You may not divert the body of water outside of the wetted perimeter.

(17) You may use materials only from within the wetted perimeter, or artificial materials from outside the wetted perimeter, to construct the diversion structure by hand. You must remove artificial materials used in the construction of a diversion structure and restore the site to its approximate original condition prior to abandoning the site.

(18) You may process aggregate collected from the frequent scour zone:

(a) At any location if you use pans; spiral wheels; mini rocker boxes; mini high-bankers; or sluices or other concentrators with riffle areas totaling three square feet or less, including ganged equipment.

(b) Only in the frequent scour zone or upland areas landward of the frequent scour zone if you use power sluice/suction dredge combinations, high-bankers, or power sluices with riffle areas totaling ten square feet or less, including

ganged equipment; or sluices or rocker boxes that have riffle areas totaling more than three, but less than ten square feet, including ganged equipment. You may not discharge tailings to the wetted perimeter when using this equipment. However, you may discharge wastewater to the wetted perimeter provided its entry point into the wetted perimeter is at least two hundred feet from any other wastewater discharge entry point.

(19) You may process aggregate collected from upland areas landward of the frequent scour zone:

(a) At any location if you use pans; spiral wheels; or sluices, concentrators, mini rocker boxes, and mini high-bankers with riffle areas totaling three square feet or less, including ganged equipment. You must classify the aggregate at the excavation site prior to processing with this equipment within the wetted perimeter or frequent scour zone.

(b) Only at an upland location landward of the frequent scour zone if you use power sluice/suction dredge combinations; high-bankers; power sluices; or rocker boxes that have riffle areas totaling more than three, but less than ten, square feet. You may not allow tailings or wastewater to enter the wetted perimeter or frequent scour zone.

(c) Within the wetted perimeter or frequent scour zone with a sluice with a riffle area greater than three square feet. You must classify the aggregate at the excavation site prior to processing with a sluice with a riffle area exceeding three square feet.

(20) You may use pressurized water only for crevicing or for redistributing dredge tailings within the wetted perimeter. No other pressurized water use is permitted.

(21) You may conduct crevicing in the wetted perimeter, in the frequent scour zone, or landward of the frequent scour zone. The hose connecting fittings of pressurized water tools used for crevicing may not have an inside diameter larger than three-quarters of an inch. If you crevice landward of the frequent scour zone, you may not discharge sediment or wastewater to the wetted perimeter or the frequent scour zone.

(22) You must avoid areas containing live freshwater mussels. If you encounter live mussels during excavation, you must relocate your operations.

(23) You may not disturb redds. If you observe or encounter redds, or actively spawning fish when collecting or processing aggregate, you must relocate your operations.

(24) If at any time, as a result of project activities, you observe a fish kill or fish life in distress, you must immediately cease operations and notify the Washington department of fish and wildlife, and the Washington military department emergency management division of the problem. You may not resume work until the Washington department of fish and wildlife gives approval. The Washington department of fish and wildlife may require additional measures to mitigate the prospecting impacts.

AMENDATORY SECTION (Amending Order 98-252, filed 12/16/98, effective 1/16/99)

WAC 220-110-340 Informal appeal of adverse administrative decisions. It is recommended that an aggrieved party contact the local habitat biologist responsible for ~~((the hydraulic permit decision of concern))~~ granting or denying the HPA prior to initiating an informal or formal appeal. Discussion of concerns with the habitat biologist often results in resolution of the problem without the need for an informal or formal appeal. The habitat biologist may request review of your concerns by his or her supervisor.

All parties are encouraged to take advantage of ~~((this))~~ the informal appeal process prior to initiating a formal appeal. However, ~~((this))~~ the informal appeal process is not mandatory, and a person may proceed directly to a formal appeal.

(1) The following procedures shall govern informal appeals of department actions taken ~~((pursuant to))~~ under RCW ((75.20.100, 75.20.103, 75.20.106, and 75.20.160) 77.55.021, 77.55.141, 77.55.151, 77.55.161(2), 77.55.181, and 77.55.291. This rule does not apply to the department's decisions regarding whether hydraulic projects qualify for processing under RCW 77.55.181, governing certain fish habitat enhancement projects. This rule also does not apply to any provisions or conditions in pamphlet(s) HPA or supplemental approvals as defined in WAC 220-110-020 ~~((44))~~ (53)(c) and (96). A person who disagrees with a provision or

condition in a pamphlet HPA or its supplemental approval may apply for an individual, written HPA. A person who is aggrieved or adversely affected by the following department actions may request an informal ~~((review))~~ appeal:

(a) The denial or issuance of an HPA, or the conditions or provisions made part of an HPA; or

(b) An order imposing civil penalties.

(2) A request for an informal ~~((review))~~ appeal shall be in writing and shall be received by the department within thirty days of the denial or issuance of an HPA or receipt of an order imposing civil penalties. The thirty-day time requirement may be stayed by the department if negotiations are occurring between the aggrieved party and the habitat biologist and/or their supervisor. Requests for informal ~~((review))~~ appeal shall be mailed to HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat ~~((and Lands Services))~~ Program, 600 Capitol Way, N., Olympia, Washington 98501-1091, or hand-delivered to 1111 Washington Street, S.E., Habitat ~~((and Lands Services))~~ Program, Fifth floor.

(3) The written request for an informal appeal shall be plainly labeled as "Request for Informal Appeal" and shall contain the following:

(a) The name, address, e-mail address (if available), and phone number of the person requesting the appeal;

(b) The specific agency action that the person contests, such as denial of an HPA, a particular condition in an HPA, or an order imposing civil penalties;

(c) Whether the person is the permittee, HPA applicant, landowner, resident, or other basis for the person's interest in the agency action in question;

(d) The date of denial, issuance, or condition of an HPA, or date the department issued the notice of civil penalty;

(e) Specific relief requested; and

(f) The attorney's name, address, e-mail address (if available) and phone number, if the person is represented by legal counsel.

(4) Upon receipt of a written request for informal ~~((agency review))~~ appeal, the department shall initiate a review of the agency decision. ~~((This review))~~ If agreed to by the appellant, and the appellant applied for the HPA, resolution of the appeal may be facilitated through an informal conference. The informal conference is a discussion between the appellant and the area habitat biologist mediated by the biologist's supervisor. The time period for the department to issue a decision on an informal appeal is suspended during the informal conference process. If resolution is not reached through the informal conference, the appellant is not the person who applied for the HPA, or the appeal involves an order imposing civil penalties, an informal appeal hearing shall be conducted by the ~~((regulatory services division manager or the division manager's))~~ HPA appeals coordinator or designee. Upon completion of the ~~((comprehensive review))~~ informal appeal hearing, the ~~((division manager))~~ HPA appeals coordinator, or designee shall recommend a decision to the director or the director's designee. This recommended decision shall be approved or disapproved by the director or the director's designee within sixty days of the date the informal appeal was received by the department, unless an extension of time is agreed to by the appellant. The department shall

notify the appellant in writing of the decision of the director or the director's designee.

~~((4))~~ (5) If, following this informal ~~(agency review)~~ appeal process, the appellant still wishes to contest the agency action, a formal appeal may be initiated ~~(pursuant to)~~ under WAC 220-110-350. Formal review must be requested within the time periods specified in WAC 220-110-350.

AMENDATORY SECTION (Amending Order 98-252, filed 12/16/98, effective 1/16/99)

WAC 220-110-350 Formal appeal of administrative decisions. (1) The following procedures shall govern formal appeals of department actions taken ~~(pursuant to)~~ under RCW ~~((75.20.100 or 75.20.106))~~ 77.55.021, except as indicated in RCW 77.55.301(5)(a), 77.55.151, 77.55.161(2), or 77.55.291. Subsection (2) of this section addresses appeals before the hydraulic appeals board. This rule does not apply to any provisions or conditions in pamphlets, or supplemental approvals as defined in WAC 220-110-020 ~~((44))~~ (53)(c) and (96). A person who disagrees with a provision or condition in a pamphlet HPA or its supplemental approval may apply for an individual, written HPA. ~~(This rule does not apply to an appeal in which a person contests the denial, conditioning or issuance of an HPA issued pursuant to RCW 75.20.103 or 75.20.160, which shall be heard by the hydraulic appeals board.)~~

(a) A person who is aggrieved or adversely affected by the following department actions may request a formal appeal:

~~((a))~~ (i) The denial or issuance of an HPA, or the conditions or provisions made part of an HPA;

~~((b))~~ (ii) An order imposing civil penalties; or

~~((c))~~ (iii) Any other ~~(agency action)~~ by the department's habitat program for which an adjudicative proceeding is required under the Administrative Procedure Act, chapter 34.05 RCW.

~~((2))~~ (b) As required by the Administrative Procedure Act, the department shall inform the permittee, HPA applicant or person subject to civil penalty ~~(order)~~ of the department, of the opportunity for appeal, the time within which to file a written request for an appeal, and the place to file it.

~~((3))~~ (c) A request for an appeal shall be in writing and shall be received during office hours by the department within thirty days of the agency action that is being challenged. Requests for appeal shall be mailed to HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat ~~(and Lands Services)~~ Program, 600 Capitol Way, N., Olympia, Washington 98501-1091, or hand-delivered to 1111 Washington Street S.E., Habitat ~~(and Lands Services)~~ Program, Fifth floor. If there is no timely request for an appeal, the agency action shall be final and unappealable.

~~((4))~~ (d) The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, the deadline for requesting a formal appeal shall be within thirty days of the date of the department's written decision in response to the informal appeal.

~~((5))~~ (e) The written request for an appeal shall be plainly labeled as "Request for Formal Appeal" and shall contain the following:

~~((a))~~ (i) The name, address, e-mail address (if available) and phone number of the person requesting the appeal;

~~((b))~~ (ii) The specific agency action that the person contests ~~(for example)~~, such as denial of an HPA, a particular condition in an HPA, an order imposing civil penalties, etc.;

~~((c))~~ (iii) Whether the person is the permittee, HPA applicant, landowner, resident, or other basis for the person's interest in the agency action in question;

~~((d))~~ (iv) The date of denial, issuance, or condition of an HPA, if the person is contesting denial, issuance, or conditioning of an HPA;

~~((e))~~ (v) Specific relief requested; and

~~((f))~~ (vi) The attorney's name, address, e-mail address (if available) and phone number, if the person is represented by legal counsel.

~~((g))~~ (f) The appeal may be conducted by the director, the director's designee, or by an administrative law judge (ALJ) appointed by the office of administrative hearings. If conducted by an ALJ, the ALJ shall issue an initial order ~~(pursuant to)~~ under RCW 34.05.461. The director or the director's designee shall review the initial order and enter a final order as provided by RCW 34.05.464.

~~((7))~~ (g) All hearings conducted by the director, the director's designee, or an ALJ ~~(pursuant to)~~ under subsection (6) of this section, shall comply with the Administrative Procedure Act and the model rules of procedure, chapter 10-08 WAC.

(2) The hydraulic appeals board hears appeals of the following permits:

(a) Under RCW 77.55.021 for the diversion of water for agricultural irrigation or stock watering purposes or when associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020;

(b) Under RCW 77.55.241 for off-site mitigation proposals;

(c) Under RCW 77.55.141 for single family marine bulkheads or rockwalls;

(d) Under RCW 77.55.181 for fish habitat enhancement project HPA conditions or denials.

The appeal procedures for the board are found in WAC 259-04-060 and chapter 371-08 WAC.

AMENDATORY SECTION (Amending Order 94-160, filed 11/14/94, effective 12/15/94)

WAC 220-110-360 Penalties. (1) ~~(Any person that commences any activity subject to RCW 75.20.100, 75.20.103, or 75.20.160)~~ Under RCW 77.15.300, it is a gross misdemeanor to construct any form of hydraulic project or perform other work on a hydraulic project without having first obtained an HPA from the department, or (any person that fails to comply with any of the requirements or provisions of an HPA, is guilty of a gross misdemeanor), violate any requirements or conditions of the HPA for such construction or work.

(2) The department may impose a civil penalty of up to one hundred dollars per day for a violation ((or continuing violation)) of ((RCW 75.20.100 or 75.20.103, or any provision or condition of an HPA)) any provisions of RCW 77.55.021. The department shall impose the civil penalty with an order in writing delivered by certified mail or personal service to the person who is penalized. The notice shall describe the violation, identify the amount of the penalty, identify how to pay the penalty, and identify informal ((or)) and formal appeal rights for the person penalized. If the violation is an ongoing violation, the penalty shall accrue for each additional day of violation. For ongoing violations, the civil penalty may continue to accrue during any appeal process unless the accrual is stayed in writing by the department.

(3) If not timely appealed under WAC 220-110-340 or 220-110-350, the civil penalty order is final and unappealable. If appealed, the civil penalty becomes final upon issuance of a final order not subject to any further administrative appeal. When a civil penalty order becomes final, it is due and payable. If the civil penalty is not paid within thirty days after it becomes due and payable, the department may seek enforcement of the order ((pursuant to)) under RCW ((75.20.106)) 77.55.291 and 34.05.578.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-110-203 Use of Class I mineral prospecting equipment.
- WAC 220-110-204 Use of Class II mineral prospecting equipment.
- WAC 220-110-205 Use of Class III mineral prospecting equipment.
- WAC 220-110-207 Authorized work times and watercourses for mineral prospecting and placer mining projects in the Columbia and Snake rivers, lakes, salt waters and waters within National Park boundaries using Class I and II equipment.
- WAC 220-110-208 Authorized work times and watercourses for mineral prospecting and placer mining projects using Class III equipment only.
- WAC 220-110-209 Authorized work times and watercourses for mineral prospecting and placer mining projects using Class 0 equipment only.

AMENDATORY SECTION (Amending Order 98-252, filed 12/16/98, effective 1/16/99)

WAC 220-110-206 Authorized work times and ((watercourses)) mineral prospecting equipment restrictions by specific state waters for mineral prospecting and placer mining projects ((by specific watercourse, except the Columbia and Snake rivers, lakes, salt waters and waters within National Park boundaries using Class I and H equipment)). Mineral prospecting and placer mining ((using Class I and II equipment pursuant to WAC 220-110-203 and 220-110-204)) under WAC 220-110-202 shall only occur in ((watercourses)) the state waters, with the equipment restrictions, and during the times specified in the following table((:)).

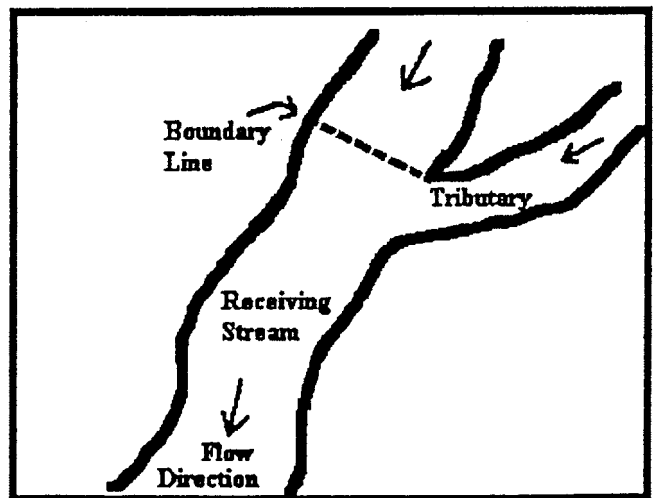
(1) The general work time for a county applies to all ((streams)) state waters within that county, unless otherwise indicated ((under specific stream and tributary work times)) in the table.

(2) The work time for a listed ((stream)) state water applies to all its tributaries, unless otherwise indicated. Some ((streams flow through)) state waters occur in multiple counties. Check the listing for the county in which mineral prospecting or placer mining is to be conducted to determine the work time for that ((stream)) state water.

(3) Where a tributary is listed as a boundary, that boundary shall be the line perpendicular to the receiving stream that is projected from the most upstream point of the tributary mouth to the opposite bank of the receiving stream. ((f)) See Figure 1((:)).

((Figure 1. Stream boundary line))

((STRICKEN GRAPHIC



STRICKEN GRAPHIC))

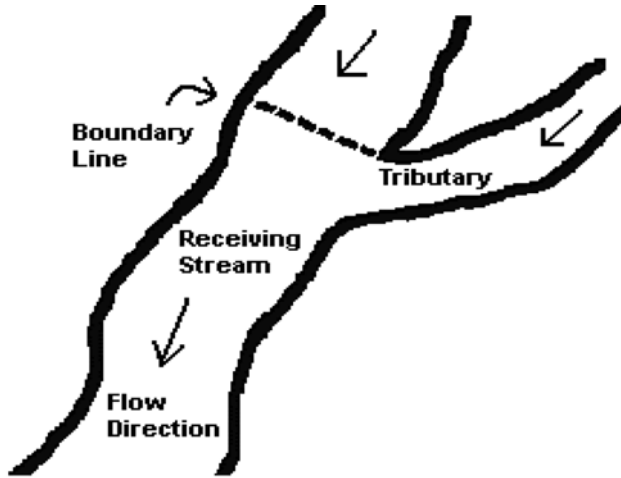


Figure 1: Stream boundary line

(4) Mineral prospecting and placer mining within ((two hundred feet landward of the ordinary high water line in)) state waters listed as "submit application" ((or "closed" is)) are not authorized under the *Gold and Fish* pamphlet. Site

review and a written HPA ((is)) are required for these state waters.

(5) Mineral prospecting using mineral prospecting equipment that has suction intake nozzles with inside diameters that should be four inches or less, but shall be no greater than four and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle is authorized only in the listed state waters, and any tributaries to them, unless otherwise indicated in the table. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the nozzle size.

(6) Mineral prospecting using mineral prospecting equipment that has suction intake nozzles with inside diameters that should be five inches or less, but shall be no greater than five and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle is authorized only in the listed state waters in the following table. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the nozzle size. You may use only mineral prospecting equipment with suction intake nozzle inside diameters of four and one-quarter inches or less in tributaries of these state waters. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the nozzle size.

~~((AUTHORIZED WORK TIMES FOR MINERAL PROSPECTING AND PLACER MINING USING CLASS I AND II EQUIPMENT~~

COUNTY	GENERAL WORK TIMES	((SPECIFIC STREAM & TRIBUTARY WORK TIMES	
		STREAM & ALL TRIBUTARIES	WORK TIME
Adams	July 1–October 31	Esquatzel Creek	July 1–September 30
		Palouse River	June 15–October 15
Asotin	July 1–October 31	Asotin Creek	July 15–August 15
		Grande Ronde River	July 15–August 15
Benton	June 1–September 30	Yakima River tributaries	July 1–September 30
		—Corral Creek	July 15–September 30
		—Spring Creek	July 15–September 30
Chelan	July 1–August 15	Beaver Creek	July 1–October 31
		Colockum Creek	July 1–October 31
		Peshastin Creek	
		—mouth to Negro Creek	July 1–August 15
		—above Negro Creek	July 1–October 31
		Squilehuok Creek	July 1–October 31
		Stemilt Creek	
		—mouth to falls	July 1–October 31
Wenatchee River		—mouth to lake	July 1–September 30
Clallam	July 15–September 30	Bogachiel River	July 15–August 15
		Calawah River	July 15–August 15
		Clallum River	July 15–September 15
		Dungeness River	submit application

((SPECIFIC STREAM & TRIBUTARY WORK TIMES			
COUNTY	GENERAL WORK TIMES	STREAM & ALL TRIBUTARIES	WORK TIME
		Elwha	
		—mouth to lower dam	July 1—August 15
		Hoko River	July 15—September 15
		Jimmycomelately Creek	submit application
		Lyre River	July 15—September 15
		McDonald Creek	July 1—August 15
		Morse Creek	July 1—August 15
		Pysht River	July 15—September 15
		Sekiu River	July 15—September 15
		Sol Due River	July 15—August 15
		Sooes River	July 15—September 15
Clark	July 1—September 30	Lewis River	
		—mouth to forks	June 1—October 31
		—East Fork Lewis River	
		—mouth to LaCenter road bridge	July 1—October 31
		—above LaCenter & all tributaries	submit application
		—North Fork Lewis River	
		—mouth to Merwin Dam	August 1—August 31
		—Cedar Creek	August 1—September 30
		—Merwin Dam to Swift Dam	July 1—July 31
		Lake River	June 1—October 31
		Washougal River	August 1—August 31
Columbia	July 15—October 31	Tucannon River	July 15—August 15
		Touhet River	July 15—August 15
Cowlitz	July 1—September 30	Cowlitz River	August 1—August 31
		—Coweeman River	August 1—September 30
		—Toutle River	submit application
		Kalama River	August 1—August 31
		Lewis River	
		—mouth to forks	June 1—October 31
		—North Fork Lewis River	
		—mouth to Merwin Dam	August 1—August 31
		—Merwin Dam to Lower Falls	July 1—July 31
		—above Lower Falls	July 1—October 31
Douglas	July 1—October 31	None	
Ferry	July 1—August 31	None	
Franklin	June 1—September 30	Palouse River	
		—above falls	June 15—October 15
Garfield	July 15—October 31	Asotin Creek	July 15—August 15
		Tucannon River	July 15—August 15
Grant	July 1—October 31	None	

((SPECIFIC STREAM & TRIBUTARY WORK TIMES			
COUNTY	GENERAL WORK TIMES	STREAM & ALL TRIBUTARIES	WORK TIME
Grays Harbor	July 15—October 31	Cedar Creek	July 15—September 30
		Chehalis River	
		—mouth to Porter Creek	June 1—October 31
		—above Porter Creek	July 15—September 30
		Cloquallum River	July 15—September 30
		Copalis River	July 15—October 15
		Elk River	July 15—September 30
		Hoquiam River	July 15—October 15
		Humptulips River	July 15—October 15
		Johns River	July 15—September 30
		Moelips River	July 15—October 15
		North River	July 15—September 15
		Porter Creek	July 15—September 30
		Quinault River	July 15—August 31
		Satsop River	July 15—August 31
		Wishkah River	July 15—October 15
		Wynoochee River	July 15—October 15
Island	June 15—September 15	None	
Jefferson	July 15—October 31	Big Quilecene River	July 15—August 31
		Bogachiel River	July 15—August 15
		Chimacum Creek	July 15—August 31
		Clearwater River	July 15—September 15
		Donovan Creek	July 15—September 30
		Dosewallips River	July 15—August 31
		Duckabush River	July 15—August 31
		Dungeness River tributaries	submit application
		Hoh River	July 15—August 15
		Little Quilecene River	July 15—August 31
		Matheny Creek	July 15—September 15
		Queets River	July 15—September 15
		Quinault River	July 15—August 15
		Salmon Creek	submit application
Sams River	July 15—September 15		
Snow Creek	submit application		
King	July 1—September 30	Green River (Duwamish)	August 1—August 31
		Greenwater River	July 15—August 31
		Lake Washington tributaries including Cedar and	
		Sammamish rivers	July 1—August 31
		—Issaquah Creek	June 15—July 31
		Snoqualmie River	
		—mouth to Snoqualmie Falls	July 1—September 15
—Snoqualmie Falls to mouth of			
South Fork Snoqualmie River	June 15—October 31		
—North, Middle and South			

COUNTY	GENERAL WORK TIMES	((SPECIFIC STREAM & TRIBUTARY WORK TIMES	
		STREAM & ALL TRIBUTARIES	WORK TIME
		Fork Snoqualmie rivers and tributaries	July 15—October 31
		—Tolt River	
		—mouth to forks	July 15—October 31
		—North Fork	
		—mouth to Yellow Creek	July 15—September 15
		—above Yellow Creek	July 15—October 31
		—mouth to dam	July 15—September 15
		—above dam	July 15—October 31
		White River	July 15—August 31
Kittitas	June 1—September 30	Coloekum Creek	July 1—October 31
		Yakima River	
		—above Roza Dam	submit application
		—Gold Creek (Lake Keechelus)	July 1—July 31
		—Kachess River	
		—above Lake Kachess	July 1—July 31
		—Box Canyon Creek (Lake Kachess)	July 1—July 31
		—Little Naches River	July 15—August 15
		—Wenas Creek	August 1—October 31
		—other Yakima River tributaries	July 15—August 31
Kitsap	July 15—October 31	Seabeek Creek	July 15—August 31
		Gorst Creek	July 15—August 31
Klickitat	July 1—September 30	Klickitat River	July 1—August 15
		White Salmon River	July 1—August 15
Lewis	July 1—September 30	Chehalis River	
		—upstream of South Fork	
		Chehalis River confluence	July 1—August 31
		Cispus River	
		—mouth to Walupt Creek	August 1—August 31
		—above Walupt Creek	submit application
		—McCoy Creek	August 1—September 30
		Connelly Creek	August 1—September 30
		Cowlitz River	August 1—August 31
		Newaukum River	July 1—August 31
		Nisqually River	
		—above Alder Lake	July 1—September 30
		Skookumehuek River	July 1—August 31
		Tilton River	August 1—September 30
		Toutle River	
		—tributaries	submit application
		Walupt Creek	submit application
		Paekwood Lake tributaries	submit application
Lincoln	June 15—October 15	None	

((SPECIFIC STREAM & TRIBUTARY WORK TIMES					
COUNTY	GENERAL WORK TIMES	STREAM & ALL TRIBUTARIES	WORK TIME		
Mason	July 15—October 31	Cloquallum Creek	July 15—September 30		
		Coulter Creek	July 15—September 15		
		Hamma Hamma River			
		—mouth to falls	July 15—August 31		
		—John Creek	July 15—August 31		
		Johns Creek	July 15—August 31		
		Lilliwaup River			
		—below falls	July 15—August 31		
		—above falls	July 1—October 31		
		Mill Creek	July 15—October 15		
		Satsop River	July 15—August 31		
		Schaerer Creek	July 15—August 31		
		Sherwood Creek	July 15—September 15		
		Skokomish River	July 15—September 15		
		Tahuya River	July 15—September 15		
		Twanoh Creek	June 1—October 31		
		Union River	June 1—September 15		
		Okanogan	July 1—August 15	Ancas Creek	
				—mouth to falls	July 1—October 31
Chewiliken Creek					
—mouth to falls	July 1—October 31				
Chiliwist Creek					
—mouth to falls	July 1—October 31				
Methow River					
—mouth to Carleton	July 1—September 30				
Mosquito Creek	July 1—October 31				
Nine Mile Creek	July 1—October 31				
Omak Creek					
—mouth to falls	July 1—October 31				
Similkameen River					
—mainstem	July 1—September 30				
—all Similkameen River tributaries	July 1—August 15				
Tunk Creek					
—mouth to falls	July 1—October 31				
Pacifie	July 15—September 30	Chehalis River	July 1—August 31		
		Chinook River	August 1—August 31		
		Grays River	August 1—September 30		
		North River	July 15—September 15		
Pend Oreille	July 1—August 31	Big Muddy Creek	June 1—August 31		
		Braeket Creek	June 1—August 31		
		Calispel Creek			
		—mouth to Calispel Lake	June 1—August 31		
		Exposure Creek	June 1—August 31		
		Kent Creek	June 1—August 31		
Lime Creek	June 1—August 31				

((SPECIFIC STREAM & TRIBUTARY WORK TIMES			
COUNTY	GENERAL WORK TIMES	STREAM & ALL TRIBUTARIES	WORK TIME
		Little Spokane River	June 15—August 31
		Lodge Creek	June 1—August 31
		Marshall Creek	June 1—August 31
		Pee-Wee Creek	
		—above falls	June 1—October 31
		Renshaw Creek	June 1—August 31
Pierce	July 15—August 31	Nisqually River	
		—mouth to Alder Lake	July 1—August 31
		—tributaries below Alder Lake	submit application
		—above Alder Lake & tributaries	July 15—September 15
		Carbon River	July 15—August 31
		—South Prairie Creek	
		—mouth to Forest Service road #7710	July 15—September 15
		—above Forest Service road #7710	July 1—October 31
		—Voights Creek	
		—mouth to falls	July 15—September 15
		—above falls	July 15—October 31
		—Wilkeson Creek	
		—mouth to Snell Lake	July 1—September 30
		—above Snell Lake	July 1—October 31
		Rocky Creek	July 15—September 30
San Juan	June 1—August 31	None	
Skagit	July 1—September 30	Baker River	
		—mouth to dam	June 15—August 31
		Cascade River	June 15—July 15
		Hlabot Creek	June 15—July 31
		Samish River	submit application
		Skagit River	
		—mouth to Sauk River	June 15—August 31
		—above Sauk River	June 15—July 31
		—Sauk River	July 15—August 15
		—Suiattle River	July 15—August 15
		Nooksack River	submit application
Skamania	July 1—September 30	Cispus River	August 1—August 31
		Lewis River	
		—East Fork Lewis River	submit application
		—North Fork Lewis River	
		—Cougar Creek	June 1—July 31
		—Merwin Dam to Lower Falls & tributaries	July 1—July 31
		—above Lower Falls	July 1—October 31
		Little White Salmon River	July 1—August 31
		McCoy Creek	August 1—September 30
		Washougal River	August 1—August 31

((SPECIFIC STREAM & TRIBUTARY WORK TIMES			
COUNTY	GENERAL WORK TIMES	STREAM & ALL TRIBUTARIES	WORK TIME
		White Salmon River	July 1--August 31
		Wind River	August 1--August 15
Snohomish	July 1--September 30	Lake Washington tributaries	July 1--August 31
		Sauk River	July 15--August 15
		—Suiattle River	July 15--August 15
		Snohomish River	
		—mouth to Highway 9	June 1--October 31
		—above Highway 9	July 1--August 31
		—Pilehuck River	July 1--August 31
		—mouth to city of Snohomish diversions dam	July 1--August 31
		—above city of Snohomish diversion dam	July 1--September 15
		—Skykomish River	
		—mouth to forks	July 1--August 31
		—North Fork Skykomish River	
		—mouth to San Juan campground	July 1--August 31
		—San Juan campground to Deer Falls	submit application
		—above Deer Falls	July 15--October 31
		—Salmon Creek	submit application
		—South Fork Skykomish River	
		—mouth to Sunset Falls	July 1--August 31
		—Sunset Falls to Alpine Falls	July 1--September 15
		—above Alpine Falls	July 15--October 31
		—Beckler River	
		—mouth to Boulder Creek	July 1--September 15
		—above Boulder Creek	July 15--October 31
		—Rapid River	
		—mouth to Meadow Creek	July 15--September 15
		—above Meadow Creek	July 15--October 31
		—Foss River	
		—mouth to forks	July 15--September 15
		—East Fork Foss River	submit application
		—West Fork Foss River	July 15--October 31
—Miller River			
—mouth to forks	July 1--September 15		
—above forks	July 1--October 31		
—Olney Creek			
—mouth to Olney Falls	July 1--September 15		
—above Olney Falls	July 1--October 31		
—Sultan River			
—mouth to old diversion dam	July 1--August 31		
—old diversion dam to Culmbaek Dam	July 1--October 31		
—tributaries above Culmbaek Dam	August 1--October 31		
—Wallace River			
—mouth to Wallace Falls	July 1--September 1		

((SPECIFIC STREAM & TRIBUTARY WORK TIMES			
COUNTY	GENERAL WORK TIMES	STREAM & ALL TRIBUTARIES	WORK TIME
		—above Wallace Falls	July 1—October 31
		—Snoqualmie River	July 1—August 31
		—all other Snohomish River tributaries	July 1—August 31
		Stillaguamish River	
		—mouth to forks	July 1—August 31
		—North and South Fork Stillaguamish Rivers	July 1—August 15
		—Deer Creek	submit application
		—Canyon Creek	submit application
Spokane	June 15—August 31	Latah Creek	
		—mainstem	June 15—October 31
		—all Latah Creek tributaries	June 15—August 31
Stevens	July 1—August 31	Big Sheep Creek	
		—mouth to Sheep Creek Falls	submit application
		—above Sheep Creek Falls	July 1—August 31
Thurston	July 15—September 15	Cedar Creek	July 15—September 30
		Little Deschutes River	July 15—October 31
		McLane Creek	July 15—October 31
		Nisqually River	
		—mainstem	July 1—August 31
		—all Nisqually River tributaries	submit application
		Porter Creek	July 15—September 30
		Schneider Creek	July 1—October 31
		Skookumchuck River	July 1—August 31
		Woodard Creek	July 1—October 31
		Woodland Creek	July 1—October 31
Wahkiakum	July 15—September 15	Elochoman River	August 1—September 30
		Grays River	August 1—September 30
		Naselle River	July 15—September 30
Walla Walla	July 15—October 31	Touche River	July 15—August 15
		Walla Walla River	July 15—August 15
Wheaton	July 1—September 30	Baker River	submit application
		Nooksack River	
		—above forks	submit application
		—all Nooksack River tributaries	submit application
		Ross Lake tributaries	submit application
		Samish River	submit application
		Skagit River	June 15—July 31
Whitman	June 15—October 15	Palouse River	
		—mouth to falls	June 1—September 30
Yakima	June 1—September 30	Klickitat River	July 1—August 15
		Yakima River	
		—mouth to Roza Dam	June 1—September 15

((SPECIFIC STREAM & TRIBUTARY WORK TIMES

COUNTY	GENERAL WORK TIMES	STREAM & ALL TRIBUTARIES	WORK TIME
		—Naches River	
		—mouth to Tieton River	June 1 – October 31
		—above confluence of Tieton River	June 1 – August 15
		—Indian Creek (Rimrock Lake)	July 1 – July 31
		—Tieton River	June 1 – August 15
		—Little Naches River	July 15 – August 15
		—Bumping River	July 15 – August 15
		—Ameriean River	submit application
		—Rattlesnake Creek	July 15 – August 15
		—Wenas Creek	August 1 – October 31
		—all other Yakima River tributaries	July 15 – August 31))

AUTHORIZED WORK TIMES AND MINERAL PROSPECTING EQUIPMENT RESTRICTIONS BY SPECIFIC STATE WATERS FOR MINERAL PROSPECTING AND PLACER MINING PROJECTS

<u>Washington Counties and State Waters</u> <u>Water Resource Inventory Area (WRIA) in parentheses</u>	<u>Mineral Prospecting Is Allowed Only Between These Dates</u>	<u>State Waters (and tributaries, unless otherwise indicated) in Which You May Use Mineral Prospecting Equipment with a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter</u>	<u>State Waters (NOT including tributaries) in Which You May Use Mineral Prospecting Equipment with a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter</u>
<u>Adams County</u>	<u>July 1 - October 31</u>	<u>X</u>	<u>=</u>
<u>Crab Creek (41.0002)</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>X</u>
<u>Esquatzel Creek (36.MISC)</u>	<u>June 1 - February 28</u>	<u>X</u>	<u>X</u>
<u>Palouse River (34.0003)</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>X</u>
<u>Asotin County</u>	<u>July 16 - September 15</u>	<u>X</u>	<u>=</u>
<u>Snake River (35.0002)</u>	<u>See below</u>	<u>=</u>	<u>=</u>
<u>Alpowa Creek (35.1440)</u>	<u>July 16 - December 15</u>	<u>X</u>	<u>=</u>
<u>Asotin Creek (35.1716)</u>	<u>July 16 - August 15</u>	<u>X</u>	<u>=</u>
<u>Couse Creek (35.2147)</u>	<u>July 16 - December 15</u>	<u>X</u>	<u>=</u>
<u>Grande Ronde River (35.2192)</u>	<u>July 16 - September 15</u>	<u>X</u>	<u>X</u>
<u>Tenmile Creek (35.2100)</u>	<u>July 16 - December 15</u>	<u>X</u>	<u>=</u>
<u>Benton County</u>	<u>June 1 - September 30</u>	<u>X</u>	<u>=</u>
<u>Columbia River</u>	<u>See below</u>	<u>=</u>	<u>=</u>
<u>Glade Creek (31.0851)</u>	<u>August 1 - September 30</u>	<u>X</u>	<u>=</u>
<u>Yakima River (37.0002)</u>	<u>June 1 - September 15</u>	<u>X</u>	<u>X</u>
<u>Amon Creek (37.0009)</u>	<u>June 1 - September 30</u>	<u>X</u>	<u>=</u>
<u>Corral Creek (37.0002)</u>	<u>June 1 - September 30</u>	<u>X</u>	<u>=</u>
<u>Spring Creek (37.0205)</u>	<u>June 1 - September 30</u>	<u>X</u>	<u>=</u>
<u>Chelan County</u>	<u>July 16 - August 15</u>	<u>X</u>	<u>=</u>
<u>Columbia River</u>	<u>See below</u>	<u>=</u>	<u>=</u>
<u>Antoine Creek (49.0294) - Mouth to falls at river mile 1.0</u>	<u>July 1 - February 28</u>	<u>X</u>	<u>=</u>
<u>Antoine Creek (49.0294) - Upstream of falls at river mile 1.0</u>	<u>July 1 - March 31</u>	<u>X</u>	<u>=</u>

<u>Washington Counties and State Waters</u> <u>Water Resource Inventory Area (WRIA) in parentheses</u>	<u>Mineral Prospecting Is Allowed Only Between These Dates</u>	<u>State Waters (and tributaries, unless otherwise indicated) in Which You May Use Mineral Prospecting Equipment with a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter</u>	<u>State Waters (NOT including tributaries) in Which You May Use Mineral Prospecting Equipment with a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter</u>
<u>Chelan River (47.0052) - Mouth to Chelan Dam</u>	<u>July 16 - September 30</u>	X	X
<u>Colockum Creek (40.0760)</u>	<u>July 1 - October 31</u>	X	=
<u>Entiat River (46.0042) - Mouth to Entiat Falls</u>	<u>July 16 - July 31</u>	X	X
<u>Entiat River (46.0042) - Upstream of Entiat Falls</u>	<u>July 16 - March 31</u>	X	=
<u>Crum Canyon (46.0107)</u>	<u>July 16 - March 31</u>	X	=
<u>Mad River (46.0125)</u>	<u>July 16 - July 31</u>	X	=
<u>Indian Creek (46.0128)</u>	<u>July 16 - February 28</u>	X	=
<u>Lake Chelan (47.0052)</u>	<u>Submit Application</u>	=	=
<u>Railroad Creek (47.0410)</u>	<u>July 16 - September 30</u>	X	=
<u>Stehekin River (47.0508)</u>	<u>Submit Application</u>	=	=
<u>Twenty-five Mile Creek (47.0195)</u>	<u>July 16 - September 30</u>	X	=
<u>Other Lake Chelan tributaries outside of North Cascades National Park</u>	<u>July 1 - August 15</u>	X	=
<u>Other Lake Chelan tributaries within North Cascades National Park</u>	<u>Submit Application</u>	=	=
<u>Number 1 Canyon (45.0011)</u>	<u>July 1 - February 28</u>	X	=
<u>Number 2 Canyon (45.0012)</u>	<u>July 1 - February 28</u>	X	=
<u>Squilchuck Creek (40.0836) - Mouth to South Wenatchee Avenue</u>	<u>July 1 - September 30</u>	X	=
<u>Squilchuck Creek (40.0836) - Upstream of South Wenatchee Avenue</u>	<u>July 1 - February 28</u>	X	=
<u>Stemilt Creek (40.0808) - Mouth to falls</u>	<u>July 1 - September 30</u>	X	=
<u>Stemilt Creek (40.0808) - Upstream of falls</u>	<u>July 1 - February 28</u>	X	=
<u>Wenatchee River (45.0030) - Mouth to Lake Wenatchee</u>	<u>July 1 - July 31</u>	X	X
<u>Beaver Creek (45.0751)</u>	<u>July 1 - September 30</u>	X	=
<u>Chiwaukum Creek (45.0700)</u>	<u>July 1 - July 31</u>	X	=
<u>Chiwawa River (45.0759) - Mouth to Phelps Creek</u>	<u>July 1 - July 31</u>	X	X
<u>Chiwawa River (45.0759) - Upstream of Phelps Creek</u>	<u>July 1 - July 31</u>	X	=
<u>Deep Creek (45.0764)</u>	<u>July 1 - February 28</u>	X	=
<u>Phelps Creek (45.0875)</u>	<u>July 16 - August 15</u>	X	=
<u>Ice Creek (45.0474) - Mouth to Johnny Creek</u>	<u>July 1 - July 31</u>	X	X

<u>Washington Counties and State Waters</u> <u>Water Resource Inventory Area (WRIA) in parentheses</u>	<u>Mineral Prospecting Is Allowed Only Between These Dates</u>	<u>State Waters (and tributaries, unless otherwise indicated) in Which You May Use Mineral Prospecting Equipment with a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter</u>	<u>State Waters (NOT including tributaries) in Which You May Use Mineral Prospecting Equipment with a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter</u>
<u>Icicle Creek (45.0474) - Upstream of Johnny Creek</u>	<u>July 1 - July 31</u>	X	=
<u>Fourth of July Creek (45.0525)</u>	<u>July 1 - February 28</u>	X	=
<u>Lake Wenatchee (45.0030)</u>	<u>Submit Application</u>	=	=
<u>Little Wenatchee (45.0985) - Mouth to Wilderness Boundary</u>	<u>July 1 - July 31</u>	X	X
<u>Little Wenatchee (45.0985) - Upstream of Wilderness Boundary</u>	<u>Submit Application</u>	=	=
<u>White River (45.1116) - Mouth to White River Falls</u>	<u>July 1 - July 31</u>	X	X
<u>White River (45.1116) - Upstream of White River Falls</u>	<u>July 1 - February 28</u>	X	=
<u>Nason Creek (45.0888)</u>	<u>July 1 - July 31</u>	X	=
<u>Peshastin Creek (45.0232) - Mouth to Negro Creek</u>	<u>July 16 - August 15</u>	X	=
<u>Peshastin Creek (45.0232) - Upstream of Negro Creek</u>	<u>August 1 - February 28</u>	X	=
<u>Ingalls Creek (45.0273) - Mouth to Cascade Creek</u>	<u>Submit Application</u>	=	=
<u>Ingalls Creek (45.0273) - Upstream of Cascade Creek</u>	<u>July 16 - February 28</u>	X	=
<u>Negro Creek (45.0323) - Mouth to falls at stream mile 2.9</u>	<u>Submit Application</u>	=	=
<u>Negro Creek (45.0323) - Upstream of falls at stream mile 2.9</u>	<u>July 16 - February 28</u>	X	=
<u>Ruby Creek (45.0318)</u>	<u>July 16 - February 28</u>	X	=
<u>Tronson Creek (45.0346)</u>	<u>August 1 - February 28</u>	X	=
<u>Scotty Creek (45.0376)</u>	<u>August 1 - February 28</u>	X	=
<u>Shaser Creek (45.0365)</u>	<u>August 1 - February 28</u>	X	=
<u>Clallam County</u>	<u>July 16 - September 15</u>	X	=
<u>Clallam River (19.0129)</u>	<u>August 1 - August 15</u>	X	=
<u>Dungeness River (18.0018)</u>	<u>Submit Application</u>	=	=
<u>Independent Creek (18.MISC)</u>	<u>August 1 - August 31</u>	X	=
<u>Elwha River (18.0272)</u>	<u>August 1 - August 15</u>	X	X
<u>Hoko River (19.0148)</u>	<u>August 1 - September 15</u>	X	=
<u>Jimmycomelately Creek (17.0285)</u>	<u>August 1 - August 31</u>	X	=
<u>Lake Ozette (20.0046)</u>	<u>Submit Application</u>	=	=
<u>Little Quilcene River (17.0076)</u>	<u>July 16 - August 31</u>	X	=
<u>Lake Ozette tributaries</u>	<u>July 16 - September 15</u>	X	=
<u>Lyre River (19.0031)</u>	<u>August 1 - September 15</u>	X	=
<u>McDonald Creek (18.0160)</u>	<u>August 1 - September 15</u>	X	=
<u>Morse Creek (18.0185)</u>	<u>August 1 - August 15</u>	X	=
<u>Ozette River (20.0046)</u>	<u>July 16 - September 15</u>	X	=

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<u>Pysht River (19.0113)</u>	<u>August 1 - September 15</u>	X	=
<u>Quillayute River (20.0096, 20.0162, 20.0175)</u>	<u>August 1 - August 15</u>	X	X
<u>Bogachiel River (20.0162)</u>	<u>Submit Application</u>	=	=
<u>Calawah River (20.0175)</u>	<u>August 1 - August 15</u>	X	X
<u>Salmon Creek (17.0245)</u>	<u>July 16 - August 31</u>	X	=
<u>Sekiu River (19.0203)</u>	<u>August 1 - September 15</u>	X	=
<u>Snow Creek (17.0219)</u>	<u>July 16 - August 31</u>	X	=
<u>Sol Duc River (20.0096)</u>	<u>Submit Application</u>	=	=
<u>Lake Pleasant (20.0313)</u>	<u>Submit Application</u>	=	=
<u>Lake Pleasant tributaries</u>	<u>July 16 - September 15</u>	X	=
<u>Sooes River (20.0015)</u>	<u>July 16 - September 15</u>	X	=
<u>Clark County</u>	<u>July 16 - September 30</u>	=	=
<u>Columbia River</u>	<u>See below</u>	=	=
<u>Lacamas Creek (28.0160) - Mouth to dam</u>	<u>August 1 - August 31</u>	X	=
<u>Lacamas Creek (28.0160) - Upstream of dam</u>	<u>August 1 - September 30</u>	X	=
<u>Lewis River (27.0168)</u>	<u>August 1 - August 15</u>	X	X
<u>East Fork Lewis River (27.0173) - Mouth to Lucia Falls</u>	<u>August 1 - August 15</u>	X	X
<u>East Fork Lewis River (27.0173) - Lucia Falls to Sunset Falls</u>	<u>August 1 - February 28</u>	X	X
<u>East Fork Lewis River (27.0173) - Upstream of Sunset Falls</u>	<u>August 1 - February 28</u>	X	=
<u>Lake River (28.0020)</u>	<u>January 1 - December 31</u>	X	X
<u>Burnt Bridge Creek (28.0143)</u>	<u>August 1 - August 31</u>	X	=
<u>Salmon Creek (28.0059)</u>	<u>August 1 - August 31</u>	X	=
<u>Whipple Creek (28.0038)</u>	<u>August 1 - September 30</u>	X	=
<u>North Fork Lewis River (27.0334) - Confluence of East Fork to Merwin Dam</u>	<u>August 1 - August 15</u>	X	X
<u>Cedar Creek (27.0339)</u>	<u>August 1 - September 15</u>	X	=
<u>North Fork Lewis River (27.0334) - Merwin Dam to Lower Falls</u>	<u>July 16 - August 15</u>	X	X
<u>Canyon Creek (27.0442)</u>	<u>July 16 - February 28</u>	X	=
<u>North Fork Lewis River (27.0168) - Upstream of Lower Falls</u>	<u>July 16 - August 15</u>	X	X
<u>Washougal River (28.0159) - Mouth to Dougan Creek</u>	<u>August 1 - August 31</u>	X	X
<u>Washougal River (28.0159) - Upstream of Dougan Creek</u>	<u>August 1 - August 31</u>	X	=

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<u>Columbia County</u>	<u>July 16 - September 30</u>	X	=
<u>Touchet River (32.0097)</u>	<u>August 1 - August 15</u>	X	X
<u>Grande Ronde River tributaries (35.2192)</u>	<u>July 16 - August 15</u>	X	=
<u>North Fork Touchet/Wolf Fork (32.0761)</u>	<u>Submit Application</u>	=	=
<u>South Fork Touchet (32.0708)</u>	<u>Submit Application</u>	=	=
<u>Tucannon River (35.0009)</u>	<u>July 16 - August 15</u>	X	X
<u>Walla Walla River (32.0008) - Mouth to Oregon State line</u>	<u>July 16 - September 15</u>	X	X
<u>Mill Creek (32.1436) - Mouth to Oregon State line</u>	<u>August 1 - August 15</u>	X	=
<u>Cowlitz County</u>	<u>July 16 - September 30</u>	X	=
<u>Chehalis River (22.0190/23.0190) - South Fork Chehalis River - Mouth to Fisk Falls</u>	<u>August 1 - August 31</u>	X	X
<u>Chehalis River (22.0190/23.0190) - South Fork Chehalis River - Upstream of Fisk Falls</u>	<u>August 1 - August 31</u>	X	=
<u>Columbia River</u>	<u>See below</u>	=	=
<u>Abernathy Creek (25.0297)</u>	<u>July 16 - September 15</u>	X	=
<u>Burke Creek (27.0148)</u>	<u>August 1 - August 31</u>	X	=
<u>Burris Creek (27.0151)</u>	<u>August 1 - August 31</u>	X	=
<u>Bybee Creek (27.0142)</u>	<u>August 1 - August 31</u>	X	=
<u>Canyon Creek (27.0147)</u>	<u>August 1 - August 31</u>	X	=
<u>Coal Creek (25.0340)</u>	<u>July 16 - September 15</u>	X	=
<u>Clark Creek (25.0371)</u>	<u>August 1 - August 31</u>	X	=
<u>Cowlitz River (26.0002) - Mouth to barrier dam at river mile 49.5</u>	<u>July 16 - August 15</u>	X	X
<u>Coweeman River (26.0003) - Mouth to Baird Creek</u>	<u>August 1 - August 31</u>	X	X
<u>Coweeman River (26.0003) - Upstream of Baird Creek</u>	<u>August 1 - August 31</u>	X	=
<u>Cowlitz River (26.0002) - Tributaries below barrier dam to mouth</u>	<u>July 16 - September 30</u>	X	=
<u>Owl Creek (26.1441)</u>	<u>July 16 - September 15</u>	X	=
<u>Toutle River (26.0227)</u>	<u>July 16 - August 15</u>	X	X
<u>North Fork Toutle River (26.0314) - Mouth to Debris Dam</u>	<u>July 16 - August 15</u>	X	X
<u>North Fork Toutle River (26.0314) - Upstream of Debris Dam</u>	<u>July 16 - August 15</u>	X	=
<u>Green River (26.0323) - Mouth to Shultz Creek</u>	<u>July 16 - September 30</u>	X	X

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<u>Green River (26.0323) - Upstream of Shultz Creek</u>	<u>July 16 - September 30</u>	X	=
<u>South Fork Toutle (26.0248) - Mouth to Bear Creek</u>	<u>July 16 - September 15</u>	X	X
<u>South Fork Toutle (26.0248) - Upstream of Bear Creek</u>	<u>July 16 - September 15</u>	X	=
<u>Tributaries to Silver Lake</u>	<u>July 16 - September 30</u>	X	=
<u>Germany Creek (25.0313)</u>	<u>July 16 - September 15</u>	X	=
<u>Kalama River (27.0002) - Mouth to Kalama Falls</u>	<u>August 1 - August 15</u>	X	X
<u>Kalama River (27.0002) - Upstream of Kalama Falls</u>	<u>August 1 - August 15</u>	X	=
<u>Lewis River (27.0168) - Mouth to East Fork Lewis River</u>	<u>August 1 - August 15</u>	X	X
<u>North Fork Lewis River (27.0334) - Confluence of East Fork to Merwin Dam</u>	<u>August 1 - August 15</u>	X	X
<u>North Fork Lewis River (27.0334) - Merwin Dam to Lower Falls</u>	<u>July 16 - August 15</u>	X	X
<u>Mill Creek (25.0284)</u>	<u>July 16 - September 15</u>	X	=
<u>Schoolhouse Creek (27.0139)</u>	<u>August 1 - August 31</u>	X	=
<u>Douglas County</u>	<u>July 1 - September 30</u>	X	=
<u>Columbia River</u>	<u>See below</u>	=	=
<u>Douglas Creek Canyon (44.0146)</u>	<u>May 16 - January 31</u>	X	=
<u>Foster Creek (50.0065)</u>	<u>August 1 - April 15</u>	X	=
<u>McCarteney Creek (44.0002)</u>	<u>July 1 - February 28</u>	X	=
<u>Pine/Corbaley Canyon Creek (44.0779)</u>	<u>September 16 - April 15</u>	X	=
<u>Rock Island Creek (44.0630)</u>	<u>July 1 - September 30</u>	X	=
<u>Ferry County</u>	<u>July 1 - August 31</u>	X	=
<u>Columbia River</u>	<u>See below</u>	=	=
<u>Kettle River (60.0002)</u>	<u>June 16 - August 31</u>	X	X
<u>Boulder Creek (60.0130) - Mouth to Hodgson Road Bridge</u>	<u>Submit Application</u>	=	=
<u>Boulder Creek (60.0130) - Upstream of Hodgson Road Bridge</u>	<u>June 16 - February 28</u>	X	=
<u>Deadman Creek (60.0008) - Mouth to SR395 Crossing</u>	<u>Submit Application</u>	=	=
<u>Deadman Creek (60.0008) - Upstream of SR395</u>	<u>June 16 - February 28</u>	X	=
<u>Goosmus Creek (60.0254)</u>	<u>June 16 - February 28</u>	X	=
<u>Toroda Creek (60.0410)</u>	<u>July 1 - September 30</u>	X	=
<u>San Poil River (52.0004)</u>	<u>June 16 - September 30</u>	X	X

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<u>Granite Creek (52.0099) - Mouth to Powerhouse Dam</u>	<u>June 16 - September 30</u>	X	=
<u>Granite Creek (52.0099) - Upstream of Powerhouse Dam</u>	<u>June 16 - February 28</u>	X	=
<u>West Fork San Poil River (52.0192) - Mouth to Deep Creek</u>	<u>June 16 - September 30</u>	X	X
<u>West Fork San Poil River (52.0192) - Upstream of Deep Creek</u>	<u>June 16 - September 30</u>	X	=
<u>Gold Creek (52.0197)</u>	<u>June 16 - February 28</u>	X	=
<u>Franklin County</u>	<u>June 1 - September 30</u>	X	=
<u>Columbia River</u>	<u>See below</u>	=	=
<u>Snake River</u>	<u>See below</u>	=	=
<u>Palouse River (34.0003)</u>	<u>July 16 - February 28</u>	X	X
<u>North bank tributaries of the lower Snake River between Palouse River and the mouth of the Snake River</u>	<u>June 16 - October 31</u>	X	=
<u>Garfield County</u>	<u>July 16 - September 30</u>	X	=
<u>Snake River (35.0003)</u>	<u>See below</u>	=	=
<u>Alpowa Creek (35.1440)</u>	<u>July 16 - December 15</u>	X	=
<u>Asotin Creek (35.1716)</u>	<u>July 16 - August 15</u>	X	=
<u>Deadman Creek (35.0688)</u>	<u>July 16 - December 15</u>	X	=
<u>Grande Ronde River tributaries (35.2192)</u>	<u>July 16 - August 15</u>	X	=
<u>Meadow Creek (35.0689)</u>	<u>July 16 - December 15</u>	X	=
<u>Tucannon River (35.0009) - Mouth to Panjab Creek</u>	<u>July 16 - August 31</u>	X	X
<u>Tucannon River (35.0009) - Upstream of Panjab Creek</u>	<u>July 16 - August 31</u>	X	=
<u>Pataha Creek (35.0123) - Mouth to Pataha Creek</u>	<u>January 1 - December 31</u>	X	=
<u>Pataha Creek (35.0123) - Upstream of Pataha Creek</u>	<u>July 16 - December 31</u>	X	=
<u>Grant County</u>	<u>July 1 - October 31</u>	X	=
<u>Columbia River</u>	<u>See below</u>	=	=
<u>Crab Creek (41.0002)</u>	<u>July 16 - September 15</u>	X	X
<u>Grays Harbor County</u>	<u>July 16 - October 15</u>	X	=
<u>Chehalis River (22.0190/23.0190) - Mouth to Porter Creek</u>	<u>August 1 - August 31</u>	X	X
<u>Chehalis River (22.0190/23.0190) - Porter Creek to Fisk Falls</u>	<u>August 1 - August 15</u>	X	X

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<u>Chehalis River (22.0190/23.0190) - Upstream of Fisk Falls</u>	<u>August 1 - August 15</u>	X	=
<u>Cedar Creek (23.0570)</u>	<u>August 1 - September 30</u>	X	=
<u>Cloquallum Creek (22.0501)</u>	<u>August 1 - September 30</u>	X	=
<u>Porter Creek (23.0543)</u>	<u>August 1 - September 30</u>	X	=
<u>Satsop River (22.0360)</u>	<u>August 1 - August 31</u>	X	X
<u>Wishkah River (22.0191)</u>	<u>August 1 - October 15</u>	X	X
<u>Wynoochee River (22.0260)</u>	<u>August 1 - September 30</u>	X	X
<u>Copalis River (21.0767)</u>	<u>August 1 - October 15</u>	X	X
<u>Elk River (22.1333)</u>	<u>July 1 - October 31</u>	X	X
<u>Hoquiam River (22.0137)</u>	<u>August 1 - October 15</u>	X	X
<u>Humtulpis River (22.0004) - Mouth to Forks</u>	<u>August 1 - September 30</u>	X	X
<u>Humtulpis River (22.0004) - Upstream of Forks</u>	<u>August 1 - September 30</u>	X	=
<u>Johns River (22.1270)</u>	<u>August 1 - September 30</u>	X	X
<u>Moclips River (21.0731)</u>	<u>August 1 - October 15</u>	X	X
<u>North River (24.0034)</u>	<u>August 1 - September 30</u>	X	X
<u>Queets River (21.0001)</u>	<u>August 1 - August 15</u>	X	X
<u>Quinalt River (21.0398)</u>	<u>August 1 - August 15</u>	X	X
<u>Raft River (21.0337)</u>	<u>August 1 - October 15</u>	X	X
<u>Island County</u>	<u>June 16 - October 15</u>	X	=
<u>Cavalero Creek (06.0065)</u>	<u>June 16 - December 15</u>	X	=
<u>Chapman Creek (06.0070)</u>	<u>June 16 - December 15</u>	X	=
<u>Crescent Creek (06.0002)</u>	<u>June 16 - December 15</u>	X	=
<u>Cultus Creek (06.0026)</u>	<u>June 16 - March 15</u>	X	=
<u>Deer Creek (06.0024)</u>	<u>June 16 - March 15</u>	X	=
<u>Dugualla Creek (06.0001)</u>	<u>June 16 - March 15</u>	X	=
<u>Glendale Creek (06.0025)</u>	<u>June 16 - December 15</u>	X	=
<u>Kristoferson Creek (06.0062-06.0063)</u>	<u>May 1 - December 15</u>	X	=
<u>Maxwelton Creek (06.0029)</u>	<u>June 16 - December 15</u>	X	=
<u>North Bluff Creek (06.0006)</u>	<u>June 16 - March 15</u>	X	=
<u>Old Clinton Creek (06.0023)</u>	<u>June 16 - March 15</u>	X	=
<u>Jefferson County</u>	<u>July 16 - October 31</u>	X	=
<u>Big Quilcene River (17.0012) - Mouth to Falls</u>	<u>July 16 - August 31</u>	X	X
<u>Big Quilcene River (17.0012) - Falls to Forks</u>	<u>August 1 - February 28</u>	X	X
<u>Big Quilcene River (17.0012) - Upstream of Forks</u>	<u>August 1 - February 28</u>	X	=
<u>Bogachiel River (20.0162)</u>	<u>Submit Application</u>	=	=
<u>Chimacum Creek (17.0203)</u>	<u>July 16 - September 15</u>	X	=

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<u>Donovan Creek (17.0115)</u>	<u>July 1 - October 15</u>	<u>X</u>	<u>=</u>
<u>Dosewallips River (16.0442)</u>	<u>July 16 - August 15</u>	<u>X</u>	<u>=</u>
<u>Duckabush River (16.0351)</u>	<u>July 16 - August 15</u>	<u>X</u>	<u>=</u>
<u>Dungeness River (18.0018)</u>	<u>August 1 - August 15</u>	<u>X</u>	<u>=</u>
<u>Elwha River (18.0272)</u>	<u>August 1 - August 15</u>	<u>X</u>	<u>X</u>
<u>Goodman Creek (20.0406)</u>	<u>August 1 - September 15</u>	<u>X</u>	<u>=</u>
<u>Hoh River (20.0422)</u>	<u>August 1 - August 15</u>	<u>X</u>	<u>X</u>
<u>Little Quilcene River (17.0076)</u>	<u>July 16 - August 31</u>	<u>X</u>	<u>=</u>
<u>Queets River (21.0001)</u>	<u>August 1 - August 15</u>	<u>X</u>	<u>X</u>
<u>Matheny Creek (21.0165)</u>	<u>August 1 - August 15</u>	<u>X</u>	<u>=</u>
<u>Sams River (21.0205)</u>	<u>August 1 - August 15</u>	<u>X</u>	<u>X</u>
<u>Quinalt River (21.0398)</u>	<u>August 1 - August 15</u>	<u>X</u>	<u>X</u>
<u>Salmon Creek (17.0245)</u>	<u>July 16 - August 31</u>	<u>X</u>	<u>=</u>
<u>Skokomish River (16.0001)</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>X</u>
<u>Snow Creek (17.0219)</u>	<u>July 16 - August 31</u>	<u>X</u>	<u>=</u>
<u>Tarboo Creek (17.0129)</u>	<u>August 1 - September 30</u>	<u>X</u>	<u>=</u>
<u>Thorndyke Creek (17.0170)</u>	<u>August 1 - October 15</u>	<u>X</u>	<u>=</u>
<u>King County</u>	<u>July 16 - September 30</u>	<u>X</u>	<u>=</u>
<u>Cedar River (08.0299) - Mouth to Forks</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>X</u>
<u>Cedar River (08.0299) - Upstream of Forks</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>=</u>
<u>Issaquah Creek (08.0178)</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>=</u>
<u>Sammamish River (08.0057)</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>=</u>
<u>Steele Creek (08.0379)</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>=</u>
<u>Green River (Duwamish River) (09.0001) - Mouth to Sawmill Creek</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>X</u>
<u>Green River (Duwamish River) (09.0001) - Upstream of Sawmill Creek</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>=</u>
<u>Lake Washington tributaries (08.LKWA)</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>=</u>
<u>Snoqualmie River (07.0219) - Mouth to Snoqualmie Falls</u>	<u>August 1 - August 15</u>	<u>X</u>	<u>X</u>
<u>Snoqualmie River (07.0219) - Snoqualmie Falls to mouth of South Fork</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>X</u>
<u>Patterson Creek (07.0376)</u>	<u>July 16 - September 30</u>	<u>X</u>	<u>=</u>
<u>Middle Fork Snoqualmie River (07.0219) - Mouth to Taylor Creek</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>X</u>

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<u>Middle Fork Snoqualmie River (07.0219) - Upstream of Taylor Creek</u>	<u>July 16 - February 28</u>	X	=
<u>Goat Creek (07.0754)</u>	<u>July 16 - February 28</u>	X	=
<u>North Fork Snoqualmie River (07.0527) - Mouth to Lennox Creek</u>	<u>July 16 - February 28</u>	X	X
<u>North Fork Snoqualmie River (07.0527) - Upstream of Lennox Creek</u>	<u>July 16 - February 28</u>	X	=
<u>Deep Creek (07.0562)</u>	<u>July 16 - February 28</u>	X	=
<u>Illinois Creek (07.0624)</u>	<u>July 16 - February 28</u>	X	=
<u>Lennox Creek (07.0596)</u>	<u>July 16 - February 28</u>	X	=
<u>Bear Creek (07.0606)</u>	<u>July 16 - February 28</u>	X	=
<u>Raging River (07.0384)</u>	<u>August 1 - September 15</u>	X	X
<u>South Fork Skykomish River (07.0012) - Mouth to Sunset Falls</u>	<u>August 1 - August 15</u>	X	X
<u>South Fork Skykomish River (07.0012) - Upstream of Sunset Falls</u>	<u>August 1 - August 15</u>	X	=
<u>Beckler River (07.1413) - Mouth to Boulder Creek</u>	<u>August 1 - August 15</u>	X	X
<u>Beckler River (07.1413) - Upstream of Boulder Creek</u>	<u>July 16 - February 28</u>	X	=
<u>Rapid River (07.1461) - Mouth to Meadow Creek</u>	<u>August 1 - August 31</u>	X	X
<u>Rapid River (07.1461) - Upstream of Meadow Creek</u>	<u>August 1 - February 28</u>	X	=
<u>Index Creek (07.1264) - Mouth to Mud Lake Creek</u>	<u>August 1 - August 31</u>	X	=
<u>Index Creek (07.1264) - Upstream of Mud Lake Creek including Salmon Creek</u>	<u>July 16 - February 28</u>	X	=
<u>Miller River (07.1329) - Mouth to Forks</u>	<u>August 1 - August 15</u>	X	X
<u>Miller River (07.1329) - Upstream of Forks</u>	<u>August 1 - August 15</u>	X	=
<u>Coney Creek (07.1347)</u>	<u>July 16 - February 28</u>	X	=
<u>East Fork Miller River (07.1329) - Mouth to Great Falls Creek</u>	<u>July 16 - August 15</u>	X	=
<u>East Fork Miller River (07.1329) - Upstream of Great Falls Creek</u>	<u>July 16 - February 28</u>	X	=
<u>Foss River (07.1562) - Mouth to Forks</u>	<u>July 16 - August 31</u>	X	X

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<u>East Fork Foss River (07.1562) - Mouth to Burn Creek</u>	<u>July 16 - August 15</u>	X	X
<u>East Fork Foss River (07.1562) - Upstream of Burn Creek</u>	<u>July 16 - February 28</u>	X	=
<u>West Fork Foss River (07.1573) - Mouth to falls at River Mile 2.0</u>	<u>July 16 - August 31</u>	X	=
<u>West Fork Foss River (07.1573) - Upstream of falls at River Mile 2.0</u>	<u>July 16 - February 28</u>	X	=
<u>West Fork Miller River (07.1335)</u>	<u>July 16 - February 28</u>	X	X
<u>Money Creek (07.1300) - Mouth to 0.5 mile upstream of Kimball Creek</u>	<u>August 1 - August 31</u>	X	=
<u>Money Creek (07.1300) - Upstream of 0.5 mile upstream of Kimball Creek</u>	<u>August 1 - February 28</u>	X	=
<u>Kimball Creek (07.1301)</u>	<u>August 1 - August 31</u>	X	=
<u>Tye River (07.0012) - Mouth to Alpine Falls</u>	<u>August 1 - August 31</u>	X	X
<u>Tye River (07.0012) - Upstream of Alpine Falls</u>	<u>July 16 - February 28</u>	X	=
<u>South Fork Snoqualmie River (07.0467)</u>	<u>July 16 - February 28</u>	X	X
<u>Denny Creek (07.0517)</u>	<u>July 16 - February 28</u>	X	=
<u>Tolt River (07.0291) - Mouth to forks</u>	<u>August 1 - August 31</u>	X	X
<u>North Fork Tolt River (07.0291) - Mouth to Yellow Creek</u>	<u>July 16 - September 15</u>	X	X
<u>North Fork Tolt River (07.0291) - Upstream of Yellow Creek</u>	<u>July 16 - February 28</u>	X	=
<u>South Fork Tolt River (07.0302) - Mouth to dam</u>	<u>July 16 - September 15</u>	X	X
<u>South Fork Tolt River (07.0302) - Upstream of Tolt Reservoir</u>	<u>July 16 - February 28</u>	X	=
<u>Yellow Creek (07.0337)</u>	<u>July 16 - February 28</u>	X	=
<u>White River (10.0031)</u>	<u>July 16 - August 31</u>	X	X
<u>Greenwater River (10.0122)</u>	<u>July 16 - August 15</u>	X	X
<u>Kittitas County</u>	<u>July 1 - September 30</u>	X	=
<u>Brushy Creek (40.0612)</u>	<u>July 1 - February 28</u>	X	=
<u>Colockum Creek (40.0760)</u>	<u>July 1 - October 31</u>	X	=
<u>Quilomene Creek (40.0613)</u>	<u>July 1 - October 31</u>	X	=
<u>Stemilt Creek (40.0808) - Upstream of falls</u>	<u>July 1 - February 28</u>	X	=
<u>Tarpiscan Creek (40.0723)</u>	<u>July 1 - February 28</u>	X	=
<u>Tekiason Creek (40.0686)</u>	<u>July 1 - February 28</u>	X	=

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<u>Whisky Dick Creek (40.0591)</u>	<u>July 1 - February 28</u>	X	=
<u>Yakima River (39.0002) - Roza Dam to Teanaway River</u>	<u>August 1 - August 31</u>	X	X
<u>Naches River (38.0003) - Tieton River to Bumping River</u>	<u>July 1 - August 15</u>	X	X
<u>Little Naches River (38.0852) - Mouth to Matthew Creek</u>	<u>July 16 - August 15</u>	X	X
<u>Little Naches River (38.0852) - Upstream of Matthew Creek</u>	<u>July 16 - August 15</u>	X	=
<u>Pileup Creek (38.0932)</u>	<u>July 16 - August 31</u>	X	=
<u>Gold Creek (38.MISC)</u>	<u>July 16 - February 28</u>	X	=
<u>Swauk Creek (39.1157)</u>	<u>July 16 - September 30</u>	X	=
<u>Baker Creek (39.1157)</u>	<u>July 16 - September 30</u>	X	=
<u>First Creek (39.1157)</u>	<u>July 16 - September 30</u>	X	=
<u>Iron Creek (39.1157)</u>	<u>July 16 - September 30</u>	X	=
<u>Williams Creek (39.1157)</u>	<u>July 16 - September 30</u>	X	=
<u>Boulder Creek (39.1157)</u>	<u>July 16 - February 28</u>	X	=
<u>Cougar Gulch (39.1157)</u>	<u>July 16 - February 28</u>	X	=
<u>Lion Gulch (39.1157)</u>	<u>July 16 - February 28</u>	X	=
<u>Yakima River (39.0002) - Teanaway River to Easton Dam</u>	<u>August 1 - August 31</u>	X	X
<u>Yakima River (39.0002) - Upstream of Easton Dam</u>	<u>August 1 - August 31</u>	X	X
<u>Cle Elum River (39.1434) - Mouth to Dam</u>	<u>July 16 - August 31</u>	X	X
<u>Cle Elum River (39.1434) - Upstream of Cle Elum Dam</u>	<u>July 1 - August 15</u>	X	X
<u>Big Boulder Creek (39.1434MISC)</u>	<u>August 1 - February 28</u>	X	=
<u>Camp Creek (39.1434MISC)</u>	<u>August 1 - February 28</u>	X	=
<u>Fortune Creek (39.1434MISC)</u>	<u>August 1 - August 15</u>	X	=
<u>South Fork Fortune Creek (39.1434MISC)</u>	<u>August 1 - February 28</u>	X	=
<u>Howson Creek (39.1434)</u>	<u>July 16 - February 28</u>	X	=
<u>Little Salmon Le Sac Creek (39.1482)</u>	<u>August 1 - August 15</u>	X	=
<u>Paris Creek (39.1434MISC)</u>	<u>August 1 - February 28</u>	X	=
<u>Salmon Le Sac Creek (39.1520)</u>	<u>August 1 - February 28</u>	X	=
<u>Kachess River (39.1739) - Upstream of Lake Kachess</u>	<u>Submit Application</u>	=	=
<u>Kachess River (39.1739) - Below Dam</u>	<u>July 16 - August 15</u>	X	X
<u>Box Canyon Creek (39.1765)</u>	<u>Submit Application</u>	=	=

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<u>Mineral Creek (39.1792)</u>	<u>August 1 - August 15</u>	X	=
<u>Lake Keechelus (39.1842) tributaries</u>	<u>July 16 - August 15</u>	X	=
<u>Gold Creek (Lake Keechelus) (39.1842)</u>	<u>Submit Application</u>	=	=
<u>Manastash Creek (39.0988)</u>	<u>July 16 - September 30</u>	X	=
<u>Naneum Creek (39.0821)</u>	<u>July 16 - September 30</u>	X	=
<u>Taneum Creek (39.1081) - Mouth to I-90</u>	<u>July 16 - August 31</u>	X	=
<u>Taneum Creek (39.1157) - Upstream of I-90</u>	<u>July 16 - September 30</u>	X	=
<u>Teanaway River (39.1236)</u>	<u>July 16 - August 31</u>	X	X
<u>NF Teanaway River (39.1260)</u>	<u>July 16 - August 15</u>	X	=
<u>Umtanum Creek (39.0553)</u>	<u>July 16 - September 30</u>	X	=
<u>Wenas Creek, Below Dam (39.0032)</u>	<u>July 16 - October 15</u>	X	=
<u>Wenas Creek, Upstream of Wenas Lake (39.0032)</u>	<u>July 16 - February 28</u>	X	=
<u>Other Yakima River tributaries not listed</u>	<u>July 16 - August 31</u>	X	=
<u>Kitsap County</u>	<u>July 16 - October 15</u>	X	=
<u>Anderson Creek (15.0211)</u>	<u>August 1 - November 15</u>	X	=
<u>Barker Creek (15.0255)</u>	<u>August 1 - September 30</u>	X	=
<u>Big Beef Creek (15.0389)</u>	<u>August 1 - August 15</u>	X	=
<u>Big Scandia Creek (15.0280)</u>	<u>August 1 - September 30</u>	X	=
<u>Blackjack Creek (15.0203)</u>	<u>August 1 - September 30</u>	X	=
<u>Burley Creek (15.0056)</u>	<u>August 1 - September 30</u>	X	=
<u>Chico Creek (15.0229)</u>	<u>August 1 - October 15</u>	X	=
<u>Clear Creek (15.0249)</u>	<u>August 1 - September 30</u>	X	=
<u>Curley Creek (15.0185)</u>	<u>August 1 - September 30</u>	X	=
<u>Dewatto River (15.0420)</u>	<u>August 1 - August 15</u>	X	=
<u>Dogfish Creek (15.0285)</u>	<u>August 1 - September 30</u>	X	=
<u>Gorst Creek (15.0216)</u>	<u>August 1 - August 31</u>	X	=
<u>Grovers Creek (15.0299)</u>	<u>August 1 - September 30</u>	X	=
<u>Johnson Creek (15.0387)</u>	<u>August 1 - October 31</u>	X	=
<u>Ollala Creek (15.0107)</u>	<u>August 1 - September 30</u>	X	=
<u>Ross Creek (15.0209)</u>	<u>August 1 - November 15</u>	X	=
<u>Salmonberry Creek (15.0188)</u>	<u>August 1 - November 30</u>	X	=
<u>Seabeck Creek (15.0400)</u>	<u>August 1 - August 15</u>	X	=
<u>Steele Creek (15.0273)</u>	<u>August 1 - September 30</u>	X	=
<u>Tahuya River (15.0446)</u>	<u>August 1 - August 31</u>	X	X
<u>Union River (15.0503)</u>	<u>August 1 - August 31</u>	X	X

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<u>Klickitat County</u>	<u>July 15 - September 30</u>	<u>X</u>	<u>=</u>
<u>Alder Creek (31.0459)</u>	<u>August 1 - September 30</u>	<u>X</u>	<u>=</u>
<u>Chapman Creek (31.0192)</u>	<u>August 1 - September 30</u>	<u>X</u>	<u>=</u>
<u>Glade Creek (31.0851)</u>	<u>August 1 - September 30</u>	<u>X</u>	<u>=</u>
<u>Juniper Canyon Creek (31.0378)</u>	<u>August 1 - September 30</u>	<u>X</u>	<u>=</u>
<u>Klickitat River (30.0002) - Mouth to Klickitat hatchery</u>	<u>Submit Application</u>	<u>=</u>	<u>=</u>
<u>Klickitat River (30.0002) - Upstream of Klickitat hatchery</u>	<u>Submit Application</u>	<u>=</u>	<u>=</u>
<u>Little White Salmon River (29.0131) - Mouth to Cabbage Creek</u>	<u>July 16 - January 31</u>	<u>X</u>	<u>X</u>
<u>Little White Salmon River (29.0131) - Upstream of Cabbage Creek</u>	<u>July 16 - January 31</u>	<u>X</u>	<u>=</u>
<u>Pine Creek (31.0354)</u>	<u>August 1 - September 30</u>	<u>X</u>	<u>=</u>
<u>Rock Creek (31.0014)</u>	<u>August 1 - September 30</u>	<u>X</u>	<u>=</u>
<u>Six Prong Creek (31.0465)</u>	<u>August 1 - September 30</u>	<u>X</u>	<u>=</u>
<u>White Salmon River (29.0160) - Mouth to Cascade Creek</u>	<u>July 16 - August 15</u>	<u>X</u>	<u>X</u>
<u>White Salmon River (29.0160) - Upstream of Cascade Creek</u>	<u>July 16 - August 15</u>	<u>X</u>	<u>=</u>
<u>Wood Gulch Creek (31.0263)</u>	<u>August 1 - September 30</u>	<u>X</u>	<u>=</u>
<u>Lewis County</u>	<u>August 1 - September 30</u>	<u>X</u>	<u>=</u>
<u>Chehalis River (22.0190/23.0190) - Mouth to South Fork Chehalis River</u>	<u>August 1 - August 15</u>	<u>X</u>	<u>X</u>
<u>Chehalis River (22.0190/23.0190) - Upstream of South Fork Chehalis River</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>X</u>
<u>Newaukum River (23.0882) - Mouth to South Fork</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>X</u>
<u>Newaukum River (23.0882) - Upstream of South Fork</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>=</u>
<u>Skookumchuck River (23.0761)</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>X</u>
<u>Cowlitz River (26.0002)</u>	<u>August 1 - August 15</u>	<u>X</u>	<u>X</u>
<u>Cispus River (26.0668) - Mouth to Squaw Creek (26.1010)</u>	<u>August 1 - August 15</u>	<u>X</u>	<u>X</u>
<u>Cispus River (26.0668) - Squaw Creek to Chambers Creek</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>X</u>
<u>Cispus River (26.0668) - Upstream of Chambers Creek</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>=</u>
<u>Yellowjacket Creek (26.0757)</u>	<u>August 1 - August 15</u>	<u>X</u>	<u>=</u>

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<u>McCoy Creek (26.0766) - Mouth to lower falls</u>	<u>August 1 - August 15</u>	X	=
<u>McCoy Creek (26.0766) - Upstream of lower falls</u>	<u>July 16 - February 28</u>	X	=
<u>Walupt Creek (26.1010)</u>	<u>Submit Application</u>	=	=
<u>Packwood Lake Tributaries</u>	<u>August 16 - September 15</u>	X	=
<u>Tilton River (26.0560) - Mouth to North Fork</u>	<u>August 1 - September 30</u>	X	X
<u>Tilton River (26.0560) - Upstream of North Fork</u>	<u>August 1 - September 30</u>	X	=
<u>Toutle River (26.0227)</u>	<u>August 1 - August 31</u>	X	X
<u>North Fork Toutle River (26.0314)</u>	<u>July 16 - August 15</u>	X	X
<u>Green River (26.0323)</u>	<u>July 16 - September 30</u>	X	X
<u>Deschutes River (13.0028)</u>	<u>July 16 - August 31</u>	X	X
<u>Little Deschutes River (13.0110)</u>	<u>July 16 - February 28</u>	X	=
<u>Nisqually River (11.0008) - Upstream of Alder Lake</u>	<u>July 16 - September 30</u>	X	X
<u>Lincoln County</u>	<u>June 16 - February 28</u>	X	=
<u>Columbia River</u>	<u>See below</u>	=	=
<u>Hawk Creek (53.0101) - Mouth to falls</u>	<u>June 16 - August 31</u>	X	=
<u>Hawk Creek (53.0101) - Upstream of falls</u>	<u>June 16 - February 28</u>	X	=
<u>Upper Crab Creek (42.0001)</u>	<u>June 16 - February 28</u>	X	=
<u>Wilson Creek (43.0020)</u>	<u>June 16 - February 28</u>	X	=
<u>Mason County</u>	<u>August 1 - October 15</u>	X	=
<u>Cloquallum Creek (22.0501)</u>	<u>August 1 - September 30</u>	X	=
<u>Coulter Creek (15.0002)</u>	<u>August 1 - August 31</u>	X	=
<u>Dewatto River (15.0420)</u>	<u>August 1 - August 31</u>	X	=
<u>Goldsborough Creek (14.0035)</u>	<u>August 1 - October 15</u>	X	=
<u>John Creek (16.0253)</u>	<u>August 1 - August 31</u>	X	=
<u>Hamma Hamma River (16.0251) - Mouth to falls</u>	<u>August 1 - August 31</u>	X	=
<u>Johns Creek (14.0049)</u>	<u>August 1 - August 15</u>	X	=
<u>Lilliwaup River (16.0230) - Mouth to falls</u>	<u>August 1 - August 31</u>	X	X
<u>Lilliwaup River (16.0230) - Upstream of falls</u>	<u>August 1 - February 28</u>	X	=
<u>Mill Creek (14.0029)</u>	<u>August 1 - August 15</u>	X	=
<u>Satsop River (22.0360)</u>	<u>August 1 - August 31</u>	X	=
<u>Schaerer Creek (16.0326)</u>	<u>August 1 - August 31</u>	X	=
<u>Sherwood Creek (14.0094)</u>	<u>August 1 - August 15</u>	X	=

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<u>Skokomish River (16.0001) - Mouth to Forks</u>	<u>August 1 - August 31</u>	X	X
<u>Skokomish River (16.0001) - Upstream of Forks</u>	<u>August 1 - August 31</u>	X	=
<u>Tahuya River (15.0446)</u>	<u>August 1 - August 31</u>	X	=
<u>Twanoh Creek (14.0134)</u>	<u>August 1 - October 31</u>	X	=
<u>Union River (15.0503)</u>	<u>August 1 - August 31</u>	X	X
<u>Okanogan County</u>	<u>July 1 - August 15</u>	X	=
<u>Aneas Creek (49.0243) - Mouth to falls</u>	<u>July 16 - August 31</u>	X	=
<u>Aneas Creek (49.0243) - Upstream of falls</u>	<u>July 1 - March 31</u>	X	=
<u>Chewiliken Creek (49.0232) - Mouth to falls</u>	<u>July 16 - August 31</u>	X	=
<u>Chewiliken Creek (49.0232) - Upstream of falls</u>	<u>July 1 - March 31</u>	X	=
<u>Chiliwist Creek (49.0034) - Mouth to falls</u>	<u>July 16 - August 31</u>	X	=
<u>Chiliwist Creek (49.0034) - Upstream of falls</u>	<u>July 1 - March 31</u>	X	=
<u>Foster Creek (50.0065)</u>	<u>July 1 - February 28</u>	X	=
<u>Methow River (48.0007) - Columbia confluence to Twisp River</u>	<u>July 1 - July 31</u>	X	X
<u>Methow River tributaries between Black Canyon Creek and Gold Creek</u>	<u>July 1 - February 28</u>	X	=
<u>Black Canyon Creek (48.0015) - Mouth to Left Fork</u>	<u>Submit Application</u>	=	=
<u>Black Canyon Creek (48.0015) - Upstream of Left Fork</u>	<u>July 1 - February 28</u>	X	=
<u>Gold Creek (48.0104) - Mouth to Foggy Dew Creek</u>	<u>Submit Application</u>	=	=
<u>Foggy Dew Creek (48.0153) - Mouth to Foggy Dew Falls</u>	<u>Submit Application</u>	=	=
<u>Foggy Dew Creek (48.0153) - Upstream of Foggy Dew Falls</u>	<u>July 1 - February 28</u>	X	=
<u>Middle Fork Gold Creek (48.0139)</u>	<u>July 1 - February 28</u>	X	=
<u>North Fork Gold Creek (48.0104)</u>	<u>Submit Application</u>	=	=
<u>Crater Creek (48.0177) - Mouth to Martin Creek</u>	<u>Submit Application</u>	=	=
<u>Crater Creek (48.0177) - Upstream of Martin Creek</u>	<u>July 1 - February 28</u>	X	=
<u>Martin Creek (48.0177)</u>	<u>July 1 - February 28</u>	X	=

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<u>South Fork Gold Creek (48.0105) - Mouth to Rainy Creek</u>	<u>Submit Application</u>	=	=
<u>South Fork Gold Creek (48.0105) - Upstream of Rainy Creek</u>	<u>July 1 - February 28</u>	X	=
<u>Rainy Creek (48.0105)</u>	<u>July 1 - February 28</u>	X	=
<u>McFarland Creek (48.0090) - Mouth to Vinegar Gulch</u>	<u>Submit Application</u>	=	=
<u>McFarland Creek (48.0090) - Upstream of Vinegar Gulch</u>	<u>July 1 - February 28</u>	X	=
<u>Methow River tributaries between Libby Creek and Beaver Creek</u>	<u>July 1 - February 28</u>	X	=
<u>Beaver Creek (48.0307)</u>	<u>Submit Application</u>	=	=
<u>Frazer Creek (48.0309)</u>	<u>July 1 - February 28</u>	X	=
<u>Lightning Creek (48.0361)</u>	<u>July 1 - February 28</u>	X	=
<u>Middle Fork Beaver Creek (48.0307)</u>	<u>July 1 - February 28</u>	X	=
<u>South Fork Beaver Creek (48.0342)</u>	<u>July 1 - February 28</u>	X	=
<u>Libby Creek (48.0203) - Mouth to Hornet Draw Creek</u>	<u>Submit Application</u>	=	=
<u>Libby Creek (48.0203) - Upstream of Hornet Draw</u>	<u>July 1 - February 28</u>	X	=
<u>Methow River (48.0007) - Twisp River to Goat Creek</u>	<u>July 1 - July 31</u>	X	X
<u>Methow River (48.0007) - Upstream of Goat Creek</u>	<u>July 1 - July 31</u>	X	=
<u>Chewuch River (48.0728) - Mouth to Meadow Creek</u>	<u>July 1 - July 31</u>	X	X
<u>Chewuch River (48.0728) - Upstream of Meadow Creek</u>	<u>July 1 - February 28</u>	X	=
<u>Early Winters Creek (48.1408) - Mouth to Silver Star Creek</u>	<u>Submit Application</u>	=	=
<u>Early Winters Creek (48.1408) - Upstream of Silver Star Creek</u>	<u>July 1 - February 28</u>	X	=
<u>Goat Creek (48.1364) - Mouth to 500' upstream of Montana Creek</u>	<u>Submit Application</u>	=	=
<u>Goat Creek (48.1364) - 500' Upstream of Montana Creek to Roundup Creek</u>	<u>July 1 - February 28</u>	X	=
<u>Goat Creek (48.1364) - Upstream of Roundup Creek</u>	<u>Submit Application</u>	=	=
<u>Lost River (48.0592)</u>	<u>July 16 - August 15</u>	X	X
<u>Twisp River (48.0374)</u>	<u>July 1 - July 31</u>	X	X
<u>Buttermilk Creek (48.0466)</u>	<u>Submit Application</u>	=	=

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<u>North Creek (48.0674)</u>	<u>Submit Application</u>	=	=
<u>North Fork Twisp River (48.0691)</u>	<u>July 1 - February 28</u>	X	=
<u>South Creek (48.0641) - Upstream of Louis Creek</u>	<u>July 1 - February 28</u>	X	=
<u>South Creek (48.0641) - Mouth to Louis Creek</u>	<u>Submit Application</u>	=	=
<u>South Fork Twisp River (48.0698)</u>	<u>July 1 - February 28</u>	X	=
<u>Wolf Creek (48.1300)</u>	<u>Submit Application</u>	=	=
<u>Myers Creek (60.0517)</u>	<u>July 1 - February 28</u>	X	=
<u>Bolster Creek (60.0517)</u>	<u>July 1 - February 28</u>	X	=
<u>Ethel Creek (60.0517)</u>	<u>July 1 - February 28</u>	X	=
<u>Gold Creek (60.0517)</u>	<u>July 1 - February 28</u>	X	=
<u>Mary Ann Creek (60.0517)</u>	<u>July 1 - February 28</u>	X	=
<u>North Fork Mary Ann Creek (60.0517)</u>	<u>July 1 - February 28</u>	X	=
<u>Okanogan River (49.0019) - Mouth to Zosel Dam</u>	<u>July 1 - August 31</u>	X	X
<u>Antoine Creek (49.0294) - Mouth to velocity gradient at river mile 1.0</u>	<u>July 1 - February 28</u>	X	=
<u>Antoine Creek (49.0294) - Upstream of falls</u>	<u>July 1 - March 31</u>	X	=
<u>Bonaparte Creek (49.0246) - Upstream of falls</u>	<u>July 1 - March 31</u>	X	=
<u>Bonaparte Creek (49.0246) - Mouth to Bonaparte Falls at river mile 1.0</u>	<u>July 1 - February 28</u>	X	=
<u>Loup Loup Creek (49.0048) - Mouth to Loup Loup Falls at river mile 2.4</u>	<u>July 1 - February 28</u>	X	=
<u>Loup Loup Creek (49.0048) - Upstream of Loup Loup Falls at river mile 2.4</u>	<u>July 1 - March 31</u>	X	=
<u>Mosquito Creek (49.0321) - Mouth to falls</u>	<u>July 1 - August 31</u>	X	=
<u>Mosquito Creek (49.0321) - Upstream of falls</u>	<u>July 1 - March 31</u>	X	=
<u>Nine Mile Creek (49.0516)</u>	<u>July 1 - February 28</u>	X	=
<u>Omak Creek (49.0138) - Mouth to Mission Falls at river mile 5.4</u>	<u>July 1 - February 28</u>	X	=
<u>Omak Creek (49.0138) - Upstream of falls</u>	<u>July 1 - March 31</u>	X	=
<u>Salmon Creek (49.0079) - Mouth to diversion</u>	<u>July 1 - August 31</u>	X	=

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<u>Salmon Creek (49.0079) - Upstream of diversion</u>	<u>July 1 - February 28</u>	X	=
<u>Similkameen River (49.0325) - Mouth to Enloe Dam</u>	<u>July 1 - August 31</u>	X	X
<u>Similkameen River (49.0325) - Upstream of Enloe Dam</u>	<u>July 1 - October 31</u>	X	X
<u>Sinlahekin Creek (49.0349) - Mouth to barrier dam at Connors Lake</u>	<u>July 1 - August 31</u>	X	=
<u>Cecile Creek (49.0447)</u>	<u>July 1 - February 28</u>	X	=
<u>Chopaka Creek (49.0357)</u>	<u>July 1 - February 28</u>	X	=
<u>Toats Coulee Creek (49.0368)</u>	<u>July 1 - February 28</u>	X	=
<u>Cougar Creek (49.0368)</u>	<u>July 1 - February 28</u>	X	=
<u>Siwash Creek (49.0284) - Falls to headwaters</u>	<u>July 1 - March 31</u>	X	=
<u>Siwash Creek (49.0284) - Mouth to falls at river mile 1.4</u>	<u>July 1 - February 28</u>	X	=
<u>Tonasket Creek (49.0501) - Mouth to Tonasket Falls at river mile 1.8</u>	<u>July 1 - February 28</u>	X	=
<u>Tonasket Creek (49.0501) - Upstream of Tonasket Falls at river mile 1.8</u>	<u>July 1 - March 31</u>	X	=
<u>Tunk Creek (49.0211) - Mouth to falls</u>	<u>July 1 - February 28</u>	X	=
<u>Tunk Creek (49.0211) - Upstream of falls</u>	<u>July 1 - March 31</u>	X	=
<u>San Poil River (52.0004)</u>	<u>June 16 - September 30</u>	X	X
<u>West Fork San Poil (52.0192)</u>	<u>June 16 - September 30</u>	X	X
<u>Gold Creek (52.0197)</u>	<u>June 16 - February 28</u>	X	=
<u>Toroda Creek (60.0410)</u>	<u>July 1 - September 30</u>	X	=
<u>Pacific County</u>	<u>August 1 - September 30</u>	X	=
<u>Bear River (24.0689)</u>	<u>August 1 - September 30</u>	X	X
<u>Bone River (24.0405)</u>	<u>August 1 - September 30</u>	X	=
<u>Chehalis River (22.0190/23.0190)</u>	<u>August 1 - August 15</u>	X	X
<u>Columbia River</u>	<u>See below</u>	=	=
<u>Chinook River (24.MISC)</u>	<u>August 1 - September 30</u>	X	X
<u>Grays River (25.0093)</u>	<u>July 16 - September 15</u>	X	X
<u>Naselle River (24.0543)</u>	<u>August 1 - September 15</u>	X	X
<u>Nemah River (24.0460)</u>	<u>August 1 - September 30</u>	X	X
<u>Niawiakum River (24.0417)</u>	<u>August 1 - September 30</u>	X	=
<u>North River (24.0034)</u>	<u>August 1 - September 30</u>	X	X
<u>Palix River (24.0426)</u>	<u>August 1 - September 30</u>	X	=
<u>Willapa River (24.0251)</u>	<u>August 1 - September 30</u>	X	X

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<u>Pend Oreille County</u>	<u>July 1 - August 31</u>	<u>X</u>	<u>=</u>
<u>Little Spokane River (55.0003)</u>	<u>August 1 - March 15</u>	<u>X</u>	<u>=</u>
<u>West Branch Little Spokane River (55.0439)</u>	<u>August 1 - March 15</u>	<u>X</u>	<u>=</u>
<u>Harvey Creek (62.0310) - Mouth to Rocky Fork of Harvey Creek</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>=</u>
<u>Harvey Creek (62.0310) - Upstream of Rocky Fork of Harvey Creek</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>=</u>
<u>Pend Oreille River (62.0002)</u>	<u>January 1 - December 31</u>	<u>X</u>	<u>X</u>
<u>Big Muddy Creek (62.0279)</u>	<u>August 1 - March 15</u>	<u>X</u>	<u>=</u>
<u>Bracket Creek (62.0815)</u>	<u>August 1 - March 15</u>	<u>X</u>	<u>=</u>
<u>Calispel Creek (62.0628)</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>=</u>
<u>Exposure Creek (62.0261)</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>=</u>
<u>Kent Creek (62.0819)</u>	<u>August 1 - March 15</u>	<u>X</u>	<u>=</u>
<u>Le Clerc Creek (62.0415)</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>=</u>
<u>Lime Creek (62.0014)</u>	<u>August 1 - March 15</u>	<u>X</u>	<u>=</u>
<u>Lodge Creek (62.0859)</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>=</u>
<u>Lost Creek (62.0322)</u>	<u>August 1 - March 15</u>	<u>X</u>	<u>=</u>
<u>Marshall Creek (62.0842)</u>	<u>August 1 - March 15</u>	<u>X</u>	<u>=</u>
<u>Pee Wee Creek (62.0007) - Mouth to falls</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>=</u>
<u>Pee Wee Creek (62.0007) - Upstream of falls</u>	<u>August 1 - March 15</u>	<u>X</u>	<u>=</u>
<u>Renshaw Creek (62.0310)</u>	<u>August 1 - March 15</u>	<u>X</u>	<u>=</u>
<u>Sullivan (O'Sullivan) Creek (62.0074)</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>=</u>
<u>North Fork Sullivan Creek (62.0075)</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>=</u>
<u>Tributaries of Deep Creek in Pend Oreille County (61.0195)</u>	<u>July 16 - August 15</u>	<u>X</u>	<u>=</u>
<u>Currant Creek (61.0249)</u>	<u>July 16 - August 15</u>	<u>X</u>	<u>=</u>
<u>Meadow Creek (61.0351)</u>	<u>July 16 - August 15</u>	<u>X</u>	<u>=</u>
<u>Rocky Creek (61.0364)</u>	<u>July 16 - August 15</u>	<u>X</u>	<u>=</u>
<u>Silver Creek (61.0195)</u>	<u>July 16 - August 15</u>	<u>X</u>	<u>=</u>
<u>Smackout Creek (61.0226)</u>	<u>July 16 - August 15</u>	<u>X</u>	<u>=</u>
<u>Pierce County</u>	<u>July 16 - August 31</u>	<u>X</u>	<u>=</u>
<u>Chambers/Clover Creek Watershed (12.MISC)</u>	<u>July 16 - September 30</u>	<u>X</u>	<u>=</u>
<u>Flett Creek (12.0009)</u>	<u>July 16 - October 31</u>	<u>X</u>	<u>=</u>
<u>Leach Creek (12.0008)</u>	<u>July 16 - September 30</u>	<u>X</u>	<u>=</u>
<u>Nisqually River (11.0008) - Mouth to Alder Lake</u>	<u>July 16 - August 31</u>	<u>X</u>	<u>X</u>

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<u>Nisqually River (11.0008) - Upstream of Alder Lake</u>	<u>July 16 - September 30</u>	X	X
<u>Mashel River (11.0101) - Mouth to Busy Wild Creek</u>	<u>July 16 - September 30</u>	X	X
<u>Mashel River (11.0101) - Upstream of Busy Wild Creek</u>	<u>July 16 - September 30</u>	X	=
<u>Puyallup River (10.0021) - Mouth to PSE Electron Powerhouse Outfall</u>	<u>July 16 - August 31</u>	X	X
<u>Puyallup River (10.0021) - Upstream of PSE Electron Powerhouse Outfall</u>	<u>July 16 - August 15</u>	X	X
<u>Carbon River (10.0413)</u>	<u>July 16 - August 15</u>	X	X
<u>Cayada Creek (10.0525) - Mouth to falls about 800 feet upstream</u>	<u>July 16 - August 31</u>	X	=
<u>Cayada Creek (10.0525) - Upstream of the falls</u>	<u>January 1 - December 31</u>	X	=
<u>South Prairie Creek (10.0429) - Mouth to Dam at Buckley</u>	<u>July 16 - August 15</u>	X	=
<u>South Prairie Creek (10.0429) - Upstream of Dam at Buckley</u>	<u>July 16 - January 15</u>	X	=
<u>Voight Creek (10.0414) - Mouth to falls at River Mile 4.0</u>	<u>July 16 - August 31</u>	X	=
<u>Voight Creek (10.0414) - Upstream of falls River Mile 4.0</u>	<u>July 16 - February 28</u>	X	=
<u>White River (10.0031)</u>	<u>July 16 - August 15</u>	X	X
<u>Clearwater River (10.0080)</u>	<u>July 16 - August 31</u>	X	X
<u>Greenwater River (10.0122)</u>	<u>July 16 - August 15</u>	X	X
<u>Huckleberry Creek (10.0253)</u>	<u>July 16 - August 15</u>	X	=
<u>West Fork White River (10.0186)</u>	<u>July 16 - August 15</u>	X	X
<u>Sequalitchew Creek (12.0019)</u>	<u>July 16 - September 30</u>	X	=
<u>San Juan County</u>	<u>July 1 - August 31</u>	X	=
<u>Cascade Creek (02.0057), Orcas Island - Upstream of lower falls</u>	<u>July 1 - February 28</u>	X	=
<u>Cascade Creek (02.0057), Orcas Island, Buck Bay to falls located approximately 300 feet above mouth</u>	<u>July 1 - October 31</u>	X	=
<u>Doe Creek (02.MISC), San Juan Island, Westcott Bay to falls (approximately 250 feet from mouth)</u>	<u>June 16 - October 15</u>	X	=
<u>False Bay Creek (02.MISC) - San Juan Island; Mouth to lake</u>	<u>July 1 - October 31</u>	X	=

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<u>Glenwood Springs, Orcas Island; direct tributary to Eastsound Bay</u>	<u>July 1 - October 15</u>	X	=
<u>Moran Creek (02.MISC) - Orcas Island; from Cascade Lake delta upstream 1/4 mile</u>	<u>July 1 - October 15</u>	X	=
<u>Unnamed Creek (02.0041) - San Juan Island; Mouth to lake</u>	<u>July 1 - October 15</u>	X	=
<u>Skagit County</u>	<u>August 1 - September 15</u>	X	=
<u>Granite Creek (04.2313) - Upstream of East Creek</u>	<u>July 16 - February 28</u>	X	=
<u>North Fork Stillaguamish River (05.0135) - Mouth to Squire Creek</u>	<u>August 1 - August 15</u>	X	X
<u>North Fork Stillaguamish River (05.0135) - Squire Creek to Cascade Creek</u>	<u>August 1 - August 15</u>	X	=
<u>North Fork Stillaguamish River (05.0135) - Upstream of Cascade Creek</u>	<u>July 16 - February 28</u>	X	=
<u>Samish River (03.0005)</u>	<u>August 1 - September 15</u>	X	=
<u>Skagit River (03.0176/04.0176) - Mouth to Sauk River (04.0673)</u>	<u>August 1 - August 15</u>	X	X
<u>Skagit River (03.0176/04.0176) - Sauk River to Gorge Dam</u>	<u>August 1 - August 15</u>	X	X
<u>Baker River (04.0435) - Mouth to Baker Dam</u>	<u>August 1 - August 15</u>	X	X
<u>Cascade River (04.1411)</u>	<u>August 1 - August 15</u>	X	X
<u>Day Creek (03.1435)</u>	<u>July 16 - February 28</u>	X	=
<u>Lookout Creek (04.1447)</u>	<u>July 16 - February 28</u>	X	=
<u>Sibley Creek (04.1481)</u>	<u>July 16 - February 28</u>	X	=
<u>Day Creek (03.0299) - Mouth to Rocky Creek</u>	<u>Submit Application</u>	=	=
<u>Day Creek (03.0299) - Upstream of Rocky Creek</u>	<u>August 1 - February 28</u>	X	=
<u>Finney Creek (04.0392) - Mouth to Big Fir Creek</u>	<u>Submit Application</u>	=	=
<u>Finney Creek (04.0392) - Upstream of Big Fir Creek</u>	<u>July 16 - February 28</u>	X	=
<u>Illabot Creek (04.1346)</u>	<u>August 1 - August 15</u>	X	=
<u>Sauk River (04.0673) - Mouth to Forks</u>	<u>August 1 - August 15</u>	X	X
<u>Sauk River (04.0673) - Upstream of Forks</u>	<u>August 1 - August 15</u>	X	=
<u>Suiattle River (04.0710)</u>	<u>August 1 - August 15</u>	X	X

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<u>Wiseman Creek (03.0280) - Mouth to SR20</u>	<u>Submit Application</u>	=	=
<u>Wiseman Creek (03.0280) - Upstream of SR20</u>	<u>July 16 - February 28</u>	X	=
<u>South Fork Nooksack River (01.0246) - Mouth to falls at River Mile 30</u>	<u>August 1 - August 15</u>	X	X
<u>South Fork Nooksack River (01.0246) - Falls at River Mile 30 to Wanlick Creek</u>	<u>July 16 - August 15</u>	X	X
<u>South Fork Nooksack River (01.0246) - Upstream of Wanlick Creek</u>	<u>July 16 - August 15</u>	X	=
<u>Skamania County</u>	<u>July 15 - September 15</u>	X	=
<u>Columbia River</u>	<u>See below</u>	=	=
<u>Cispus River (26.0668)</u>	<u>August 1 - August 15</u>	X	X
<u>Cispus River (26.0668) tributaries located in Skamania County</u>	<u>August 1 - October 31</u>	X	=
<u>East Fork Lewis River (27.0173) - Lucia Falls to Sunset Falls</u>	<u>August 1 - February 28</u>	X	X
<u>East Fork Lewis River (27.0173) - Upstream of Sunset Falls</u>	<u>August 1 - February 28</u>	X	=
<u>Green River (26.0323) (Tributary of North Fork Toutle River)</u>	<u>July 16 - September 30</u>	X	X
<u>Hamilton Creek (28.0303)</u>	<u>August 1 - August 31</u>	X	=
<u>Hardy Creek (28.0303)</u>	<u>August 1 - August 31</u>	X	=
<u>Little White Salmon River (29.0131) - Mouth to Hatchery</u>	<u>July 16 - August 15</u>	X	X
<u>Little White Salmon River (29.0131) - Hatchery to Cabbage Creek</u>	<u>July 16 - January 31</u>	X	X
<u>Little White Salmon River (29.0131) - Upstream of Cabbage Creek</u>	<u>July 16 - January 31</u>	X	=
<u>North Fork Lewis River (27.0168) - Merwin Dam to Lower Falls</u>	<u>July 16 - August 15</u>	X	X
<u>Canyon Creek (27.0442)</u>	<u>July 16 - February 28</u>	X	=
<u>North Fork Lewis River (27.0168) - Upstream of Lower Falls</u>	<u>July 16 - February 28</u>	X	X
<u>Washougal River (28.0159) - Mouth to Stebbins Creek</u>	<u>August 1 - August 31</u>	X	X
<u>Washougal River (28.0159) - Upstream of Stebbins Creek</u>	<u>August 1 - August 31</u>	X	=
<u>White Salmon River (29.0160) - Mouth to Cascade Creek</u>	<u>July 16 - August 15</u>	X	X

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<u>White Salmon River (29.0160) - Upstream of Cascade Creek</u>	<u>July 16 - August 15</u>	X	=
<u>Wind River (29.0023)</u>	<u>August 1 - August 15</u>	X	X
<u>Woodward Creek (28.0298)</u>	<u>August 1 - August 31</u>	X	=
<u>Snohomish County</u>	<u>July 16 - September 15</u>	X	=
<u>Lake Washington tributaries</u>	<u>August 1 - August 15</u>	X	=
<u>Sauk River (04.0673) - Mouth to Forks</u>	<u>August 1 - August 15</u>	X	X
<u>Sauk River (04.0673) - Upstream of Forks</u>	<u>August 1 - August 15</u>	X	=
<u>Suiattle River (04.0710)</u>	<u>August 1 - August 15</u>	X	X
<u>Snohomish River (07.0012) - Mouth to Highway 9</u>	<u>August 1 - October 31</u>	X	X
<u>Snohomish River (07.0012) - Upstream of Highway 9</u>	<u>August 1 - August 15</u>	X	X
<u>Pilchuck River (07.0125) - Mouth to City of Snohomish diversion dam</u>	<u>August 1 - August 31</u>	X	X
<u>Pilchuck River (07.0125) - City of Snohomish diversion dam to Boulder Creek</u>	<u>August 1 - September 15</u>	X	X
<u>Pilchuck River (07.0125) - Upstream of Boulder Creek</u>	<u>August 1 - September 15</u>	X	=
<u>Skykomish River (07.0012) - Mouth to forks</u>	<u>August 1 - August 15</u>	X	X
<u>Deer Creek (05.0173) - Mouth to stream mile 0.5</u>	<u>August 1 - August 31</u>	X	=
<u>Deer Creek (05.0173) - Upstream of stream mile 0.5</u>	<u>August 1 - February 28</u>	X	=
<u>North Fork Skykomish River (07.0982) - Mouth to Bear Creek Falls</u>	<u>August 1 - August 31</u>	X	X
<u>North Fork Skykomish River (07.0982) - Bear Creek Falls to Deer Falls</u>	<u>August 1 - August 31</u>	X	X
<u>North Fork Skykomish River (07.0982) - Deer Falls to West Cady Creek</u>	<u>August 1 - February 28</u>	X	X
<u>North Fork Skykomish River (07.0982) - Upstream of West Cady Creek</u>	<u>August 1 - February 28</u>	X	=
<u>Howard Creek (07.1042)</u>	<u>July 16 - February 28</u>	X	=
<u>Silver Creek (07.1053) - Mouth to Lake Gulch</u>	<u>August 1 - August 31</u>	X	=

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<u>Silver Creek (07.1053) - Upstream of Lake Gulch</u>	<u>August 1 - February 28</u>	X	=
<u>Troublesome Creek (07.1085)</u>	<u>August 1 - February 28</u>	X	=
<u>West Fork Troublesome Creek (07.1092)</u>	<u>August 1 - August 31</u>	X	=
<u>South Fork Skykomish River (07.0012) - Mouth to Sunset Falls</u>	<u>August 1 - August 15</u>	X	X
<u>Beckler River (07.1413) - Mouth to Boulder Creek</u>	<u>August 1 - August 15</u>	X	X
<u>Beckler River (07.1413) - Upstream of Boulder Creek</u>	<u>July 16 - February 28</u>	X	=
<u>Rapid River (07.1461) - Mouth to Meadow Creek</u>	<u>August 1 - August 31</u>	X	X
<u>Rapid River (07.1461) - Upstream of Meadow Creek</u>	<u>August 1 - February 28</u>	X	X
<u>Sultan River (07.0881) - Mouth to Diversion Dam at river mile 9.4</u>	<u>August 1 - August 15</u>	X	X
<u>Sultan River (07.0881) - Diversion Dam to Elk Creek</u>	<u>July 16 - February 28</u>	X	X
<u>Sultan River (07.0881) - Upstream of Elk Creek</u>	<u>July 16 - February 28</u>	X	=
<u>Wallace River (07.0940) - Mouth to Wallace Falls</u>	<u>August 1 - August 31</u>	X	X
<u>Wallace River (07.0940) - Upstream of Wallace Falls</u>	<u>August 1 - February 28</u>	X	=
<u>Olney Creek (07.0946) - Mouth to Olney Falls</u>	<u>August 1 - August 31</u>	X	=
<u>Olney Creek (07.0946) - Upstream of Olney Falls</u>	<u>August 1 - February 28</u>	X	=
<u>Snoqualmie River Mouth to Falls (07.0219)</u>	<u>August 1 - August 15</u>	X	X
<u>All other Snohomish River tributaries</u>	<u>August 1 - August 31</u>	X	=
<u>Stillaguamish River (05.0001) - Mouth to forks</u>	<u>August 1 - August 31</u>	X	X
<u>North Fork Stillaguamish River (05.0135) - Mouth to Squire Creek</u>	<u>August 1 - August 15</u>	X	X
<u>North Fork Stillaguamish River (05.0135) - Squire Creek to Cascade Creek</u>	<u>August 1 - August 15</u>	X	=
<u>North Fork Stillaguamish River (05.0135) - Upstream of Cascade Creek</u>	<u>July 16 - February 28</u>	X	=
<u>South Fork Stillaguamish River (05.0001) - Mouth to Deer Creek</u>	<u>August 1 - August 15</u>	X	X

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<u>South Fork Stillaguamish River (05.0001) - Upstream of Deer Creek</u>	<u>August 1 - August 15</u>	X	=
<u>Spokane County</u>	<u>June 16 - August 31</u>	X	=
<u>Latah Creek (56.0003)</u>	<u>June 16 - August 31</u>	X	=
<u>Little Spokane River (55.0600) - Mouth to Deer Creek</u>	<u>June 16 - August 31</u>	X	X
<u>Little Spokane River (55.0600) - Upstream of Deer Creek</u>	<u>June 16 - August 31</u>	X	=
<u>Spokane River (57.0001)</u>	<u>June 16 - August 31</u>	X	X
<u>Stevens County</u>	<u>July 16 - August 31</u>	X	=
<u>Columbia River</u>	<u>See below</u>	=	=
<u>Big Sheep Creek (61.0150)</u>	<u>July 16 - August 15</u>	X	=
<u>Colville River (59.0002) - Mouth to the Falls</u>	<u>July 16 - September 30</u>	X	X
<u>Colville River (59.0002) - Upstream of the Falls</u>	<u>July 16 - September 30</u>	X	X
<u>Deep Creek (61.0195)</u>	<u>July 16 - August 15</u>	X	=
<u>Onion Creek (61.0098)</u>	<u>July 16 - August 15</u>	X	=
<u>Sheep Creek (59.0861)</u>	<u>July 16 - September 30</u>	X	=
<u>Lake Roosevelt tributaries from the mouth of the Spokane River to mouth of the Colville River</u>	<u>July 16 - February 28</u>	X	=
<u>Lake Roosevelt tributaries from the mouth of the Colville River north to the B.C. Border</u>	<u>July 16 - February 28</u>	X	=
<u>Tributaries of Little Spokane River (55.0600)</u>	<u>June 16 - August 31</u>	X	=
<u>Calispel Creek (62.0628)</u>	<u>August 1 - August 31</u>	X	=
<u>Other tributaries to the Pend Oreille River in Stevens County</u>	<u>July 1 - August 31</u>	X	=
<u>Thurston County</u>	<u>July 16 - September 15</u>	X	=
<u>Cedar Creek (23.0570)</u>	<u>August 1 - September 30</u>	X	=
<u>Chehalis River (22.0190/23.0190) - Upstream of Porter Creek</u>	<u>August 1 - August 15</u>	X	X
<u>Skookumchuck River (23.0761) - Mouth to Skookumchuck Reservoir</u>	<u>August 1 - August 31</u>	X	X
<u>Skookumchuck River (23.0761) - Upstream of Skookumchuck Reservoir</u>	<u>August 1 - August 31</u>	X	=
<u>Deschutes River (13.0028) - Mouth to Deschutes Falls</u>	<u>July 16 - August 31</u>	X	X

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<u>Deschutes River (13.0028) - Upstream of Deschutes Falls</u>	<u>July 16 - August 31</u>	X	=
<u>Ellis Creek (13.0022)</u>	<u>May 16 - September 30</u>	X	=
<u>Little Deschutes River (13.0110)</u>	<u>July 16 - February 28</u>	X	=
<u>McLane Creek (13.0138)</u>	<u>August 1 - October 31</u>	X	=
<u>Percival Creek (13.0029)</u>	<u>July 16 - August 31</u>	X	=
<u>Nisqually River (11.0008)</u>	<u>July 16 - August 31</u>	X	X
<u>Tributaries of Nisqually River (11.0008)</u>	<u>July 16 - August 31</u>	X	=
<u>Porter Creek (23.0543)</u>	<u>August 1 - September 30</u>	X	=
<u>Schneider Creek (14.0009)</u>	<u>August 1 - October 31</u>	X	=
<u>Waddell Creek (23.0677)</u>	<u>August 1 - September 30</u>	X	=
<u>Woodard Creek (13.0012)</u>	<u>July 16 - August 31</u>	X	=
<u>Woodland Creek (13.0006)</u>	<u>July 16 - September 30</u>	X	=
<u>Wahkiakum County</u>	<u>July 16 - September 15</u>	X	=
<u>Columbia River</u>	<u>See below</u>	=	=
<u>Abernathy Creek (25.0297)</u>	<u>July 16 - September 15</u>	X	=
<u>Deep River (25.0011)</u>	<u>July 16 - September 15</u>	X	X
<u>Elochoman River (25.0236)</u>	<u>July 16 - September 15</u>	X	X
<u>Grays River (25.0093)</u>	<u>July 16 - September 15</u>	X	X
<u>Mill Creek (25.0284)</u>	<u>July 16 - September 15</u>	X	=
<u>Naselle River (24.0543)</u>	<u>July 16 - September 15</u>	X	X
<u>Skamokowa Creek (25.0194)</u>	<u>July 16 - September 15</u>	X	=
<u>Walla Walla County</u>	<u>July 16 - September 30</u>	X	=
<u>Walla Walla River (32.0008) - Mouth to Oregon state line</u>	<u>July 16 - September 15</u>	X	X
<u>Mill Creek (32.1436) - Mouth to Oregon state line</u>	<u>August 1 - August 15</u>	X	=
<u>Touchet River (32.0097) - Mouth to Forks</u>	<u>August 1 - August 15</u>	X	X
<u>North Fork Touchet/Wolf Fork (32.0761)</u>	<u>Submit Application</u>	=	=
<u>South Fork Touchet (32.0708)</u>	<u>Submit Application</u>	=	=
<u>Whatcom County</u>	<u>July 16 - August 15</u>	X	=
<u>Damfino Creek (00.0032)</u>	<u>July 16 - August 31</u>	X	=
<u>Nooksack River (01.0120)</u>	<u>July 16 - August 15</u>	X	X
<u>Cascade Creek (02.0057) - Mouth to FR 37</u>	<u>Submit Application</u>	=	=
<u>Cascade Creek (02.0057) - Upstream of FR 37</u>	<u>July 16 - February 28</u>	X	=
<u>Middle Fork Nooksack River (01.0339) - Mouth to City of Bellingham Diversion Dam</u>	<u>July 16 - August 15</u>	X	X

<u>Washington Counties and State Waters</u> <u>Water Resource Inventory Area (WRIA) in parentheses</u>	<u>Mineral Prospecting Is Allowed Only Between These Dates</u>	<u>State Waters (and tributaries, unless otherwise indicated) in Which You May Use Mineral Prospecting Equipment with a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter</u>	<u>State Waters (NOT including tributaries) in Which You May Use Mineral Prospecting Equipment with a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter</u>
<u>Middle Fork Nooksack River (01.0339) - Upstream of City of Bellingham Diversion Dam</u>	<u>Submit Application</u>	=	=
<u>North Fork Nooksack River (01.0120) - Mouth to Nooksack Falls</u>	<u>July 16 - August 15</u>	X	X
<u>North Fork Nooksack River (01.0120) - Upstream of Nooksack Falls</u>	<u>Submit Application</u>	=	=
<u>Barometer Creek (01.0513)</u>	<u>July 16 - February 28</u>	X	=
<u>Ruth Creek (01.0531)</u>	<u>July 16 - February 28</u>	X	=
<u>Swamp Creek (01.0518)</u>	<u>July 16 - February 28</u>	X	=
<u>Wells Creek (02.0057)</u>	<u>Submit Application</u>	=	=
<u>Bar Creek (01.0500)</u>	<u>July 16 - February 28</u>	X	=
<u>South Fork Nooksack (01.0246) - Mouth to Wanlick Creek</u>	<u>August 1 - August 15</u>	X	X
<u>South Fork Nooksack (01.0246) - Upstream of Wanlick Creek</u>	<u>August 1 - August 15</u>	X	=
<u>Samish River (03.0005)</u>	<u>July 16 - August 15</u>	X	=
<u>Skagit River (03.0176) - Mouth to Sauk River</u>	<u>August 1 - August 15</u>	X	X
<u>Skagit River (03.0176) - Sauk River to Gorge Dam</u>	<u>August 1 - August 15</u>	X	X
<u>Skagit River (03.0176/04.0176) - Gorge Dam to Ross Dam</u>	<u>Submit Application</u>	=	=
<u>Baker River (04.0435) - Mouth to Baker Lake Dam (04.0435)</u>	<u>Submit Application</u>	=	=
<u>Baker River (04.0435) - Baker Lake to national park boundary</u>	<u>Submit Application</u>	=	=
<u>Boulder Creek (04.0499)</u>	<u>July 16 - February 28</u>	X	=
<u>Park Creek (04.0506) - Mouth to fish passage barrier at river mile 1.6</u>	<u>Submit Application</u>	=	=
<u>Park Creek (04.0506) - Upstream of river mile 1.6</u>	<u>July 16 - February 28</u>	X	=
<u>Swift Creek (04.0509) - Mouth to Rainbow Creek</u>	<u>Submit Application</u>	=	=
<u>Swift Creek (04.0509) - Upstream of Rainbow Creek</u>	<u>July 16 - February 28</u>	X	=
<u>Ross Lake (03.0176/04.0176) tributaries</u>	<u>Submit Application</u>	=	=
<u>Ruby Creek (04.2199)</u>	<u>Submit Application</u>	=	=
<u>Canyon Creek (04.2458) - Mouth to Barron Creek</u>	<u>Submit Application</u>	=	=

<u>Washington Counties and State Waters</u> <u>Water Resource Inventory Area (WRIA) in parentheses</u>	<u>Mineral Prospecting Is Allowed Only Between These Dates</u>	<u>State Waters (and tributaries, unless otherwise indicated) in Which You May Use Mineral Prospecting Equipment with a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter</u>	<u>State Waters (NOT including tributaries) in Which You May Use Mineral Prospecting Equipment with a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter</u>
<u>Canyon Creek (04.2458) - Upstream of Barron Creek and tributaries</u>	<u>October 1 - February 28</u>	X	=
<u>Barron Creek (04.2591)</u>	<u>October 1 - February 28</u>	X	=
<u>Boulder Creek (04.2478) - Mouth to 300 feet upstream</u>	<u>Submit Application</u>	=	=
<u>Boulder Creek (04.2478) - 300 feet upstream of mouth to headwaters</u>	<u>October 1 - February 28</u>	X	=
<u>Friday Creek (04.2549) - Mouth to 300 feet upstream</u>	<u>Submit Application</u>	=	=
<u>Friday Creek (04.2549) - 300 feet upstream of mouth to headwaters</u>	<u>October 1 - February 28</u>	X	=
<u>Holmes Creek (04.2473) - Mouth to 300 feet upstream</u>	<u>Submit Application</u>	=	=
<u>Holmes Creek (04.2473) - 300 feet upstream of mouth to headwaters</u>	<u>October 1 - February 28</u>	X	=
<u>Mill Creek (04.2504) - Mouth to 300 feet upstream</u>	<u>Submit Application</u>	=	=
<u>Mill Creek (04.2504) - 300 feet upstream of mouth to headwaters</u>	<u>October 1 - February 28</u>	X	=
<u>Nickol Creek (04.2476) - Mouth to 300 feet upstream</u>	<u>Submit Application</u>	=	=
<u>Nickol Creek (04.2476) - 300 feet upstream of mouth to headwaters</u>	<u>October 1 - February 28</u>	X	=
<u>North Fork Canyon Creek (04.2583) - Mouth to Elk Creek</u>	<u>Submit Application</u>	=	=
<u>Cascade Creek (05.2584)</u>	<u>October 1 - February 28</u>	X	=
<u>North Fork Canyon Creek (04.2583) - Upstream of Elk Creek</u>	<u>October 1 - February 28</u>	X	=
<u>Slate Creek (04.2557) - Mouth to falls at River Mile 0.6</u>	<u>Submit Application</u>	=	=
<u>Slate Creek (04.2557) - Upstream of falls at River Mile 0.6</u>	<u>October 1 - February 28</u>	X	=
<u>Granite Creek (04.2313) - Mouth to East Creek</u>	<u>Submit Application</u>	=	=
<u>Granite Creek (04.2313) - Upstream of East Creek and tributaries</u>	<u>October 1 - February 28</u>	X	=
<u>Saar Creek (00.0003)</u>	<u>August 1 - September 30</u>	X	=
<u>Silesia Creek (00.0042) - Canadian Border to Middle Fork</u>	<u>July 16 - August 15</u>	X	=
<u>Silesia Creek (00.0042) - Middle Fork to national park boundary</u>	<u>July 16 - February 28</u>	X	=
<u>Rapid Creek (00.0048)</u>	<u>July 16 - February 28</u>	X	=

<u>Washington Counties and State Waters</u> <u>Water Resource Inventory Area (WRIA) in parentheses</u>	<u>Mineral Prospecting Is Allowed Only Between These Dates</u>	<u>State Waters (and tributaries, unless otherwise indicated) in Which You May Use Mineral Prospecting Equipment with a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter</u>	<u>State Waters (NOT including tributaries) in Which You May Use Mineral Prospecting Equipment with a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter</u>
<u>West Fork Silesia Creek (00.0044)</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>=</u>
<u>Winchester Creek (00.0045)</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>=</u>
<u>Whitman County</u>	<u>July 16 - December 15</u>	<u>X</u>	<u>=</u>
<u>Snake River (35.0002)</u>	<u>See below</u>	<u>=</u>	<u>=</u>
<u>Alkali Flats Creek (35.0570)</u>	<u>July 16 - December 15</u>	<u>X</u>	<u>=</u>
<u>Almota Creek (35.1017)</u>	<u>July 16 - December 15</u>	<u>X</u>	<u>=</u>
<u>Little Almota Creek (35.1018)</u>	<u>July 16 - December 15</u>	<u>X</u>	<u>=</u>
<u>Palouse River (34.0003) - Mouth to Palouse Falls</u>	<u>July 16 - September 30</u>	<u>X</u>	<u>X</u>
<u>Palouse River (34.0003) - Upstream of Palouse Falls</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>X</u>
<u>Penewawa Creek (35.0916)</u>	<u>July 16 - December 15</u>	<u>X</u>	<u>=</u>
<u>Wawawi Canyon Creek (35.1165)</u>	<u>July 16 - December 15</u>	<u>X</u>	<u>=</u>
<u>Yakima County</u>	<u>June 1 - September 15</u>	<u>X</u>	<u>=</u>
<u>Glade Creek (31.0851)</u>	<u>August 1 - September 30</u>	<u>X</u>	<u>=</u>
<u>Klickitat River (30.0002)</u>	<u>Submit Application</u>	<u>=</u>	<u>=</u>
<u>Yakima River (37.0002/38.0002/39.0002) - Mouth to Roza Dam</u>	<u>June 1 - September 15</u>	<u>X</u>	<u>X</u>
<u>Ahtanum Creek (37.1382)</u>	<u>June 16 - September 30</u>	<u>X</u>	<u>=</u>
<u>North Fork Ahtanum Creek (37.1382)</u>	<u>Submit Application</u>	<u>=</u>	<u>=</u>
<u>South Fork Ahtanum Creek (37.1382)</u>	<u>Submit Application</u>	<u>=</u>	<u>=</u>
<u>Naches River (38.0003) - Mouth to Tieton River</u>	<u>July 1 - October 15</u>	<u>X</u>	<u>X</u>
<u>Naches River (38.0003) - Upstream of mouth of Tieton River to Bumping River</u>	<u>July 1 - August 15</u>	<u>X</u>	<u>X</u>
<u>Bumping River (38.0998)</u>	<u>July 16 - August 15</u>	<u>X</u>	<u>X</u>
<u>American River (38.1000)</u>	<u>Submit Application</u>	<u>=</u>	<u>=</u>
<u>Gold Creek (38.MISC)</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>=</u>
<u>Kettle Creek (38.1033)</u>	<u>Submit Application</u>	<u>=</u>	<u>=</u>
<u>Miner Creek (38.1027)</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>=</u>
<u>Morse Creek (38.1072) - Mouth to SR410 Crossing</u>	<u>August 1 - August 15</u>	<u>X</u>	<u>=</u>
<u>Morse Creek (38.1072) - Upstream of SR410 Crossing</u>	<u>August 1 - February 28</u>	<u>X</u>	<u>=</u>
<u>Rock Creek (38.MISC)</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>=</u>
<u>Timber Creek (38.1062)</u>	<u>August 1 - August 15</u>	<u>X</u>	<u>=</u>
<u>Union Creek (38.1045) - Upstream of 500' above falls</u>	<u>August 1 - February 28</u>	<u>X</u>	<u>=</u>

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<u>Union Creek (38.1045) - Mouth to 500' above falls</u>	<u>Submit Application</u>	=	=
<u>Other American River tributaries not listed</u>	<u>August 1 - February 28</u>	X	=
<u>Deep Creek (38.MISC)</u>	<u>Submit Application</u>	=	=
<u>Copper Creek (38.MISC)</u>	<u>August 1 - August 15</u>	X	=
<u>Cowiche Creek (38.0005) - Mouth to South Fork Cowiche Creek</u>	<u>July 1 - September 30</u>	X	=
<u>North Fork Cowiche Creek (38.0008)</u>	<u>July 1 - February 28</u>	X	=
<u>South Fork Cowiche Creek (38.0031) - Mouth to Reynolds Creek</u>	<u>July 1 - September 30</u>	X	=
<u>South Fork Cowiche Creek (38.0031) - Upstream of Reynolds Creek</u>	<u>July 16 - October 31</u>	X	=
<u>Granite Creek (38.MISC)</u>	<u>August 1 - August 15</u>	X	=
<u>Little Naches River (38.0852) - Mouth to Matthews Creek</u>	<u>July 16 - August 15</u>	X	X
<u>Little Naches River (38.0852) - Upstream of Matthews Creek</u>	<u>July 16 - August 15</u>	X	=
<u>Crow Creek (38.0858)</u>	<u>July 16 - August 15</u>	X	=
<u>Nile Creek (38.0692)</u>	<u>July 16 - October 15</u>	X	=
<u>Rattlesnake Creek (38.0518)</u>	<u>July 16 - August 15</u>	X	=
<u>Tieton River (38.0166) - Mouth to Rimrock Dam</u>	<u>July 1 - August 31</u>	X	X
<u>North Fork Tieton River (38.0291) - Below Clear Lake Dam</u>	<u>Submit Application</u>	=	=
<u>North Fork Tieton River (38.0291) - Upstream of Clear Lake</u>	<u>July 1 - August 15</u>	X	=
<u>Clear Creek (38.0317)</u>	<u>July 16 - February 28</u>	X	=
<u>South Fork Tieton River (38.0374) - Below South Fork Falls</u>	<u>Submit Application</u>	=	=
<u>South Fork Tieton River (38.0374) - Upstream of South Fork Falls</u>	<u>July 16 - February 28</u>	X	=
<u>Indian Creek (38.0302)</u>	<u>Submit Application</u>	=	=
<u>Tributaries of Tieton River below Rimrock Dam</u>	<u>July 16 - February 28</u>	X	=
<u>Umtanum Creek (39.0553)</u>	<u>July 16 - September 30</u>	X	=
<u>Wenas Creek (39.0032)</u>	<u>July 16 - October 15</u>	X	=
<u>Other Yakima River tributaries</u>	<u>July 16 - August 31</u>	X	=
<u>Columbia River</u>	=	X	=
<u>Mouth to the I-205 Bridge</u>	<u>August 1 - March 31</u>	X	X
<u>I-205 Bridge to Bonneville Dam</u>	<u>July 16 - September 15</u>	X	X

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<u>Bonneville Dam to Snake River</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>X</u>
<u>Snake River to Priest Rapids Dam</u>	<u>July 16 - September 30</u>	<u>X</u>	<u>X</u>
<u>Priest Rapids Dam to Mouth of Crab Creek</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>X</u>
<u>Mouth of Crab Creek to Wanapum Dam</u>	<u>July 16 - September 30</u>	<u>X</u>	<u>X</u>
<u>Wanapum Dam to the SR 285 bridge in South Wenatchee</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>X</u>
<u>SR 285 bridge in South Wenatchee to the SR 2 bridge</u>	<u>July 16 - September 30</u>	<u>X</u>	<u>X</u>
<u>SR 2 bridge to one mile downstream of the Chelan River</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>X</u>
<u>From one mile downstream of the Chelan River to the SR 97 bridge</u>	<u>July 16 - September 30</u>	<u>X</u>	<u>X</u>
<u>From SR 97 bridge to Chief Joseph Dam</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>X</u>
<u>Chief Joseph Dam to Grand Coulee</u>	<u>June 16 - March 31</u>	<u>X</u>	<u>X</u>
<u>Upstream of Grand Coulee to Onion Creek</u>	<u>Submit Application</u>	<u>=</u>	<u>=</u>
<u>Onion Creek to Canadian Border</u>	<u>January 1 - December 31</u>	<u>X</u>	<u>X</u>
<u>All Columbia River tributaries</u>	<u>See county listings</u>	<u>=</u>	<u>=</u>
<u>Snake River</u>	<u>=</u>	<u>X</u>	<u>=</u>
<u>Mouth to Ice Harbor Dam</u>	<u>July 16 - September 30</u>	<u>X</u>	<u>X</u>
<u>Ice Harbor Dam to Mouth of Clearwater River</u>	<u>July 16 - March 31</u>	<u>X</u>	<u>X</u>
<u>Mouth of Clearwater River to State Line</u>	<u>August 1 - August 31</u>	<u>X</u>	<u>X</u>
<u>All Snake River tributaries</u>	<u>See county listings</u>	<u>=</u>	<u>=</u>
<u>Lakes</u>	<u>Submit Application</u>	<u>=</u>	<u>=</u>
<u>Salt water</u>	<u>Submit Application</u>	<u>=</u>	<u>=</u>
<u>All waters within national park, state park, or wilderness boundaries</u>	<u>Submit Application</u>	<u>=</u>	<u>=</u>

WSR 08-17-059
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY
[Filed August 18, 2008, 10:49 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 3.11 (Civil Penalties) and Section 3.25 (Federal Regulation Reference Date).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on September 25, 2008, at 9:15 a.m.

Date of Intended Adoption: September 25, 2008.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA

98101, e-mail lynns@psc Clean Air, fax (206) 343-7522, by September 24, 2008.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 18, 2008, TTY (800) 833-6388 or (800) 833-6385 (braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To adjust the maximum civil penalty amount for inflation and update the federal regulation reference date.

Reasons Supporting Proposal: Without the adjustment for inflation, the maximum civil penalty amount would effectively decrease each year. The federal regulation reference date needs to be kept current.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Lynn Sykes, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4067; Implementation and Enforcement: Jim Nolan, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4053.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

August 18, 2008
Dennis J. McLerran
Executive Director

AMENDATORY SECTION

REGULATION I SECTION 3.11 CIVIL PENALTIES

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed (~~(\$15,717.00)~~) \$16,314.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than (~~(\$15,717.00)~~) \$16,314.00, for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date

stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

AMENDATORY SECTION**REGULATION I SECTION 3.25 FEDERAL REGULATION REFERENCE DATE**

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, (~~2007~~) 2008.

WSR 08-17-060
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY
 [Filed August 18, 2008, 10:50 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 8.04 (General Conditions for Outdoor Burning) and Section 8.05 (Agricultural Burning).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on September 25, 2008, at 9:15 a.m.

Date of Intended Adoption: September 25, 2008.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail lynns@psc Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail lynns@pscleanair.org, fax (206) 343-7522, by September 24, 2008.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 18, 2008, TTY (800) 833-6388 or (800) 833-6385 (braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To align the agency permit fees for agricultural burn permits with the statewide fee structure contained in the ecology agricultural burning rule (WAC 173-430-040). The proposal would also include appropriate cross-references to chapter 173-430 WAC.

Reasons Supporting Proposal: The maximum fees are set by statute and the agency's fees need to be brought into alignment with statutory requirements.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jim Nolan, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4053.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

August 18, 2008
 Dennis J. McLerran
 Executive Director

AMENDATORY SECTION**REGULATION I SECTION 8.04 GENERAL CONDITIONS FOR OUTDOOR BURNING**

(a) The provisions of Chapters 173-425 WAC (Outdoor Burning) and 173-430 WAC (Agricultural Burning) are herein incorporated by reference. It shall be unlawful for any person to cause or allow any outdoor burning unless the burning is in compliance with Chapters 173-425 and 173-430 WAC.

(b) The provisions of Sections 9.05 and 9.15 of Regulation I shall not apply to outdoor burning.

(c) Nothing contained in Article 8 shall be construed to allow outdoor burning in those areas in which outdoor burning is prohibited by laws, ordinances, or regulations of the state or any city, county, or fire district.

(d) Nothing contained in Article 8 shall relieve the applicant from obtaining permits required by any state or local fire protection agency or from compliance with the (~~Uniform~~) Fire Code.

AMENDATORY SECTION**REGULATION I SECTION 8.05 AGRICULTURAL BURNING PERMITS**

(a) **Applicability.** This section applies to burning permits related to agricultural operations. The definitions and requirements contained in Chapter 173-430 WAC also apply to this section.

(b) **General Requirements.** Agricultural burning will be permitted if the following requirements are met:

(1) The natural vegetation being burned is generated from the property of the commercial agricultural operation; and

(2) Burning is necessary for crop propagation or rotation, disease or pest control; and

(3) Burning is a best management practice as established by the Agricultural Burning Practices and Research Task Force (established in RCW 70.94.650 as referenced in WAC 173-430-050); or the burning practice is approved in writing by the Washington State Cooperative Extension Service or the Washington State Department of Agriculture; or the burning is conducted by a governmental entity with specific agricultural burning needs, such as irrigation districts, drainage districts, and weed control boards.

(c) **Permit Applications.** Agricultural burning permits shall be approved by the Agency prior to burning. The permit application shall be submitted on forms provided by the Agency and shall include:

(1) A copy of the applicant's most recent year's Schedule F (as filed with the Internal Revenue Service);

(2) A written review by the local fire district or fire marshal indicating their endorsement that local requirements have been met; and

(3) A non-refundable permit fee:

(A) For burning up to 10 acres (or equivalent), the fee is \$25.00 (\$12.50 for local administration and \$12.50 for the research fund (~~((base fee))~~);

(B) For burning over 10 acres, the fee is (~~((\$25.00 plus \$2.50 for each additional acre))~~) \$2.25 per acre (\$1.25 for local administration, \$.50 for the research fund, and \$.50 for Ecology administration).

(d) **Permit Action and Content.**

(1) The Agency will act on a complete application within 7 days of receipt.

(2) All agricultural burning permits shall contain conditions that are necessary to minimize emissions.

(3) All permits shall expire 12 months from date of issuance.

(e) **Permit Denial.** No permit shall be issued if the Agency determines that the proposed burning will cause a nuisance. All denials shall become final within 15 days unless the applicant petitions the Control Officer for reconsideration, stating the reasons for reconsideration. The Control Officer shall then consider the petition and shall within 30 days issue a permit or notify the applicant in writing of the reason(s) for denial. (For more information on the appeal process, see Section 3.17 of this regulation.)

WSR 08-17-061

PROPOSED RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed August 18, 2008, 12:56 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 5.03 (Applicability of Registration Program) and Section 6.03 (Notice of Construction) and Regulation III, Section 2.02 (National Emission Standards for Hazardous Air Pollutants).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on September 25, 2008, at 9:15 a.m.

Date of Intended Adoption: September 25, 2008.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail lynns@pscleanair.org, fax (206) 343-7522, by September 24, 2008.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 18, 2008, TTY (800) 833-6388 or (800) 833-6385 (braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To exclude from our EPA delegation request certain newly promulgated EPA regulations.

Reasons Supporting Proposal: Certain NESHAPs should be excluded from delegation because there is little or no environmental benefit beyond our current requirements and/or implementing the NESHAP would shift environmental priorities inconsistent with agency policy direction (40 C.F.R. 63 Subpart WWWW, CCCCC, and HHHHH); and the agency has had insufficient time to assess the impacts of accepting delegation and needs additional time to perform this analysis (40 C.F.R. 63 Subpart WWWW).

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Agata McIntyre, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4061; Implementation and Enforcement: Jim Nolan, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4053.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

August 18, 2008
Dennis J. McLerran
Executive Director

AMENDATORY SECTION

REGULATION I SECTION 5.03 APPLICABILITY OF REGISTRATION PROGRAM

(a) The requirements of this article shall apply only to:

(1) Sources subject to a federal emission standard under:

(A) 40 CFR Part 60 (except Subparts B, S, BB, and AAA, and Subpart III pertaining to owners and operators of emergency stationary compression ignition internal combustion engines);

(B) 40 CFR Part 61 (except Subparts B, H, I, K, Q, R, T, W, and the provisions of Subpart M pertaining to asbestos on roadways, asbestos demolition and renovation activities, and asbestos spraying);

(C) 40 CFR Part 62; or

(D) 40 CFR Part 63 (except Subpart LL, ~~((and))~~ the provisions of Subparts S and MM pertaining to kraft and sulfite pulp mills, ~~((and))~~ the provisions of Subpart ZZZZ pertaining to emergency and limited-use stationary reciprocating internal combustion engines, and Subparts WWWW, CCCCC, HHHHH, and WWWW);

(2) Sources with a federally enforceable emission limitation established in order to avoid operating permit program applicability under Article 7 of this regulation;

(3) Sources with annual emissions:

(A) Greater than or equal to 2.50 tons of any single hazardous air pollutant (HAP);

(B) Greater than or equal to 6.25 tons of total hazardous air pollutants (HAP); or

(C) Greater than or equal to 25.0 tons of carbon monoxide (CO), nitrogen oxides (NOx), particulate matter (PM_{2.5} or PM₁₀), sulfur oxides (SOx), or volatile organic compounds (VOC);

(4) Sources subject to the following sections of Regulation I, II, or III:

(A) Refuse burning equipment subject to Section 9.05 of Regulation I (including crematories);

(B) Fuel burning equipment or refuse burning equipment burning oil that exceeds any limit in Section 9.08 of Regulation I and sources marketing oil to such sources;

(C) Fuel burning equipment subject to Section 9.09 of Regulation I with a rated heat input greater than or equal to 1 MMBtu/hr of any fuel other than natural gas, propane, butane, or distillate oil, or greater than or equal to 10 MMBtu/hr of any fuel;

(D) Sources with spray-coating operations subject to Section 9.16 of Regulation I;

(E) Petroleum refineries subject to Section 2.03 of Regulation II;

(F) Gasoline loading terminals subject to Section 2.05 of Regulation II;

(G) Gasoline dispensing facilities subject to Section 2.07 of Regulation II;

(H) Volatile organic compound storage tanks subject to Section 3.02 of Regulation II;

(I) Can and paper coating facilities subject to Section 3.03 of Regulation II;

(J) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II;

(K) Flexographic and rotogravure printing facilities subject to Section 3.05 of Regulation II;

(L) Polyester, vinyl ester, gelcoat, and resin operations subject to Section 3.08 of Regulation II;

(M) Aerospace component coating operations subject to Section 3.09 of Regulation II;

(N) Dry cleaners subject to Section 3.03 of Regulation III; or

(O) Ethylene oxide sterilizers subject to Section 3.07 of Regulation III;

(5) Sources with any of the following gas or odor control equipment having a rated capacity of greater than or equal to 200 cfm (≥ 4 " diameter inlet):

(A) Activated carbon adsorption;

(B) Afterburner;

(C) Barometric condenser;

(D) Biofilter;

(E) Catalytic afterburner;

(F) Catalytic oxidizer;

(G) Chemical oxidation;

(H) Condenser;

(I) Dry sorbent injection;

(J) Flaring;

(K) Non-selective catalytic reduction;

(L) Refrigerated condenser;

(M) Selective catalytic reduction; or

(N) Wet scrubber;

(6) Sources with any of the following particulate control equipment having a rated capacity of greater than or equal to 2,000 cfm (≥ 10 " diameter inlet):

(A) Baghouse;

(B) Demister;

(C) Electrostatic precipitator;

(D) HEPA (high efficiency particulate air) filter;

(E) HVAF (high velocity air filter);

(F) Mat or panel filter;

(G) Mist eliminator;

(H) Multiple cyclones;

(I) Rotoclone;

(J) Screen;

(K) Venturi scrubber;

(L) Water curtain; or

(M) Wet electrostatic precipitator;

(7) Sources with a single cyclone having a rated capacity of greater than or equal to 20,000 cfm (≥ 27 " diameter inlet);

(8) Sources with any of the following equipment:

(A) Asphalt batch plants;

(B) Burn-off ovens;

(C) Coffee roasters;

(D) Commercial composting with raw materials from off-site;

(E) Commercial smokehouses with odor control equipment;

(F) Concrete batch plants (ready-mix concrete);

(G) Galvanizing;

(H) Iron or steel foundries;

(I) Microchip or printed circuit board manufacturing;

(J) Rendering plants;

(K) Rock crushers or concrete crushers;

(L) Sewage treatment plants with odor control equipment;

(M) Shipyards;

(N) Steel mills; or

(O) Wood preserving lines or retorts; and

(9) Sources with equipment (or control equipment) that has been determined by the Control Officer to warrant registration through review of a Notice of Construction application under Section 6.03(a) or a Notification under Section 6.03(b) of this regulation, due to the amount and nature of air contaminants produced, or the potential to contribute to air pollution, and with special reference to effects on health, economic and social factors, and physical effects on property.

(b) The requirements of this article shall not apply to:

(1) Motor vehicles;

(2) Nonroad engines or nonroad vehicles as defined in Section 216 of the federal Clean Air Act;

(3) Sources that require an operating permit under Article 7 of this regulation;

(4) Solid fuel burning devices subject to Article 13 of this regulation; or

(5) Any source, including any listed in Sections 5.03 (a)(4) through 5.03 (a)(9) of this regulation, that has been determined through review by the Control Officer not to warrant registration, due to the amount and nature of air contaminants produced or the potential to contribute to air pollution, and with special reference to effects on health, economic and social factors, and physical effects on property.

(c) It shall be unlawful for any person to cause or allow the operation of any source subject to registration under this

section, unless it meets all the requirements of Article 5 of this regulation.

(d) An exemption from new source review under Article 6 of this regulation shall not be construed as an exemption from registration under this article. In addition, an exemption from registration under this article shall not be construed as an exemption from any other provision of Regulation I, II, or III.

AMENDATORY SECTION

REGULATION I SECTION 6.03 NOTICE OF CONSTRUCTION

(a) It shall be unlawful for any person to cause or allow the establishment of a new source, or the replacement or substantial alteration of control equipment installed on an existing source, unless a "Notice of Construction application" has been filed and an "Order of Approval" has been issued by the Agency. The exemptions in Sections 6.03 (b) and (c) of this regulation shall not apply to:

(1) Any project that qualifies as construction, reconstruction, or modification of an affected facility within the meaning of 40 CFR Part 60 (New Source Performance Standards), except for Subpart AAA (New Residential Wood Heaters), Subpart BB (Kraft Pulp Mills), Subpart S (Primary Aluminum Reduction Plants), and Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines; and for relocation of affected facilities under Subpart I (Hot Mix Asphalt Facilities) and Subpart OOO (Nonmetallic Mineral Processing Plants) for which an Order of Approval has been previously issued by the Agency;

(2) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants), except for Subpart B (Radon from Underground Uranium Mines), Subpart H (Emissions of Radionuclides other than Radon from Department of Energy Facilities), Subpart I (Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H), Subpart K (Radionuclides from Elemental Phosphorus Plants), Subpart Q (Radon from Department of Energy Facilities), Subpart R (Radon from Phosphogypsum Stacks), Subpart T (Radon from Disposal of Uranium Mill Tailings), Subpart W (Radon from Operating Mill Tailings), and for demolition and renovation projects subject to Subpart M (Asbestos);

(3) Any project that qualifies as a new source as defined under 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories), except for the provisions of Subpart M (Dry Cleaning Facilities) pertaining to area source perchloroethylene dry cleaners, Subpart LL (Primary Aluminum Reduction Plants), (~~and~~) the provisions of Subpart S (Pulp and Paper Industry) and Subpart MM (Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills) pertaining to kraft and sulfite pulp mills, (~~and~~) Subpart ZZZZ (Reciprocating Internal Combustion Engines) pertaining to emergency and limited-use stationary reciprocating internal combustion engines, Subpart WWWW (Hospitals: Ethylene Oxide Sterilizers), Subpart CCCCC (Gasoline Dispens-

ing Facilities), Subpart HHHHHH (Paint Stripping and Miscellaneous Surface Coating Operations), and Subpart WWW-WWW (Plating and Polishing Operations);

(4) Any new major stationary source or major modification as defined under WAC 173-400-030; and

(5) Any stationary source previously exempted from review that is cited by the Agency for causing air pollution under Section 9.11 of this regulation.

(b) **Notifications.** A Notice of Construction application and Order of Approval are not required for the following new sources, provided that a complete notification is filed with the Agency prior to initial startup:

Liquid Storage and Transfer

(1) Storage tanks used exclusively for:

(A) Gasoline and having a rated capacity of 1,001-19,999 gallons, PROVIDED THAT they are installed in accordance with the current California Air Resources Board Executive Orders;

(B) Organic liquids with a true vapor pressure of 2.2-4.0 psia and having a rated capacity of 20,000-39,999 gallons; or

(C) Organic liquids with a true vapor pressure of 0.5-0.75 psia and having a rated capacity \geq 40,000 gallons.

(2) Loading and unloading equipment used exclusively for the storage tanks exempted above, including gasoline dispensers at gasoline stations.

Relocation of Portable Batch Plants

(3) Relocation of the following portable facilities: asphalt batch plants, nonmetallic mineral processing plants, rock (or concrete) crushers, and concrete batch plants for which an Order of Approval has been previously issued by the Agency. *All the conditions in the previously issued Order of Approval remain in effect.*

Dry Cleaning

(4) Unvented, dry-to-dry, dry-cleaning equipment that is equipped with refrigerated condensers to recover the cleaning solvent.

Printing

(5) Non-heatset, web offset presses and wholesale, sheet-fed offset presses (lithographic or letterpress) using exclusively soy-based or kerosene-like oil-based inks, fountain solutions with \leq 6% VOC by volume or \leq 8.5% if refrigerated to $<60^{\circ}\text{F}$, and cleaning solvents with a vapor pressure \leq 25mm Hg or a VOC content \leq 30% by volume.

Water Treatment

(6) Industrial and commercial wastewater evaporators (except flame impingement) used exclusively for wastewater generated on-site that meets all discharge limits for disposal into the local municipal sewer system (including metals, cyanide, fats/oils/grease, pH, flammable or explosive materials, organic compounds, hydrogen sulfide, solids, and food waste). *A letter from the local sewer district documenting compliance is required in order to use this exemption.*

Sanding Equipment

(7) Sanding equipment controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of $<3.5:1$ (for reverse-air or manual cleaning) or $<12:1$ (for pulse-jet cleaning).

Ventilation and Control Equipment

(8) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes

controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of <3.5:1 (for mechanical or manual cleaning) or <12:1 (for pulse-jet cleaning).

(9) Replacement of existing paint spray booths. All the conditions in the previously issued Order of Approval remain in effect.

Miscellaneous

(10) Any source not otherwise exempt under Section 6.03(c) of this regulation that has been determined through review of a Notice of Construction application by the Control Officer not to warrant an Order of Approval because it has a de minimis impact on air quality and does not pose a threat to human health or the environment.

Coffee Roasters

(11) Batch coffee roasters with a maximum rated capacity of 10 lbs per batch or less.

(c) **Exemptions.** A Notice of Construction application and Order of Approval are not required for the following new sources, provided that sufficient records are kept to document the exemption:

Combustion

(1) Fuel-burning equipment (except when combusting pollutants generated by a non-exempt source) having a rated capacity:

(A) <10 million Btu per hour heat input burning exclusively distillate fuel oil, natural gas, propane, butane (or any combination thereof);

(B) <0.5 million Btu per hour heat output burning waste-derived fuel (including fuel oil not meeting the specifications in Section 9.08 of this regulation); or

(C) <1 million Btu per hour heat input burning any other fuel.

(2) All stationary gas turbines with a rated heat input <10 million Btu per hour.

(3) Stationary internal combustion engines having a rated capacity:

(A) <50 horsepower output;

(B) Used solely for instructional purposes at research, teaching, or educational facilities; or

(C) Portable or standby units operated <500 hours per year, PROVIDED THAT they are not operated at a facility with a power supply contract that offers a lower rate in exchange for the power supplier's ability to curtail energy consumption with prior notice.

(4) Relocation of portable, stationary internal combustion engines or gas turbines for which an Order of Approval has been previously issued by the Agency.

(5) All nonroad compression ignition engines subject to 40 CFR Part 89.

Metallurgy

(6) Crucible furnaces, pot furnaces, or induction furnaces with a capacity ≤1,000 pounds, PROVIDED THAT no sweating or distilling is conducted, and PROVIDED THAT only precious metals, or an alloy containing >50% aluminum, magnesium, tin, zinc, or copper is melted.

(7) Crucible furnaces or pot furnaces with a capacity ≤450 cubic inches of any molten metal.

(8) Ladles used in pouring molten metals.

(9) Foundry sand-mold forming equipment.

(10) Shell core and shell-mold manufacturing machines.

(11) Molds used for the casting of metals.

(12) Die casting machines with a rated capacity ≤1,000 pounds that are not used for copper alloys.

(13) Equipment used for heating metals immediately prior to forging, pressing, rolling, or drawing, if any combustion equipment is also exempt.

(14) Forming equipment used exclusively for forging, rolling, or drawing of metals, if any combustion equipment is also exempt.

(15) Heat treatment equipment used exclusively for metals, if any combustion equipment is also exempt.

(16) Equipment used exclusively for case hardening, carburizing, cyaniding, nitriding, carbonitriding, siliconizing, or diffusion treating of metals, if any combustion equipment is also exempt.

(17) Atmosphere generators used in connection with metal heat-treating processes.

(18) Sintering equipment used exclusively for metals other than lead, PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

(19) Welding equipment and oxygen/gaseous fuel cutting equipment.

(20) Soldering or brazing, or equipment, including brazing ovens.

(21) Equipment used exclusively for surface preparation, passivation, deoxidation, and/or stripping that meets all of the following tank content criteria:

(A) ≤50 grams of VOC per liter;

(B) No acids other than boric, formic, acetic, phosphoric, sulfuric, or ≤12% hydrochloric; and

(C) May contain alkaline oxidizing agents, hydrogen peroxide, salt solutions, sodium hydroxide, and water in any concentration.

Associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment are also exempt. (This exemption does not include anodizing, hard anodizing, chemical milling, circuit board etching using ammonia-based etchant, electrocleaning, or the stripping of chromium, except sulfuric acid and/or boric acid anodizing with a total bath concentration of ≤20% by weight and using ≤10,000 amp-hours per day, or phosphoric acid anodizing with a bath concentration of ≤15% by weight of phosphoric acid and using ≤20,000 amp-hours per day.)

(22) Equipment used exclusively for electrolytic plating (except the use of chromic and/or hydrochloric acid) or electrolytic stripping (except the use of chromic, hydrochloric, nitric, or sulfuric acid) of brass, bronze, copper, iron, tin, zinc, precious metals, and associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment. Also, equipment used to electrolytically recover metals from spent or pretreated plating solutions that qualify for this exemption.

Ceramics and Glass

(23) Kilns used for firing ceramic-ware or artwork, if any combustion equipment is also exempt.

(24) Porcelain enameling furnaces, porcelain enameling drying ovens, vitreous enameling furnaces, or vitreous enameling drying ovens, if any combustion equipment is also exempt.

(25) Hand glass melting furnaces, electric furnaces, and pot furnaces with a capacity $\leq 1,000$ pounds of glass.

(26) Heat-treatment equipment used exclusively for glass, if any combustion equipment is also exempt.

(27) Sintering equipment used exclusively for glass PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

Plastics and Rubber and Composites

(28) Equipment used exclusively for conveying and storing plastic pellets.

(29) Extrusion equipment used exclusively for extruding rubber or plastics where no organic plasticizer is present, or for pelletizing polystyrene foam scrap.

(30) Equipment used for extrusion, compression molding, and injection molding of plastics, PROVIDED THAT the VOC content of all mold release products or lubricants is $\leq 1\%$ by weight.

(31) Injection or blow-molding equipment for rubber or plastics, PROVIDED THAT no blowing agent other than compressed air, water, or carbon dioxide is used.

(32) Presses or molds used for curing, post-curing, or forming composite products and plastic products, PROVIDED THAT the blowing agent contains no VOC or chlorinated compounds.

(33) Presses or molds used for curing or forming rubber products and composite rubber products with a ram diameter ≤ 26 inches, PROVIDED THAT it is operated at $\leq 400^\circ\text{F}$.

(34) Ovens used exclusively for the curing or forming of plastics or composite products, where no foam-forming or expanding process is involved, if any combustion equipment is also exempt.

(35) Ovens used exclusively for the curing of vinyl plastisols by the closed-mold curing process, if any combustion equipment is also exempt.

(36) Equipment used exclusively for softening or annealing plastics, if any combustion equipment is also exempt.

(37) Hot wire cutting of expanded polystyrene foam and woven polyester film.

(38) Mixers, roll mills, and calenders for rubber or plastics where no material in powder form is added and no organic solvents, diluents, or thinners are used.

Material Working and Handling

(39) Equipment used for mechanical buffing (except tire buffers), polishing, carving, cutting, drilling, grinding, machining, planing, pressing, routing, sawing, stamping, or turning of wood, ceramic artwork, ceramic precision parts, leather, metals, plastics, rubber, fiberboard, masonry, glass, silicon, semiconductor wafers, carbon, graphite, or composites. This exemption also applies to laser cutting, drilling, and machining of metals.

(40) Hand-held sanding equipment.

(41) Sanding equipment controlled by a fabric filter with an airflow of $< 2,000$ cfm.

(42) Equipment used exclusively for shredding of wood (e.g., tub grinders, hammermills, hoppers), or for extruding, pressing, handling, or storage of wood chips, sawdust, or wood shavings.

(43) Paper shredding and associated conveying systems and baling equipment.

(44) Hammermills used exclusively to process aluminum and/or tin cans.

(45) Tumblers used for the cleaning or deburring of metal products without abrasive blasting.

Abrasive Blasting

(46) Portable abrasive blasting equipment used at a temporary location to clean bridges, water towers, buildings, or similar structures, PROVIDED THAT any blasting with sand (or silica) is performed with $\geq 66\%$ by volume water.

(47) Portable vacuum blasting equipment using steel shot and vented to a fabric filter.

(48) Hydroblasting equipment using exclusively water as the abrasive.

(49) Abrasive blasting cabinets vented to a fabric filter, PROVIDED THAT the total internal volume of the cabinet is ≤ 100 cubic feet.

(50) Shot peening operations, PROVIDED THAT no surface material is removed.

Cleaning

(51) Solvent cleaning:

(A) Non-refillable, hand-held aerosol spray cans of solvent; or

(B) Closed-loop solvent recovery systems with refrigerated or water-cooled condensers used for recovery of waste solvent generated on-site.

(52) Steam-cleaning equipment.

(53) Unheated liquid solvent tanks used for cleaning or drying parts:

(A) With a solvent capacity ≤ 10 gallons and containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetrachloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof;

(B) Using a solvent with a true vapor pressure ≤ 0.6 psi containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetrachloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof;

(C) With a remote reservoir and using a solvent containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetrachloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof; or

(D) With a solvent capacity ≤ 2 gallons.

(54) Hand-wipe cleaning.

Coating, Resin, and Adhesive Application

(55) Powder-coating equipment.

(56) Portable coating equipment and pavement strippers used exclusively for the field application of architectural coatings and industrial maintenance coatings to stationary structures and their appurtenances or to pavements and curbs.

(57) High-volume low-pressure (HVLP) spray-coating equipment having a cup capacity ≤ 8 fluid ounces, PROVIDED THAT it is not used to coat > 9 square feet per day and is not used to coat motor vehicles or aerospace components.

(58) Airbrushes having a cup capacity ≤ 2 fluid ounces and an airflow of 0.5-2.0 cfm.

(59) Hand-held aerosol spray cans having a capacity of ≤ 1 quart of coating.

(60) Spray-coating equipment used exclusively for application of automotive undercoating materials with a flash point $> 100^\circ\text{F}$.

(61) Ovens associated with an exempt coating operation, if any combustion equipment is also exempt.

(62) Ovens associated with a coating operation that are used exclusively to accelerate evaporation, if any combustion equipment is also exempt. (Note: The coating operation is not necessarily exempt.)

(63) Radiation-curing equipment using ultraviolet or electron beam energy to initiate a chemical reaction forming a polymer network in a coating.

(64) Hand lay, brush, and roll-up resins equipment and operations.

(65) Equipment used exclusively for melting or applying of waxes or natural and synthetic resins.

(66) Hot-melt adhesive equipment.

(67) Any adhesive application equipment that exclusively uses materials containing <1% VOC by weight and <0.1% HAP.

(68) Equipment used exclusively for bonding of linings to brake shoes, where no organic solvents are used.

Printing

(69) Retail, sheet-fed, non-heatset offset presses (lithographic or letterpress).

(70) Presses using exclusively UV-curable inks.

(71) Presses using exclusively plastisols.

(72) Presses using exclusively water-based inks (<1.5 lbs VOC per gallon, excluding water, or <10% VOC by volume) and cleaning solvents without VOC.

(73) Presses used exclusively for making proofs.

(74) Electrostatic, ink jet, laser jet, and thermal printing equipment.

(75) Ovens used exclusively for exempt printing presses, if any combustion equipment is also exempt.

Photography

(76) Photographic process equipment by which an image is reproduced upon material sensitized by radiant energy, excluding equipment using perchloroethylene.

Liquid Storage and Transfer

(77) Storage tanks permanently attached to a motor vehicle.

(78) Storage tanks used exclusively for:

(A) Liquefied gases, including any tanks designed to operate in excess of 29.7 psia without emissions;

(B) Asphalt at a facility other than an asphalt roofing plant, asphalt processing plant, or petroleum refinery;

(C) Any liquids (other than asphalt) that also have a rated capacity $\leq 1,000$ gallons;

(D) Organic liquids (other than gasoline or asphalt) that also have a rated capacity <20,000 gallons;

(E) Organic liquids (other than asphalt) with a true vapor pressure <2.2 psia (e.g., ASTM spec. fuel oils and lubricating oils) that also have a rated capacity <40,000 gallons;

(F) Organic liquids (other than asphalt) with a true vapor pressure <0.5 psia that also have a rated capacity $\geq 40,000$ gallons;

(G) Sulfuric acid or phosphoric acid with an acid strength $\leq 99\%$ by weight;

(H) Nitric acid with an acid strength $\leq 70\%$ by weight;

(I) Hydrochloric acid or hydrofluoric acid tanks with an acid strength $\leq 30\%$ by weight;

(J) Aqueous solutions of sodium hydroxide, sodium hypochlorite, or salts, PROVIDED THAT the surface of the solution contains $\leq 1\%$ VOC by weight;

(K) Liquid soaps, liquid detergents, vegetable oils, fatty acids, fatty esters, fatty alcohols, waxes, and wax emulsions;

(L) Tallow or edible animal fats intended for human consumption and of sufficient quality to be certifiable for United States markets;

(M) Water emulsion intermediates and products, including latex, with a VOC content $\leq 5\%$ by volume or a VOC composite partial pressure of ≤ 0.1 psi at 68°F; or

(N) Wine, beer, or other alcoholic beverages.

(79) Loading and unloading equipment used exclusively for the storage tanks exempted above.

(80) Loading and unloading equipment used exclusively for transferring liquids or compressed gases into containers having a rated capacity <60 gallons, except equipment transferring >1,000 gallons per day of liquid with a true vapor pressure >0.5 psia.

(81) Equipment used exclusively for the packaging of sodium hypochlorite-based household cleaning or pool products.

Mixing

(82) Mixing equipment, PROVIDED THAT no material in powder form is added and the mixture contains <1% VOC by weight.

(83) Equipment used exclusively for the mixing and blending of materials at ambient temperature to make water-based adhesives.

(84) Equipment used exclusively for the manufacture of water emulsions of waxes, greases, or oils.

(85) Equipment used exclusively for the mixing and packaging of lubricants or greases.

(86) Equipment used exclusively for manufacturing soap or detergent bars, including mixing tanks, roll mills, plodders, cutters, wrappers, where no heating, drying, or chemical reactions occur.

(87) Equipment used exclusively to mill or grind coatings and molding compounds in a paste form, PROVIDED THAT the solution contains <1% VOC by weight.

(88) Batch mixers with a rated working capacity ≤ 55 gallons.

(89) Batch mixers used exclusively for paints, varnishes, lacquers, enamels, shellacs, printing inks, or sealers, PROVIDED THAT the mixer is equipped with a lid that contacts $\geq 90\%$ of the rim.

Water Treatment

(90) Oil/water separators, except those at petroleum refineries.

(91) Water cooling towers and water cooling ponds not used for evaporative cooling of process water, or not used for evaporative cooling of water from barometric jets or from barometric condensers, and in which no chromium compounds are contained.

(92) Equipment used exclusively to generate ozone and associated ozone destruction equipment for the treatment of cooling tower water or for water treatment processes.

(93) Municipal sewer systems, including wastewater treatment plants and lagoons, PROVIDED THAT they do not use

anaerobic digesters or chlorine sterilization. This exemption does not include sewage sludge incinerators.

(94) Soil and groundwater remediation projects involving <15 pounds per year of benzene or vinyl chloride, <500 pounds per year of perchloroethylene, and <1,000 pounds per year of toxic air contaminants.

Landfills and Composting

(95) Passive aeration of soil, PROVIDED THAT the soil is not being used as a cover material at a landfill.

(96) Closed landfills that do not have an operating, active landfill gas collection system.

(97) Non-commercial composting.

Agriculture, Food, and Drugs

(98) Equipment used in agricultural operations, in the growing of crops, or the raising of fowl or animals.

(99) Insecticide, pesticide, or fertilizer spray equipment.

(100) Equipment used in retail establishments to dry, cook, fry, bake, or grill food for human consumption, including charbroilers, smokehouses, barbecue units, deep fat fryers, cocoa and nut roasters, but not including coffee roasters.

(101) Cooking kettles (other than deep frying equipment) and confection cookers where all the product in the kettle is edible and intended for human consumption.

(102) Bakery ovens with a total production of yeast leavened bread products <10,000 pounds per operating day, if any combustion equipment is also exempt.

(103) Equipment used to dry, mill, grind, blend, or package <1,000 tons per year of dry food products such as seeds, grains, corn, meal, flour, sugar, and starch.

(104) Equipment used to convey, transfer, clean, or separate <1,000 tons per year of dry food products or waste from food production operations.

(105) Storage equipment or facilities containing dry food products that are not vented to the outside atmosphere, or that handle <1,000 tons per year.

(106) Equipment used exclusively to grind, blend, package, or store tea, cocoa, spices, coffee, flavor, fragrance extraction, dried flowers, or spices, PROVIDED THAT no organic solvents are used in the process.

(107) Equipment used to convey or process materials in bakeries or used to produce noodles, macaroni, pasta, food mixes, and drink mixes where products are edible and intended for human consumption, PROVIDED THAT no organic solvents are used in the process. This exemption does not include storage bins located outside buildings.

(108) Brewing operations at facilities producing <3 million gallons per year of beer.

(109) Fermentation tanks for wine (excluding tanks used for the commercial production of yeast for sale).

(110) Equipment used exclusively for tableting, or coating vitamins, herbs, or dietary supplements, PROVIDED THAT no organic solvents are used in the process.

(111) Equipment used exclusively for tableting or packaging pharmaceuticals and cosmetics, or coating pharmaceutical tablets, PROVIDED THAT no organic solvents are used.

Quarries, Nonmetallic Mineral Processing Plants, and Concrete and Asphalt Batch Plants

(112) Portable sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers ≤ 150 tons per hour.

(113) Fixed sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers ≤ 25 tons per hour.

(114) Common clay plants and pumice plants with a cumulative rated capacity of all initial crushers of ≤ 10 tons per hour.

(115) Mixers and other ancillary equipment at concrete batch plants (or aggregate product production facilities) with a rated capacity <15 cubic yards per hour.

(116) Concrete mixers with a rated working capacity of ≤ 1 cubic yard.

(117) Drilling or blasting (explosives detonation).

(118) Asphaltic concrete crushing/recycling equipment with a throughput <5,000 tons per year.

Construction

(119) Asphalt paving application.

(120) Asphalt (hot-tar) roofing application.

(121) Building construction or demolition, except that notification of demolitions is required under Section 4.03 of Regulation III.

Ventilation and Control Equipment

(122) Comfort air-conditioning systems, or ventilating systems (forced or natural draft), PROVIDED THAT they are not designed or used to control air contaminants generated by, or released from, sources subject to Notice of Construction.

(123) Refrigeration units, except those used as, or in conjunction with, air pollution control equipment.

(124) Refrigerant recovery and/or recycling units, excluding refrigerant reclaiming facilities.

(125) Emergency ventilation systems used exclusively to contain and control emissions resulting from the failure of a compressed gas storage system.

(126) Emergency ventilation systems used exclusively to scrub ammonia from refrigeration systems during process upsets or equipment breakdowns.

(127) Negative air machines equipped with HEPA filters used to control asbestos emissions from demolition/renovation activities.

(128) Portable control equipment used exclusively for storage tank degassing.

(129) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow <2,000 cfm.

(130) Control equipment used exclusively for sources that are exempt from Notice of Construction under Section 6.03(c) of this regulation.

(131) Routine maintenance, repair, or similar parts replacement of control equipment.

Testing and Research

(132) Laboratory testing and quality assurance/control testing equipment used exclusively for chemical and physical analysis, teaching, or experimentation, used specifically in achieving the purpose of the analysis, test, or teaching activity. Non-production bench scale research equipment is also included.

Miscellaneous

(133) Single-family and duplex dwellings.

(134) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment, if any combustion equipment used to power such equipment is also exempt.

(135) Equipment, including dryers, used exclusively for dyeing, stripping, or bleaching of textiles where no organic solvents, diluents, or thinners are used, if any combustion equipment used to power such equipment is also exempt.

(136) Chemical vapor sterilization equipment where no ethylene oxide is used, and with a chamber volume of ≤2 cubic feet used by healthcare facilities.

(137) Ozone generators that produce <1 pound per day of ozone.

(138) Fire extinguishing equipment.

(d) Each Notice of Construction application and Section 6.03(b) notification shall be submitted on forms provided by the Agency and shall be accompanied by the appropriate fee as required by Section 6.04 of this regulation. Notice of Construction applications shall also include any additional information required to demonstrate that the requirements of this Article are met. Notice of Construction applications shall also include an environmental checklist or other documents demonstrating compliance with the State Environmental Policy Act.

AMENDATORY SECTION

REGULATION III SECTION 2.02 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

It shall be unlawful for any person to cause or allow the operation of any source in violation of any provision of Part 61 or Part 63, Title 40, of the Code of Federal Regulations (excluding Part 61, Subparts B, H, I, K, Q, R, T, and W; and Part 63, Subpart LL, the provisions of Subpart M pertaining to area source perchloroethylene dry cleaners, ~~((and))~~ the provisions of Subparts S and MM pertaining to kraft and sulfite pulp mills, and Subparts WWWW, CCCCC, HHHHH, and WWWW) in effect as of the federal regulation reference date listed in Section 3.25 of Regulation I herein incorporated by reference.

WSR 08-17-062
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY
[Filed August 18, 2008, 12:58 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 7.09 (General Reporting Requirements for Operating Permits).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on September 25, 2008, at 9:15 a.m.

Date of Intended Adoption: September 25, 2008.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail lynns@pscleanair.org, fax (206) 343-7522, by September 24, 2008.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 18, 2008, TTY (800) 833-6388 or (800) 833-6385 (braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify what constitutes "on time" submittal of compliance reports sent by operating permit sources; and to require reports to be submitted by both e-mail and postal service after June 30, 2009.

Reasons Supporting Proposal: The proposal clarifies what determines a timely submittal; and by requiring electronic submittal of compliance reports, agency inspection staff will have timely access to information while in the field.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement: Jim Nolan, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4053.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

August 18, 2008
Dennis J. McLerran
Executive Director

AMENDATORY SECTION

REGULATION I SECTION 7.09 GENERAL REPORTING REQUIREMENTS FOR OPERATING PERMITS

(a) **Emission Reporting.** An emission report shall be required from each owner or operator of an operating permit source, listing those air contaminants emitted during the previous calendar year that equal or exceed the following (tons/year):

carbon monoxide (CO) emissions	25
facility combined total of all toxic air contaminant (TAC) emissions	6
any single toxic air contaminant (TAC) emissions	2
nitrogen oxide (NOx) emissions	25
particulate matter (PM10) emissions	25
particulate matter (PM2.5) emissions	25
sulfur oxide (SOx) emissions	25
volatile organic compounds (VOC) emissions	25

Annual emission rates shall be reported to the nearest whole tons per year for only those air contaminants that equal or exceed the thresholds above. The owner or operator of a source requiring a Title V operating permit under this Article shall maintain records of information necessary to document any reported emissions or to demonstrate that the emissions were less than the above amounts.

(b) **Operation and Maintenance Plan.** Owners or operators of air contaminant sources subject to ~~((Regulation I))~~ Article 7 of this regulation shall develop and implement an operation and maintenance plan to assure continuous compliance with Regulations I, II, and III. A copy of the plan shall be filed with the Control Officer upon request. The plan shall reflect good industrial practice and shall include, but not be limited to, the following:

- (1) Periodic inspection of all equipment and control equipment;
- (2) Monitoring and recording of equipment and control equipment performance;
- (3) Prompt repair of any defective equipment or control equipment;
- (4) Procedures for start up, shut down, and normal operation;
- (5) The control measures to be employed to assure compliance with Section 9.15 of this regulation ~~((Regulation I))~~; and
- (6) A record of all actions required by the plan.

The plan shall be reviewed by the source owner or operator at least annually and updated to reflect any changes in good industrial practice.

(c) Compliance Reports. Owners or operators of air contaminant sources subject to Article 7 of this regulation shall submit complete copies of all required compliance reports to this Agency in electronic format using e-mail after June 30, 2009. Whenever there is a specified time period for submittal of a report, the date the document is received by the Agency e-mail system shall be considered the submitted date of the report. Original written documents shall also be submitted for record purposes. Nothing in this section waives or modifies any submittal requirements established under other applicable regulations.

WSR 08-17-065

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF REVENUE

[Filed August 18, 2008, 3:05 p.m.]

The department of revenue has withdrawn its proposal to amend WAC 458-20-258 Travel agents and tour operators (Rule 258), filed on January 31, 2008, and published in the Washington state register as WSR 08-04-052. The department is drafting further changes and anticipates filing another CR-102 proposed rule-making notice for Rule 258.

Alan R. Lynn
Rules Coordinator

WSR 08-17-073

PROPOSED RULES CENTRAL WASHINGTON UNIVERSITY

[Filed August 19, 2008, 11:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-14-015.

Title of Rule and Other Identifying Information: Student conduct code, chapter 106-120 WAC.

Hearing Location(s): Barge 304, on September 23, 2008, at 10:00 a.m.

Date of Intended Adoption: September 23, 2008.

Submit Written Comments to: Kristy Magdlin, President's Office, 400 East University Way, Ellensburg, WA 98926-7501, e-mail magdlink@cwu.edu, fax (509) 963-2154, by September 19, 2008.

Assistance for Persons with Disabilities: Contact disability support services, TTY (509) 963-2143.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Modify existing rules to comply with current administrative practices.

Reasons Supporting Proposal: Clarify rules consistent with current internal administrative practice.

Statutory Authority for Adoption: RCW 28B.10.528 and 28B.35.120(12).

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

Name of Proponent: Kristy Magdlin, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jack Baker, 400 East University Way, Ellensburg, WA 98926-7432, (509) 963-1515.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes are in response to internal processes and do not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Complies with federal law (FERPA, 20 U.S.C. § 1232g; 34 C.F.R. Part 99), RCW 34.05.328 (5)(b)(iii).

August 8, 2008

Jerilyn S. McIntyre
President

AMENDATORY SECTION (Amending WSR 07-01-065, filed 12/18/06, effective 1/18/07)

WAC 106-120-004 Definitions. (1) "University" shall mean Central Washington University.

(2) "Vice-president" shall mean the vice-president for student affairs and enrollment management of the university or the vice-president's designee.

(3) "Student" shall mean a person enrolled either full or part time, pursuing undergraduate or graduate studies, or extension studies, or a person accepted for admission or readmission to the university.

(4) "University community" shall include the employees and students of Central Washington University and all property and equipment of the university.

(5) "Hazing" shall include any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending Central Washington University. The term does not include customary athletic events or other similar contests or competitions.

(6) "Sexual assault" occurs when the act is intentional and is committed either by:

- (a) Physical force, violence, threat, or intimidation;

- (b) Ignoring the objections of another person;
- (c) Causing another's intoxication or impairment through the use of alcohol or drugs; or
- (d) Taking advantage of another person's incapacitation, state of intimidation, helplessness, or other inability to consent.

(7) "Sexual misconduct" occurs when an act is committed without intent to harm another and where, by failing to correctly assess the circumstances, a person mistakenly believes that effective consent was given and did not meet his/her responsibility to gain effective consent.

(8) "Sexual harassment" is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. More specifically, sexually harassing behavior includes, but is not limited to the following:

(a) Gender harassment, including sexist statements and behaviors that convey insulting, degrading, or sexist attitudes;

(b) Seductive behavior encompassing unwanted, inappropriate, and offensive physical or verbal sexual advances;

(c) Sexual bribery, involving solicitation of sexual activity or other sex-linked behavior by promise of reward;

(d) Sexual coercion of sexual activity or other sex-linked behavior by threat of punishment; and

(e) Sexual assault, attempted rape, and rape. Additional examples of sexual harassment can be found in the university's sexual harassment policy. (CWU Policies Manual 2-2.2.3.2 <http://www.cwu.edu/~pres/policies/Part2-2.2.pdf>).

(9) "Stalking" is a legal term for repeated harassment or other forms of invasion of a person's privacy in a manner that causes fear to its target. Stalking may include such acts as repeated following; unwanted contact (by letter or other means of communication); observing a person's actions closely for an extended period of time; or contacting family members, friends, or associates of a target inappropriately.

(10) Burden of proof: In determining whether sufficient cause exists, the burden of proof shall be on the university which must establish, by a preponderance of the evidence, that the student is responsible for a violation of the student conduct code. For the purpose of this code, the phrase "preponderance of the evidence," means that it is more likely that the student charged violated the student code by engaging in the conduct for which he/she is charged than that he/she did not.

AMENDATORY SECTION (Amending WSR 07-01-065, filed 12/18/06, effective 1/18/07)

WAC 106-120-006 Students subject to student conduct code. Any student is subject to these rules, independent of any other status the individual may have with the university. Any action taken against a student under these rules shall be independent of other actions taken by virtue of another relationship with the university in addition to that of student.

The student conduct code shall apply to a student's conduct, even if the student withdraws from school, while a disciplinary matter is pending.

AMENDATORY SECTION (Amending WSR 07-01-065, filed 12/18/06, effective 1/18/07)

WAC 106-120-007 Cooperation with law enforcement agencies. Central Washington University distinguishes its responsibility for student conduct from the controls imposed by the larger community beyond the university, and of which the university is a part. When students are charged with violations of laws of the nation or state, or ordinances of the county or city, the university will neither request nor agree to special consideration for students because of their status as students, but the university will cooperate with law enforcement agencies, courts, and any other agencies in programs for rehabilitation of students.

~~((Central Washington University reserves the right to impose the provisions of this chapter and apply further sanctions before or after law enforcement agencies, courts, and other agencies have imposed penalties or otherwise disposed of a case.))~~ University disciplinary proceedings may be initiated against a student charged with conduct that potentially violates both the criminal law and this student conduct code (that is if both possible violations result from the same factual situation) without regard to the pendency of civil or criminal arrest and prosecution. Proceedings under this student conduct code may be carried out prior to, simultaneously with, or following civil or criminal proceedings.

University proceedings are not subject to challenge or dismissal referencing, as a basis, that criminal charges involving the same incident have been dismissed or reduced. Determinations made or sanctions imposed under this student conduct code shall not be subject to change because criminal charges arising out of the same facts giving rise to violation of university rules were dismissed, reduced, or resolved in favor of or against the criminal law defendant. The university is not bound by the rules of evidence observed by courts in this state and may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

AMENDATORY SECTION (Amending WSR 07-01-065, filed 12/18/06, effective 1/18/07)

WAC 106-120-024 Student conduct council—Chair. A student conduct council chair shall be elected at the ~~((first meeting each academic year and shall continue in office until the person resigns or is recalled))~~ beginning of each hearing and preside over that hearing. The duties of the chair are as follows:

(1) ~~((To call regular and special meetings of the council by notification to members at least twenty-four hours in advance of the meeting time, except in bona fide emergency situations.~~

~~((2) To preside over all regular and special meetings.~~

~~((3) To act as presiding officer at all meetings of the proceeding board.))~~ To preside over the hearing process.

(2) To draft a letter regarding the outcome of the hearing to include all sanctions and actions required by the student appearing before the student conduct council; and

(3) After a draft is placed on university letterhead, the chair will sign the letter.

AMENDATORY SECTION (Amending WSR 07-01-065, filed 12/18/06, effective 1/18/07)

WAC 106-120-027 Proscribed conduct. A student shall be subject to disciplinary action or sanction upon violation of any of the following conduct proscriptions:

(1) Disruptive and disorderly conduct which interferes with the rights and opportunities of other students to pursue their academic studies.

(2) Academic dishonesty in all its forms including, but not limited to:

(a) Cheating on tests.

(b) Copying from another student's test paper.

(c) Using materials during a test not authorized by the person giving the test.

(d) Collaboration with any other person during a test without authority.

(e) Knowingly obtaining, using, buying, selling, transporting, or soliciting in whole or in part the contents of an unadministered test or information about an unadministered test.

(f) Bribing any other person to obtain an unadministered test or information about an unadministered test.

(g) Substitution for another student or permitting any other person to substitute for oneself to take a test.

(h) "Plagiarism" which shall mean the appropriation of any other person's work and the unacknowledged incorporation of that work in one's own work offered for credit.

(i) "Collusion" which shall mean the unauthorized collaboration with any other person in preparing work offered for credit.

(3) Filing a formal complaint with the vice-president for student affairs and enrollment management with the intention of falsely accusing another with having violated a provision of this code.

(4) Furnishing false information to any university official, especially during the investigation of alleged violations of this code.

(5) Furnishing false information to the student conduct council with the intent to deceive, the intimidation of witnesses, the destruction of evidence with the intent to deny its presentation to the student conduct council or the vice-president when properly notified to appear.

(6) Intentionally setting off a fire alarm or reporting a fire or other emergency or tampering with fire or emergency equipment except when done with the reasonable belief in the existence of a need therefore.

(7) Forgery, alteration, or misuse of university documents, records, or identification cards.

(8) Sexual harassment including stalking, forced and/or nonconsensual sexual activity in any form, including sexual assault and sexual misconduct.

(9) Actual or attempted physical/emotional abuse of any person or conduct which threatens or endangers the health and safety of any person or which intentionally or recklessly causes a reasonable apprehension of harm to any person.

(10) Harassment of any sort or any malicious act which causes harm to any person's physical or mental well being.

(11) Recklessly engaging in conduct which creates a substantial risk of physical harm to another person.

(12) Creating noise in such a way as to interfere with university functions or using sound amplification equipment in a loud and raucous manner.

(13) Theft or malicious destruction, damage or misuse of university property, private property of another member of the university community, whether occurring on or off campus; or theft or malicious destruction, damage or misuse on campus of property of a nonmember of the university community.

(14) Unauthorized seizure or occupation or unauthorized presence in any university building or facility.

(15) Intentional disruption or obstruction of teaching, research, administration, disciplinary proceedings, or other university activities or programs whether occurring on or off campus or of activities or programs authorized or permitted by the university pursuant to the provisions of this chapter.

(16) Intentional participation in a demonstration which is in violation of rules and regulations governing demonstrations promulgated by the university pursuant to the provisions of this chapter.

(17) Unauthorized entry upon the property of the university or into a university facility or any portion thereof which has been reserved, restricted in use, or placed off limits; unauthorized presence in any university facility after closing hours; or unauthorized possession or use of a key to any university facility.

(18) Possession or use on campus of any firearm, dangerous weapon or incendiary device or explosive unless such possession or use has been authorized by the university.

(19) Possession, use, or distribution on campus of any controlled substance as defined by the laws of the United States or the state of Washington except as expressly permitted by law.

(20) Violation of the university policy on alcoholic beverages which states:

(a) Persons twenty-one years of age or older may possess and/or consume alcoholic beverages within the privacy of their residence hall rooms or apartments. Washington state law provides severe penalties for the possession or consumption of alcoholic beverages by persons under twenty-one years of age and for persons who furnish alcoholic beverages to minors. All university students should be aware of these laws and the possible consequences of violations.

(b) The university does not condone the consumption of alcoholic beverages by minors at functions sponsored by Central Washington University organizations. Organizations are held responsible for the conduct of their members at functions sponsored by the organization and for failure to comply with Washington state law.

(c) The student conduct council may place on probation any organization or prohibit a specific campus social function when the consumption of alcoholic beverages has become a problem of concern to the university.

(21) Conduct which violates the university policies on computer use.

(22) Violation of clearly stated proscriptions in any published rule or regulation promulgated by any official campus committee, commission, or council acting within the scope of its authority.

(23) Violation on or off campus of any university policy, city, county, state, or federal law. This includes participation in any university sponsored activity.

(24) Conspiracy to engage in hazing or participation in hazing of another.

(25) Failure to comply with the directive of a university official acting in the scope of authority may result in disciplinary action.

Any questions of interpretation of application or revision of the student conduct code shall be referred to the vice-president for student affairs or their designee.

AMENDATORY SECTION (Amending WSR 07-01-065, filed 12/18/06, effective 1/18/07)

WAC 106-120-028 Disciplinary sanctions. The following may be the sanctions imposed by the vice-president for student affairs and enrollment management, or the vice-president's designee, or by the student conduct council.

(1) Warning. Notice in writing that the student has violated university rules or regulations or has otherwise failed to meet the university's standard of conduct. Such warning will contain the statement that continuation or repetition of the specific conduct involved or other misconduct will normally result in one of the more serious disciplinary actions described below.

(2) Disciplinary probation. Formal action specifying the conditions under which a student may continue to be a student at the university including limitation of specified activities, movement, or presence on the CWU campus, including restricted access to any university building. The conditions specified may be in effect for a limited period of time or for the duration of the student's attendance at the university.

(3) Restitution. An individual student may be required to make restitution for damage or loss to university or other property and for injury to persons. Failure to make restitution will result in suspension until payment is made.

(4) Suspension. Dismissal from the university and from status as a student for a stated period. The notice suspending the student will state in writing the term of the suspension and any condition(s) that must be met before readmission is granted. The student so suspended must demonstrate that the conditions for readmission have been met. There is to be no refund of fees for the quarter in which the action is taken, but fees paid in advance for a subsequent quarter are to be refunded.

(5) Deferred suspension. Notice of suspension from the university with the provision that the student may remain enrolled contingent on meeting a specified condition. Not meeting the contingency shall immediately invoke the suspension for the period of time and under the conditions originally imposed.

(6) Expulsion. The surrender of all rights and privileges of membership in the university community and exclusion from the campus without any possibility for return.

(7) For the specific instance of hazing, forfeiture of any entitlement to state-funded grants, scholarships, or awards for a specified period of time.

More than one of the sanctions listed above may be imposed for any single violation.

AMENDATORY SECTION (Amending WSR 07-01-065, filed 12/18/06, effective 1/18/07)

WAC 106-120-131 Initiation, investigation, and disposition of complaints. (1) Philosophy.

The problem-solving team deals with student behaviors which constitute violations of this code. The problem-solving team meets weekly to review residence hall incident reports filed by resident assistants and building managers, as well as police reports which deal with both on- and off-campus students.

The problem-solving team works together to suggest intervention strategies which are considered to be most appropriate and effective for eliminating specific negative student behaviors. The problem-solving team is chaired by the ~~((associate))~~ assistant to the vice-president for student affairs and includes representatives from public safety and police services, university housing and new student programs, the center for student empowerment, counseling services, international studies and programs, and the wildcat wellness center.

(2) Process.

Incidents that come to the attention of the problem-solving team may be addressed in one of the following ways:

(a) No action;

(b) Informal meetings with relevant university officials;

(c) Referral to the residence hall arbitration council, for resolving certain disputes within the residence halls;

(d) Initiate proceedings in the office of the vice-president for student affairs and enrollment management.

Official proceedings in the vice-president's office are conducted when it becomes apparent to the problem-solving team that the initial and more informal forms of intervention with a student have been unsuccessful in positively modifying a student's behavior.

(3) Investigation and disposition of complaints. The following rules will govern the processing of alleged violations of the proscribed conduct listed in the student conduct code with one exception. Allegations of discrimination, based on race, color, creed, religion, national origin, sex (including sexual harassment), sexual orientation, gender identity and gender expression, age, marital status, disability, or status as a protected veteran will utilize a separate process in order to provide both parties their rights under the law and in accordance with Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. Copies of the discrimination grievance process are available in the office of the vice-president for student affairs and enrollment management.

(a) A complaint alleging misconduct ~~((against any student at the university))~~ related to this student conduct code may be filed by anyone ~~((at))~~ and reported to the office of the vice-president for student affairs and enrollment management. The report should be in standardized written form. Students, faculty members, administrators, and other employees of the university shall have concurrent authority to request the commencement of the disciplinary proceedings provided for in this chapter. A person filing a complaint shall be complainant of record and should file the complaint as soon as possible or within twenty working days.

(b) Any student charged in a complaint shall receive written notification from the vice-president. Such notice shall:

- (i) Inform the student that a complaint has been filed alleging that the student violated specific provisions of the student conduct code and the date of the violation(s);
- (ii) Set forth those provisions allegedly violated;
- (iii) Specify a time and date the student is required to meet with the vice-president or designee; and
- (iv) Inform the student that failure to appear at the appointed time at the vice-president's office may subject the student to suspension from the university.

(4) When the vice-president meets with the student, the vice-president shall:

(a) Provide for the student a copy of the student conduct code;

(b) Review the facts of the alleged violation with the student; and

(c) Conduct an investigation into the alleged violation.

(5) Upon completion of the review with the student and/or the investigation, the vice-president may:

(a) Drop the charges, when they appear to be invalid or without substance or capricious;

(b) Issue a verbal warning;

(c) Apply any of the sanctions as outlined in WAC 106-120-028 if such sanction is warranted by the evidence;

(d) Refer the case to the student conduct council; or

(e) Invoke the summary suspension procedure as outlined in WAC 106-120-143 when deemed appropriate.

(6) The vice-president shall inform the student that only suspension and expulsion sanctions may be appealed to the student conduct council, and that if an appeal is made, the vice-president shall take no action or make any determination, except for summary suspension, in the matter other than to inform the student of the time, date, and location of the proceeding by the student conduct council.

AMENDATORY SECTION (Amending WSR 07-01-065, filed 12/18/06, effective 1/18/07)

WAC 106-120-132 Procedures for proceeding before the student conduct council. (1) When a case is referred to the student conduct council the vice-president shall forward to the council:

- (a) A statement describing the alleged misconduct;
- (b) The name and address of the complainant;
- (c) The name and address of the student charged; and
- (d) All relevant facts and statements.

(2) The ~~((secretary to the council))~~ vice-president shall call a special meeting of the council and arrange for a proceeding in the following manner:

(a) The ~~((council))~~ vice-president shall determine the time and place of the proceeding, which shall be at least ~~((ten))~~ five working days after delivery of written notice to the student. In the interest of timeliness and efficiency, upon the request of either the student or the vice-president, this ~~((ten))~~ five working day interval may be waived by the vice-president, with the student's permission. Time and place shall be set to make the least inconvenience for all interested par-

ties. ~~((The chair may change the time and place of the proceeding for sufficient cause.~~

~~((b) The council shall draw lots to determine a proceeding board consisting of five student names and three faculty names, with one student and one faculty serving as alternates to be available until the proceeding board has been constituted and the chair selected who will act as the proceeding officer.))~~

(b) The members of the council shall be selected by the vice-president from the list of students and faculty appointed by the council based on their ability to attend the scheduled hearing. The proceedings board will consist of three students and two faculty members; and if possible, one student and one faculty will serve as alternates. Faculty and student members may be substituted for each other when faculty or student members are not available. A chair will be selected from the group assigned for each hearing and will preside over that meeting acting as the official representative of the committee.

(c) No case shall be heard unless ~~((the full membership of))~~ all the ((proceeding)) hearing board is present, unless approved by the appealing student.

(d) All cases will be heard de novo, whether the case be an appeal from a subsidiary judicial body or is heard as an original complaint.

(3) The student affairs and enrollment management secretary ~~((to the council))~~ shall send written notice by ~~((certified))~~ e-mail and mail of the proceeding to the student's last known address. Certified mail may be used, if appropriate. The notice shall contain:

(a) A statement of the date, time, place and nature of the proceeding;

(b) ~~((To the extent known.))~~ A list of witnesses who will appear, to the extent known; and

(c) A summary description of any documentary or other physical evidence that would be presented by the university.

(4) The student shall have all authority possessed by the university to obtain information he/she specifically describes in writing and tenders to the ~~((council chair))~~ vice-president no later than two working days prior to the proceeding or to request the presence of witnesses, or the production of other evidence relevant to the proceeding. However, the university shall not be liable for information requested by the student or the presence of any witnesses when circumstances beyond the control of the university prevent the obtaining of such information or the attendance of such witnesses at the proceeding.

(5) Proceedings will ordinarily be held in closed session unless the proceeding board determines there is a compelling reason for the proceeding to be open, or the student requests an open proceeding. A closed proceeding shall include only members of the proceeding board, the vice-president, persons directly involved in the proceeding as parties and persons called as witnesses.

(6) The proceeding shall be audio tape recorded, and the tape shall be on file at the office of the vice-president for a period of three years.

(7) The university shall be represented by the vice-president who shall present the university's case against the student.

(8) The student must represent himself or herself. The student may be accompanied by counsel, or another third party, who may offer advice. If the student utilizes an attorney as advisor, the student must give to the vice-president two working days notice of intent to do so. If the student elects to be advised by an attorney, the vice-president may elect to have the university advised by an assistant attorney general.

(9) The council chair shall insure that:

(a) The proceeding is held in an orderly manner giving full care that the rights of all parties to a full, fair and impartial proceeding are maintained.

(b) The charges and supporting evidence or testimony shall be presented first, and that there is full opportunity for the accused student to challenge the testimony and/or evidence, and to cross examine appropriately.

(c) The student charged shall next present evidence or testimony to refute the charge, and that there is full opportunity for the accuser to challenge testimony and/or evidence, and to cross examine appropriately.

(d) Only those materials and matters presented at the proceeding will be considered as evidence. The presiding officer shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(10) Any person disruptive of the proceeding or any other procedure described in this document may be excluded from the process by the chair of the student conduct council or by the vice-president, using such means as are necessary to ensure an orderly process. Any student engaging in such interference shall be in contempt and may be summarily suspended from the university by the student conduct council or the vice-president immediately. The student shall be subject to a suspension or any lesser sanction as may be determined by the student conduct council or the vice-president at the time the interference takes place or within fifteen working days thereafter.

(11) The student has a right to a fair and impartial proceeding, but the student's failure to cooperate with or attend a proceeding shall not preclude the council from making its finding of facts, conclusions, and recommendations. Failure by the student to cooperate may be taken into consideration by the student conduct council and the vice-president in deciding the appropriate disciplinary action.

(12) Upon conclusion of the proceeding, the proceeding board in closed session shall consider all the evidence presented and decide by majority vote to exonerate the student or to impose one of the sanctions authorized by this document.

(13) The student shall be provided with a copy of the board's findings of fact and conclusions regarding whether the student did violate any rule or rules of the student conduct code and the board's decision as to the appropriate sanction to be imposed.

(14) If a student charged with misconduct under this code has been charged with a crime for the same act or closely related acts by federal, state, or local authorities, or if it appears that such criminal charge is under consideration, the student conduct council may postpone action on the complaint until there has been a disposition of the criminal charge or of the consideration of filing such charge. However, prior to action by other agencies, the council may proceed to hear

and decide the case if in the judgment of the council, the nature of the alleged misconduct and the circumstances surrounding it pose a serious risk to the health or well-being of the student or other members of the university. If there is a determination of guilt by the council and if the subsequent criminal proceedings result in a judgment of acquittal, the student may petition the student conduct council for a rehearing.

AMENDATORY SECTION (Amending WSR 07-01-065, filed 12/18/06, effective 1/18/07)

WAC 106-120-143 Summary suspension proceedings. The vice-president may summarily suspend any student from the university pending investigation, action of prosecution of charges of an alleged proscribed conduct violation or violations, if the vice-president has reason to believe that the student's physical or emotional safety and well-being, or the safety and well-being of other university community members, or the protection of property requires such suspension.

(1) If the vice-president finds it necessary to exercise the authority to summarily suspend a student the vice-president shall:

(a) Give to the student an oral or written notice of intent to determine if summary suspension is an appropriate action;

(b) Give an oral or written notice of the alleged misconduct and violation(s) to the student;

(c) Give an oral or written explanation of the evidence in support of the charge(s) to the student;

(d) Determine a time for the summary suspension proceeding to be held within (~~thirty-six hours~~) two working days;

(e) Give an oral or written notice of the time and place of the summary suspension proceeding before the vice-president; and

(f) Give an oral or written explanation of the summary suspension which may be imposed on the student.

(2) At the place and time designated for the summary suspension proceeding, the vice-president shall:

(a) Consider the evidence relating specifically to the probability of danger to the student, to others on the campus, or to property;

(b) Provide the student with an opportunity to show why continued presence on campus does not constitute a danger to the physical and emotional well being of self or others, or a danger to property;

(c) Give immediate oral notice of the decision to the student to be followed by written notice; and

(d) If summary suspension is warranted, summarily suspend the student for no more than fifteen working days with a student conduct council proceeding of the allegations to have commenced by the end of the suspension period.

(3) If a student has been instructed by the vice-president to appear for summary suspension proceedings and then fails to appear at the time designated, the vice-president may suspend the student from the university, and shall give written notice of suspension to the student at the last address of record on file with the university.

(4) During the period of summary suspension, the suspended student shall not enter the campus of the university

other than to meet with the vice-president. However, the vice-president may grant the student special permission for the express purpose of meeting with faculty, staff, or students in preparation for a proceeding before the student conduct council.

WSR 08-17-076
PROPOSED RULES
DEPARTMENT OF HEALTH
 [Filed August 19, 2008, 11:50 a.m.]

Supplemental Notice to WSR 08-12-105.

Preproposal statement of inquiry was filed as WSR 07-17-170.

Title of Rule and Other Identifying Information: Repealing WAC 246-310-262 Nonemergent interventional cardiology standards; adding new sections WAC 246-310-700 Adult PCI—Purpose and applicability, 246-310-705 PCI definitions, 246-310-710 Concurrent review, 246-310-715 General requirements, 246-310-720 Hospital volume standards, 246-310-725 Physician volume standards, 246-310-730 Staffing requirements, 246-310-735 Partnering agreements, 246-310-740 Quality assurance, 246-310-745 Need forecasting methodology, 246-310-750 Tiebreaker, and 246-310-755 Ongoing compliance with standards.

Hearing Location(s): Department of Health, Point Plaza East Conference Center, 310 Israel Road S.E., Tumwater, WA 98502, on September 30, 2008, at 1:30 p.m.

Date of Intended Adoption: October 6, 2008.

Submit Written Comments to: Yvette Fox, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by September 30, 2008.

Assistance for Persons with Disabilities: Contact Yvette Fox by September 19, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 440, Laws of 2007 (SHB 2304) requires the department of health to adopt rules establishing criteria for the issuance of a certificate of need for the performance of elective coronary interventions at hospitals that do not otherwise provide on-site cardiac surgery. These proposed changes amend the original proposed language and include: Increasing the number of planning areas from twelve to fourteen (WAC 246-310-705); increasing the planning horizon from three years to five years (WAC 246-310-745); and changing the definition of "geographic access" to mean the facility that is the most statute miles from an existing facility that is authorized to provide PCI procedures (WAC 246-310-750). The proposed rules will help maintain quality of care, cost containment and overall health system viability.

Reasons Supporting Proposal: Repealing WAC 246-310-262 Nonemergent interventional cardiology standards.

The proposed rules are required by chapter 440, Laws of 2007 (SHB 2304). As required by statute, the department considered and used many of the recommendations of a legislatively required independent, evidence-based review of the circumstances under which elective percutaneous coronary interventions should be allowed in Washington in hospitals

that do not otherwise provide on-site cardiac surgery. The department also considered public comment from a public hearing held on July 8, 2008, and made changes to the original proposal.

WAC 246-310-705 Planning areas. After receiving public comment regarding the growing populations within some of the proposed twelve planning areas, the department reevaluated the criteria used for developing the planning areas and considered population increases within the planning areas. As a result of this evaluation, the department is proposing the addition of two new planning areas, bringing the total number of planning areas to fourteen. In the original proposal, Skagit, Island, San Juan and Whatcom counties were all in one planning area. Pierce County was a single planning area. The original proposal was amended based on population and other criteria and includes Skagit, Island, and San Juan counties as a separate planning area from Whatcom County. Population and other criteria used also supported creating two planning areas within Pierce County that divided the county into an east and west planning area. This was supported by both the total county population and the projected growth of these counties.

WAC 246-310-745 Need forecasting methodology. Based on public comment, that a planning horizon of three years would realistically project only one year past the start of a new program, the program agrees a five-year projection period is more appropriate. Projecting five-year results in filling a need that would be just over three years after a program would start.

WAC 246-310-750 Tiebreaker. Based on public comment that the tiebreaker language needed to be modified in order to support the objective of improving geographic access, the department made the following changes: (1) Adding "statute miles" in the definition of geographic access clarifies the method the department will use to measure distances between facilities; and (2) removing "within the planning area" in the definition of geographic access was necessary to properly allow all nearby facilities to be measured. These two changes to the tiebreaker section more accurately define the process used to determine improving geographic access.

Statutory Authority for Adoption: Chapter 440, Laws of 2007 (SHB 2304) codified as RCW 70.38.128.

Statute Being Implemented: Chapter 440, Laws of 2007 (SHB 2304) codified as RCW 70.38.128.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Bart Eggen, 310 Israel Road, Tumwater, WA 98502, (360) 236-2960; and Enforcement: Steven Saxe, 310 Israel Road, Tumwater, WA 98502, (360) 236-2902.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Per chapter 19.85 RCW no small business economic impact statement is required for rules that do not impose more than minor costs on small businesses within an industry affected by the rule. The proposed rules do not impact small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Yvette Fox, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-2928, fax (360) 236-2901, e-mail yvette.fox@doh.wa.gov.

August 19, 2008
 Mary C. Selecky
 Secretary

NEW SECTION

WAC 246-310-700 Adult elective percutaneous coronary interventions (PCI) without on-site cardiac surgery. Purpose and applicability of chapter. Adult elective percutaneous coronary interventions are tertiary services as listed in WAC 246-310-020. To be granted a certificate of need, an adult elective PCI program must meet the standards in this section in addition to applicable review criteria in WAC 246-310-210, 246-310-220, 246-310-230, and 246-310-240. This chapter is adopted by the Washington state department of health to implement chapter 70.38 RCW and establish minimum requirements for obtaining a certificate of need and operating an elective PCI program.

NEW SECTION

WAC 246-310-705 PCI definitions. For the purposes of this chapter and chapter 70.38 RCW, the words and phrases below will have the following meanings unless the context clearly indicates otherwise:

- (1) "Concurrent review" the process by which applications competing to provide services in the same planning area are reviewed simultaneously by the department. The department compares the applications to one another and these rules.
- (2) "Elective" one performed on a patient with cardiac function that has been stable in the days or weeks prior to the operation. Elective cases are usually scheduled at least one day prior to the surgical procedure.
- (3) "Emergent" if a patient needs immediate PCI because, in the treating physician's best clinical judgment, delay would result in undue harm or risk to the patient, the situation is "emergent."
- (4) "Percutaneous coronary interventions (PCI)" invasive but nonsurgical mechanical procedures and devices that are used by cardiologists for the revascularization of obstructed coronary arteries. These interventions include, but are not limited to:
 - (a) Bare and drug-eluting stent implantation;
 - (b) Percutaneous transluminal coronary angioplasty (PTCA);
 - (c) Cutting balloon atherectomy;
 - (d) Rotational atherectomy;
 - (e) Directional atherectomy;
 - (f) Excimer laser angioplasty;
 - (g) Extractional thrombectomy.
- (5) "PCI planning area" each individual geographic area designated by the department for which adult elective PCI program need projections are calculated. For purposes of

adult elective PCI projections, planning area and service area have the same meaning. The following table establishes PCI planning areas for Washington state:

Planning Areas: Planning areas that utilize zip codes will be administratively updated upon a change by the United States Post Office, and are available upon request.	
1.	Adams, Ferry, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Whitman, Asotin
2.	Benton, Columbia, Franklin, Garfield, Walla Walla
3.	Chelan, Douglas, Okanogan
4.	Kittitas, Yakima, Klickitat East (98620, 99356, 99322)
5.	Clark, Cowlitz, Skamania, Wahkiakum, Klickitat West (98650, 98619, 98672, 98602, 98628, 98635, 98617, 98613)
6.	Grays Harbor, Lewis, Mason, Pacific, Thurston
7.	Pierce East (98304, 98321, 98323, 98328, 98330, 98338, 98360, 98371, 98372, 98373, 98374, 98375, 98387, 98390, 98391, 98443, 98445, 98446, 98580)
8.	Pierce West (98303, 98327, 98329, 98332, 98333, 98335, 98349, 98351, 98354, 98388, 98394, 98402, 98403, 98404, 98405, 98406, 98407, 98408, 98409, 98416, 98418, 98421, 98422, 98424, 98430, 98433, 98438, 98439, 98444, 98447, 98465, 98466, 98467, 98498, 98499)
9.	King East (98001, 98002, 98003, 98004, 98005, 98006, 98007, 98008, 98010, 98011, 98014, 98019, 98022, 98023, 98024, 98027, 98028, 98029, 98030, 98031, 98032, 98033, 98034, 98038, 98039, 98042, 98045, 98047, 98051, 98052, 98053, 98055, 98056, 98057, 98058, 98059, 98065, 98072, 98074, 98075, 98077, 98092, 98224, 98288)
10.	King West (98040, 98070, 98101, 98102, 98103, 98104, 98105, 98106, 98107, 98108, 98109, 98112, 98115, 98116, 98117, 98118, 98119, 98121, 98122, 98125, 98126, 98133, 98134, 98136, 98144, 98146, 98148, 98155, 98158, 98166, 98168, 98177, 98178, 98188, 98195, 98198, 98199)
11.	Snohomish
12.	Skagit, San Juan, Island
13.	Kitsap, Jefferson, Clallam
14.	Whatcom

NEW SECTION

WAC 246-310-710 Concurrent review. The department shall review new adult elective percutaneous coronary intervention (PCI) services using the concurrent review cycle according to the following table:

Concurrent Review Cycle:

Application Submission Period	Letters of Intent Due	First working day through last working day of November of each year.	
	Receipt of Initial Application	First working day through last working day of December of each year.	
	End of Screening Period	Last working day of January of each year.	
	Applicant Response	Last working day of February of each year.	
Department Action	Beginning of Review Preparation	March 1 through March 15	
Application Review Period	Public Comment Period (includes public hearing if requested)	60-Day Public Comment Period	Begins March 16 of each year or the first working day after March 16.
	Rebuttal Period	30-Day Rebuttal period	Applicant and affected party response to public comment.
	Ex parte Period	45-Day Ex parte period	Department evaluation and decision.

(1) The department will notify applicants fifteen days prior to the scheduled decision date if it is unable to meet the deadline for making a decision on the application. In that event, the department will establish and commit to a new decision date.

(2) The department will not accept new applications for a planning area if there are any pending applications in that planning area filed under a previous concurrent review cycle or applications submitted prior to the effective date of these rules that affect any of the new planning areas, unless the department has not made a decision on the pending applications within the review timelines of nine months for a concurrent review and six months for a regular review.

(3) The department may convert the review of an application that was initially submitted under a concurrent review cycle to a regular review process if the department determines that the application does not compete with another application.

NEW SECTION

WAC 246-310-715 General requirements. The applicant hospital must comply with the following:

(1) Hospitals applying must submit a detailed analysis of the impact that their new adult elective PCI services will have on the Cardiovascular Disease and Interventional Cardiology Fellowship Training programs at the University of Washington with an opportunity for the university to respond. New programs cannot reduce current volumes at the University of Washington fellowship training program.

(2) Applicant hospitals must submit a detailed analysis of the projected volume of adult elective PCIs that it anticipates it will perform in years one, two and three after it begins

operations. All new elective PCI programs are to be in compliance with the state of Washington annual PCI volume standards (three hundred) by the end of year three. The projected volumes must be sufficient to assure that all physicians working only at the applicant hospital will be able to meet volume standards of seventy-five PCIs per year. Inability to meet annual volume standards may result in a review of certificate of need approval (see WAC 246-310-755 - Ongoing compliance with standards).

(3) Applicant hospitals must submit a plan detailing how they will be able to effectively recruit and staff their new program with qualified nurses, catheterization laboratory technicians, and interventional cardiologists without negatively affecting existing staffing at PCI programs in the same planning area.

(4) Applicant hospitals must have one catheterization lab used primarily for cardiology. The lab must be a fully equipped cardiac catheterization laboratory with all appropriate devices, optimal digital imaging systems, life sustaining apparatus, intra-aortic balloon pump assist device (IABP), staffed by qualified, experienced nursing and technical staff with documented competencies in the treatment of acutely ill patients.

(5) Applicant hospitals must be prepared and staffed to perform emergent PCIs twenty-four hours per day, seven days per week in addition to the scheduled PCIs.

(6) If an existing CON approved heart surgery program relinquishes the CON for heart surgery, the facility must apply for an amended CON to continue elective PCI services. The applicant must demonstrate ability to meet the elective PCI standards in this chapter.

NEW SECTION

WAC 246-310-720 Hospital volume standards. The applicant hospital must comply with the following:

(1) A minimum of three hundred adult PCIs per year must be performed in hospitals with an elective PCI program by the end of the third year of operation and each year thereafter.

(2) The state need forecasting method must project unmet volumes sufficient to establish one or more programs within a planning area.

(3) The department will not grant a certificate of need to a new program within the identified planning area unless all existing PCI programs in that planning area are meeting or exceeding the minimum volume standard.

NEW SECTION

WAC 246-310-725 Physician volume standards. Physicians performing adult elective PCI procedures at the applying hospital must perform a minimum of seventy-five PCIs per year. Applicant hospitals must provide documentation that physicians performed seventy-five PCI procedures per year for the previous three years prior to the applicant's CON request.

NEW SECTION

WAC 246-310-730 Staffing requirements. The applicant hospital must comply with the following:

- (1) The hospital must have a sufficient number of properly credentialed physicians on staff so that both emergent and elective PCIs can be performed.
- (2) The applicant's catheterization laboratory must be staffed by a qualified, trained team of technicians experienced in interventional lab procedures.
- (3) Nursing staff should have coronary care unit experience and have demonstrated competency in operating PCI related technologies.
- (4) Staff should be capable of endotracheal intubation and ventilator management both on-site and during transfer if necessary.

NEW SECTION

WAC 246-310-735 Partnering agreements. The applicant hospital must have a signed written agreement with a hospital providing on-site cardiac surgery. This agreement will include, at minimum, provisions for:

- (1) Coordination between the nonsurgical hospital and surgical hospital's availability of surgical teams and operating rooms. This provision does not require the hospital with on-site surgical services to maintain an available surgical suite twenty-four hours, seven days a week.
- (2) The backup surgical hospital providing cardiac surgery during all hours that elective PCIs are being performed at the hospital without on-site surgery.
- (3) All clinical data, including images and videos, being transferred with the patient to the backup surgical hospital.
- (4) Communication between the physician(s) performing the elective PCI and the backup hospital cardiac surgeon(s) regarding the clinical reasons for urgent transfer and the clinical condition of the patient.
- (5) All referred patients being accepted by the backup surgical hospital.
- (6) The hospital providing a mode of emergency transport. The hospital must have a signed transportation agreement with a vendor who will expeditiously transport by air or land all patients who experience complications during elective PCIs that require transfer to a backup hospital with on-site cardiac surgery.
- (7) Emergency transportation beginning within less than twenty minutes of the initial identification of a complication.
- (8) Emergency transport staff having the necessary qualifications. Staff must be advanced cardiac life support (ACLS) certified and have the skills, experience, and equipment to monitor and treat the patient en route and to manage an intra-aortic balloon pump (IABP).
- (9) The hospital documenting the transportation time from the decision to transfer the patient with an elective PCI complication to arrival in the operating room of the backup hospital. Transportation time must be less than one hundred twenty minutes.
- (10) No less than two annual timed emergency transportation drills with outcomes reported to the hospital's quality assurance program.

(11) Patients signing informed consents for adult elective (and emergent) PCIs. Consent forms must explicitly communicate to the patients that the intervention is being performed without on-site surgery backup and address risks related to transfer, the risk of urgent surgery, and the established emergency transfer agreements.

(12) Conferences between representatives from the heart surgery program(s) and the elective coronary intervention program. These conferences must be held at least quarterly, in which a significant number of preoperative and post-operative cases are reviewed, including all transport cases.

(13) Addressing peak volume periods (such as joint agreements with other programs, the capacity to temporarily increase staffing, etc.).

NEW SECTION

WAC 246-310-740 Quality assurance. The applying hospital will submit a written quality assurance/quality improvement plan specific to the elective PCI program as part of their application. At minimum, the plan will include:

- (1) A process for ongoing review of the outcomes of adult elective PCIs. Outcomes should be benchmarked against state or national quality of care indicators for elective PCIs.
- (2) A system for patient selection that will result in outcomes that are equal to or better than the benchmark standards in the applicant's plan.
- (3) A process for formalized case reviews with partnering surgical backup hospital(s) of preoperative and post-operative elective PCI cases, which at minimum includes all transferred cases.
- (4) Provision for the hospital's cardiac catheterization laboratory and elective PCI program reporting requested information to the department of health or to the designated entity that the department requires information to be reported. The department of health does not intend to require duplicative reporting of information.

NEW SECTION

WAC 246-310-745 Need forecasting methodology. For the purposes of the need forecasting method in this section, the following terms have the following specific meanings:

- (1) "Base year" the most recent calendar year for which December 31 data is available as of the first day of the application submission period from the DOH CHARS reports or successor reports.
- (2) "Current capacity" a planning area's current capacity for PCIs equals the sum of the base year PCIs performed on planning area residents (persons fifteen years of age and older) at each hospital with an approved adult elective PCI program or a department grandfathered program within the planning area. In those planning areas where a new program has operated less than three years, the volume of that hospital will be measured as the greater of:
 - (a) The actual volume; or
 - (b) The minimum volume standard for an elective PCI program established in WAC 246-310-720.
- (3) "Forecast year" the fifth year after the base year.

(4) "Percutaneous coronary interventions" means cases as defined by diagnosis related groups (DRGs) as developed under the Centers for Medicare and Medicaid Services (CMS) contract that describe catheter-based interventions involving the coronary arteries and great arteries of the chest. All pediatric catheter-based therapeutic and diagnostic interventions performed on persons fourteen years of age and younger are excluded. The department will update the list of DRGs administratively to reflect future revisions made by CMS to the DRG to be considered in certificate of need definitions, analyses, and decisions. The DRGs for calendar year 2008 applications will be DRGs reported in 2007, which include DRGs 518, 555, 556, 557 and 558.

(5) "Use rate" PCI use rate equals the number of PCIs performed on the residents of a planning area (persons fifteen years of age and older). The use rate is defined per one thousand persons.

(6) "Grandfathered programs" means those hospitals operating a certificate of need approved interventional cardiac catheterization program or heart surgery program prior to the effective date of these rules, which continues to operate a heart surgery program. For hospitals with jointly operated programs, only the hospital where the program's procedures were approved to be performed will be grandfathered.

(7) The data sources for adult elective PCI case volumes include:

(a) The CHARS data from the DOH, office of hospital and patient data;

(b) DOH office of certificate of need survey data as compiled, by planning area, from hospital providers of PCIs to state residents (including patient origin information, i.e., patients' zip codes and a delineation of whether the PCI was performed on an inpatient or outpatient basis); and

(c) COAP data from the foundation for health care quality, as provided by the department.

(8) The data source for population estimates and forecasts is the office of financial management medium growth series population trend reports or if not available for the planning area, other received population data published by well-recognized demographic firms.

(9) The data used for evaluating applications submitted during the concurrent review cycle will be the most recent year end data as reported by CHARS or the most recent survey data available through DOH or COAP data for the appropriate application year. The forecasts for demand and supply will be for five years following the base year. The base year is the latest year that full calendar year data is available from CHARS. In recognition that CHARS does not currently provide outpatient volume statistics but is patient origin-specific and COAP does provide outpatient PCI case volumes by hospitals but is not currently patient origin-specific, the department will make available PCI statistics from its hospital survey data, as necessary, to bridge the current outpatient patient origin-specific data shortfall with CHARS and COAP.

(10) Numeric methodology:

Step 1. Compute each planning area's PCI use rate calculated for persons fifteen years of age and older, including inpatient and outpatient PCI case counts.

(a) Take the total planning area's base year population residents fifteen years of age and older and divide by one thousand.

(b) Divide the total number of PCIs performed on the planning area residents fifteen years of age and older by the result of Step 1 (a). This number represents the base year PCI use rate per thousand.

Step 2. Forecasting the demand for PCIs to be performed on the residents of the planning area.

(a) Take the planning area's use rate calculated in Step 1 (b) and multiply by the planning area's corresponding forecast year population of residents over fifteen years of age.

Step 3. Compute the planning area's current capacity.

(a) Identify all inpatient procedures at CON approved hospitals within the planning area using CHARS data.

(b) Identify all outpatient procedures at CON approved hospitals within the planning area using department survey data.

(c) An alternative to (b) is to calculate the difference between total PCI procedures by CON approved hospitals within the planning area reported to COAP and CHARS. The difference represents outpatient procedures.

(d) Sum the results of (a) and (b) or sum the results of (a) and (c). This total is the planning area's current capacity which is assumed to remain constant over the forecast period.

Step 4. Calculate the net need for additional adult elective PCI procedures by subtracting the calculated capacity in Step 3 from the forecasted demand in step 2. If net need for procedures is less than three hundred, no new program shall be approved.

Step 5. If Step 4 is greater than three hundred, calculate the need for additional programs.

(a) Divide the number of projected procedures from Step 4 by three hundred.

(b) Round the results down to identify the number of needed programs. (For example: $575/300 = 1.916$ or 1 program)

NEW SECTION

WAC 246-310-750 Tiebreaker. If two or more hospitals are competing to meet the same forecasted net need, the department shall consider the most improvement in geographic access. Geographic access will mean the facility that is the most statute miles from an existing facility that is authorized to provide PCI procedures.

NEW SECTION

WAC 246-310-755 Ongoing compliance with standards. If a certificate of need (CON) is issued, it will be conditioned to require ongoing compliance with the CON standards. Failure to meet the standards may be grounds for revocation or suspension of a hospital's CON, or other appropriate licensing or certification actions.

(1) Hospitals granted a certificate of need have three years from the date of initiating the program to meet the program procedure volume standards.

(2) These standards should be reevaluated every three years.

(3) Hospitals granted a certificate of need must meet QA standards in WAC 246-310-740.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-310-262 Nonemergent interventional cardiology standard.

WSR 08-17-077
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed August 19, 2008, 11:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-22-098.

Title of Rule and Other Identifying Information: Chapter 296-46B WAC, Electrical safety standards, administration, and installation.

Hearing Location(s): Department of Labor and Industries, Tukwila Service Location, 12806 Gateway Drive, Tukwila, WA, on September 23, 2008, at 10:00 a.m.; at the Department of Labor and Industries, Spokane Service Location, 901 North Monroe Street, Suite 100, Spokane, WA, on September 25, 2008, at 2:00 p.m.; and at the Department of Labor and Industries, 7273 Linderson Way S.W., Room S117, Tumwater, WA, on September 29, 2008, at 9:00 a.m.

Date of Intended Adoption: November 4, 2008.

Submit Written Comments to: Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by September 29, 2008.

Assistance for Persons with Disabilities: Contact Sally Elliott by September 1, 2008, at yous235@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department has reviewed the electrical rule for additions and revisions. The electrical rules are reviewed on a regular basis to ensure the rules are consistent with the national consensus standards, industry practice, clarify the rules, and make fee changes.

The rule making will:

- Adopt the 2008 National Electrical Code (NEC) and other more current electrical standards.
- Include modifications of the NEC that are consistent with electrical installation methods in Washington.
- Make minor typographical and grammatical changes to correct errors and references.
- Modify the approval process for industrial equipment to make it more usable for our customers.
- Provide clarification to current language and intent in chapter 19.28 RCW and the rule to be consistent with Department of Labor and Industries' (L&I) interpretation of the statute and the current rule.

- Return the cost of electrical permits to their previous levels, before the temporary 5% fee reduction.
- Return the cost of electrical licenses to their previous levels, before the temporary 5% fee reduction for those licenses that are processed manually.
- Reformat and relocate certain technical sections to allow easier adoption by city jurisdictions.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.281, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551.

Statute Being Implemented: Chapter 19.28 RCW.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Ron Fuller, Tumwater, Washington, (360) 902-5249; Implementation and Enforcement: Patrick Woods, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is specifically exempt from the small business economic impact statement requirement because since the proposed changes will clarify rule language without changing its effect (see RCW 34.05-328 (5)(b)(iv)).

A cost-benefit analysis is not required under RCW 34.05.328. This rule is specifically exempt from the cost-benefit analysis requirement because the proposed changes are exempted by law since the proposed changes will clarify rule language without changing its effect (see RCW 34.05-310 (4)(d)).

August 19, 2008
Judy Schurke
Director

PART A
NEC INSTALLATION AMENDMENTS, STANDARDS,
INSPECTIONS, AND DEFINITIONS

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-010 General. Adopted standards(~~inspectors~~ ~~city inspection~~ ~~variance~~)).

(1) The ((2005)) 2008 edition of the National Electrical Code (NFPA 70 - ((2005)) 2008) including Annex A, B, and C; the ((2003)) 2007 edition of standard for the Installation of Stationary Pumps for Fire Protection (NFPA 20 - ((2003)) 2007); the ((2002)) 2005 edition of standard for Emergency and Standby Power Systems (NFPA 110 - ((2002)) 2005); Commercial Building Telecommunications Cabling Standard (ANSI/TIA/EIA 568-B.1-(~~May 2001~~) June 2002 including Annex 1 through 5); Commercial Building Standard for Telecommunications Pathway and Spaces (ANSI/TIA/EIA 569-A-7 December 2001 including Annex 1 through 4); Commercial Building Grounding and Bonding Requirements for Telecommunications (ANSI/TIA/EIA 607 - A - 2002); Residential Telecommunications Cable Standard

(ANSI/TIA/EIA 570-((A-December 2001) B-2004); American Railroad Engineering and Maintenance of Way Association - 2005 Communications and Signal Manual; and the National Electrical Safety Code (NESC C2-((2002)) 2007 excluding Appendixes A and B) are hereby adopted by reference as part of this chapter. Other codes, manuals, and reference works referred to in this chapter are available for inspection and review in the Olympia office of the electrical section of the department during business hours.

The requirements of this chapter will be observed where there is any conflict between this chapter and the National Electrical Code (NFPA 70), Centrifugal Fire Pumps (NFPA 20), the Emergency and Standby Power Systems (NFPA 110), ANSI/TIA/EIA 568-B, ANSI/TIA/EIA 569-A, ANSI/TIA/EIA 607, ANSI/TIA/EIA 570, or the NESC C2-((2002)) 2007.

The National Electrical Code will be followed where there is any conflict between standard for Installation of Stationary Pumps for Fire Protection (NFPA 20), standard for Emergency and Standby Power Systems (NFPA 110), ANSI/TIA/EIA 568-B, ANSI/TIA/EIA 569-A, ANSI/TIA/EIA 607, ANSI/TIA/EIA 570-B, or the NESC C2-((2002)) and the National Electrical Code (NFPA 70).

Inspections - general.

(2) Electrical inspectors will give information as to the interpretation or application of the standards in this chapter, but will not lay out work or act as consultants for contractors, owners, or users.

(3) A variance from the electrical installation requirements of chapter 19.28 RCW or this chapter may be granted by the department or the city that has electrical inspection jurisdiction when it is assured that equivalent objectives can be achieved by establishing and maintaining effective safety.

(a) Any electrical permit holder may request a variance.

(b) The permit holder must make the request in writing, using a form provided by the department, to the chief electrical inspector or to the city that has electrical inspection jurisdiction. The request must include:

(i) A description of the installation as installed or proposed;

(ii) A detailed list of the applicable code violations;

(iii) A detailed list of safety violations;

(iv) A description of the proposal for meeting equivalent objectives for code and/or safety violations; and

(v) Appropriate variance application fee as listed in chapter 296-46B WAC, Part C.

(4) Electrical wiring or equipment subject to this chapter must be sufficiently accessible, at the time of inspection, to allow the inspector to visually inspect the installation to verify conformance with the NEC and any other electrical requirements of this chapter.

(5) Cables or raceways, fished according to the NEC, do not require visual inspection.

(6) All required equipment grounding conductors installed in concealed cable or flexible conduit systems must be completely installed and made up at the time of the rough-in cover inspection.

(7) The installation of all structural elements and mechanical systems (e.g., framing, plumbing, ducting, etc.) must be complete in the area(s) where electrical inspection is

requested. Prior to completion of an exterior wall cover inspection, either:

(a) The exterior shear panel/sheathing nail inspection must be completed by the building code inspector; or

(b) All wiring and device boxes must be a minimum of 63 mm (2 1/2") from the exterior surface of the framing member; or

(c) All wiring and device boxes must be protected by a steel plate a minimum of 1.6 mm (1/16") thick and of appropriate width and height installed to cover the area of the wiring or box.

(8) In order to meet the minimum electrical safety standards for installations, all materials, devices, appliances, and equipment, not exempted in chapter 19.28 RCW, must conform to applicable electrical product standards recognized by the department, be listed, or field evaluated. For any equipment that requires an amusement operating permit under chapter 67.42 RCW, the operating permit is prima facie evidence of an appropriate standard. Other than as authorized by the chief electrical inspector or a city authorized to do electrical inspection, equipment must not be energized until such standards are met.

(9) The state department of transportation is recognized as the inspection authority for telecommunications systems installations within the rights of way of state highways provided the department of transportation maintains and enforces an equal, higher or better standard of construction, and of materials, devices, appliances, and equipment than is required for telecommunications systems installations by chapter 19.28 RCW and this chapter.

Inspection move on buildings and structures.

(10) All buildings or structures relocated into or within the state:

(a) Other than residential, wired inside the United States (U.S.) must be inspected to ensure compliance with current requirements of chapter 19.28 RCW and the rules developed by the department.

(b) Wired outside the U.S. or Canada must be inspected to ensure compliance with all current requirements of chapter 19.28 RCW and the rules developed by the department.

(11) Residential buildings or structures wired in the U.S., to NEC requirements, and moved into or within a county, city, or town must be inspected to ensure compliance with the NEC requirements in effect at the time and place the original wiring was made. The building or structure must be inspected to ensure compliance with all current requirements of chapter 19.28 RCW and the rules developed by the department if:

(a) The original occupancy classification of the building or structure is changed as a result of the move; or

(b) The building or structure has been substantially remodeled or rehabilitated as a result of the move.

(12) Residential buildings or structures wired in Canada to Canadian Electrical Code (CEC) standards and moved into or within a county, city, or town, must be inspected to ensure compliance with the following minimum safety requirements:

(a) Service, service grounding, and service bonding must comply with the current chapter 19.28 RCW and rules adopted by the department.

(b) Canadian Standards Association (CSA) listed Type NMD cable is allowed with the following qualifications:

(i) CSA listed Type NMD cable, American Wire Gauge #10 and smaller installed after 1964 utilizing an equipment grounding conductor smaller than the phase conductors, must be:

(A) Replaced with a cable utilizing a full-size equipment grounding conductor; or

(B) Protected by a ground fault circuit interrupter protection device.

(ii) CSA listed Type NMD cable, #8 AWG and larger, must:

(A) Utilize an equipment grounding conductor sized according to the requirements of the NEC in effect at the time of the installation;

(B) Be protected by a ground fault circuit interrupter protection device; or

(C) Be replaced.

(c) Other types of wiring and cable must be:

(i) Replaced with wiring listed or field evaluated in accordance with U.S. standards by a laboratory approved by the department; or

(ii) Protected by a ground fault circuit interrupter protection device and arc fault circuit protection device.

(d) Equipment, other than wiring or panelboards, manufactured and installed prior to 1997 must be listed and identified by laboratory labels approved by the department or CSA labels.

(e) All panelboards must be listed and identified by testing laboratory labels approved by the department with the following qualifications:

(i) CSA listed panelboards labeled "suitable for use as service equipment" will be considered to be approved as "suitable for use only as service equipment."

(ii) CSA listed panelboards used as panelboards as described in the NEC, must meet all current requirements of the NEC and this chapter.

(f) Any wiring or panelboards replaced or changed as a result of the move must meet current requirements of chapter 19.28 RCW and this chapter.

(g) The location, type, and ground fault circuit interrupter protection of receptacles and equipment in a bathroom, kitchen, basement, garage, or outdoor area must meet the Washington requirements in effect at the time the wiring was installed.

(h) 4, 15-ampere, kitchen small appliance circuits will be accepted in lieu of 2, 20-ampere, kitchen small appliance circuits. Receptacles will not be required to be added on kitchen peninsular or island counters.

(i) Spacing requirements for all other receptacles must meet the Washington requirements in effect at the time the wiring was installed.

(j) Receptacles installed above baseboard or fixed wall space heaters must be removed and the outlet box covered with a blank cover. The receptacle is required to be relocated as closely as possible to the existing location.

(k) Lighting outlet and switch locations must meet the Washington requirements in effect at the time the wiring was installed.

(l) Dedicated 20-ampere small appliance circuits are not required in dining rooms.

(m) Electric water heater branch circuits must be adequate for the load.

(n) The location, type, and circuit protection of feeders must meet the Washington requirements in effect at the time the wiring was installed.

Wiring methods for designated building occupancies.

(13) Wiring methods, equipment, and devices for health or personal care, educational and institutional facilities as defined or classified in this chapter and for places of assembly for one hundred or more persons must comply with Tables 010-1 and 010-2 of this chapter and the notes thereto. The local building authority will determine the occupant load of places of assembly.

(14) Listed tamper-resistant receptacles are required in all licensed day care centers, all licensed children group care facilities, and psychiatric patient care facilities where accessible to children five years of age and under. Listed tamper-resistant receptacles are required in psychiatric patient care facilities where accessible to psychiatric patients over five years of age.

<u>Notes to Tables 010-1 and 010-2.</u>
<u>1. Wiring methods in accordance with the NEC unless otherwise noted.</u>
<u>2. Metallic or nonmetallic raceways, MI, MC, or AC cable, except that in places of assembly located within educational or institutional facilities, wiring methods must conform to NEC 518.4(A). Places of assembly located within educational or institutional facilities may not be wired according to NEC 518.4 (B) or (C).</u>
<u>3. Limited energy systems may use wiring methods in accordance with the NEC.</u>
<u>4. Generator systems may be installed and wired per NEC 517.</u>

Table 010-1 Health or Personal Care Facilities

<u>Health or Personal Care Facility Type⁽¹⁾</u>	
<u>Hospital</u>	
<u>Nursing home unit or long-term care unit</u>	
<u>Boarding home</u>	
<u>Assisted living facility⁽⁴⁾</u>	
<u>Private alcoholism hospital</u>	
<u>Alcoholism treatment facility</u>	
<u>Private psychiatric hospital</u>	
<u>Maternity home</u>	
<u>Birth center or childbirth center</u>	
<u>Ambulatory surgery facility</u>	
<u>Hospice care center</u>	
<u>Renal hemodialysis clinic</u>	
<u>Medical, dental, and chiropractic clinic</u>	

Table 010-1 Health or Personal Care Facilities

Health or Personal Care Facility Type⁽¹⁾	
Residential treatment facility for psychiatrically impaired children and youth	
Adult residential rehabilitation center	
Group care facility	

Table 010-2 Educational and Institutional Facilities, Places of Assembly or Other Facilities

Educational, Institutional or Other Facility Types	
Educational ⁽²⁾⁽³⁾	
Institutional ⁽²⁾⁽³⁾	
Places of Assembly for 100 or more persons ⁽¹⁾	
Child day care center ⁽¹⁾	
School-age child care center ⁽¹⁾	
Family child day care home, family child care home, or child day care facility ⁽¹⁾	

Traffic management systems.

(15) The department or city authorized to do electrical inspections will perform the electrical inspection and acceptance of traffic management systems within its jurisdiction. A traffic management system includes:

- (a) Traffic illumination systems;
- (b) Traffic signal systems;
- (c) Traffic monitoring systems;
- (d) The electrical service cabinet and all related components and equipment installed on the load side of the service cabinet supplying electrical power to the traffic management system; and
- (e) Signalization system(s) necessary for the operation of a light rail system.

A traffic management system can provide signalization for controlling vehicular traffic, pedestrian traffic, or rolling stock.

(16) The department or city authorized to do electrical inspections recognizes that traffic signal conductors, pole and bracket cables, signal displays, traffic signal controllers/cabinets and associated components used in traffic management systems are acceptable for the purpose of meeting the requirements of chapter 19.28 RCW provided they conform with the following standards or are listed on the Washington state department of transportation (WSDOT) qualified products list.

- (a) WSDOT/APWA standard specifications and plans;
- (b) WSDOT *Design Manual*;
- (c) International Municipal Signal Association (IMSA);
- (d) National Electrical Manufacturer's Association (NEMA);
- (e) Federal Standards 170/Controller Cabinets;
- (f) Manual for *Uniform Road, Bridge, and Municipal Construction*;
- (g) Institute of Transportation Engineers (ITE); or

(h) Manual of *Uniform Traffic Control Devices (MUTCD)*.

(17) Associated induction detection loop or similar circuits will be accepted by the department or city authorized to do electrical inspections without inspection.

(18) For the licensing requirements of chapter 19.28 RCW, jurisdictions will be considered owners of traffic management systems when doing electrical work for another jurisdiction(s) under a valid interlocal agreement, as permitted by chapter 39.34 RCW. Interlocal agreements for traffic management systems must be filed with the department or city authorized to do electrical inspections prior to work being performed for this provision to apply.

(19) Jurisdictions, with an established electrical inspection authority, and WSDOT may perform electrical inspection on their rights of way for each other by interlocal agreement. They may not perform electrical inspection on other rights of way except as allowed in chapter 19.28 or 39.34 RCW.

(20) Underground installations.

(a) In other than open trenching, raceways will be considered "fished" according to the NEC and do not require visual inspection.

(b) The department or city authorized to do electrical inspections will conduct inspections in open trenching within its jurisdiction. The electrical work permit purchaser must coordinate the electrical inspection. A written request (e.g., letter, e-mail, fax, etc.) for inspection, made to the department or city authorized to do electrical inspections office having the responsibility to perform the inspection, must be made a minimum of two working days prior to the day inspection is needed (e.g., two working days 10:00 a.m. Tuesday request for a 10:00 a.m. Thursday inspection, excluding holidays and weekends).

If, after proper written request, the department or city authorized to do electrical inspections fails to make an electrical inspection at the time requested, underground conduit may be covered after inspection by the local government jurisdiction's project inspector/designee. Written documentation of a local government jurisdiction inspection must be provided to the department or city authorized to do electrical inspections when requested. Written documentation will include:

- (i) Date and time of inspection;
- (ii) Location;
- (iii) Installing firm;
- (iv) Owner;
- (v) Type of conduit;
- (vi) Size of conduit;
- (vii) Depth of conduit; and
- (viii) Project inspector/designee name and contact information.

(21) Identification of traffic management system components. Local government jurisdictions or WSDOT may act as the certifying authority for the safety evaluation of all components.

(a) An electrical service cabinet must contain only listed components. The electrical service cabinet enclosure is not required to be listed but will conform to the standards in subsection (22) of this section.

(b) The local government jurisdiction must identify, as acceptable, the controller cabinet or system component(s) with an identification plate. The identification plate must be located inside the cabinet and may be attached with adhesive.

(22) Conductors of different circuits in same cable, enclosure, or raceway. All traffic management system circuits will be permitted to occupy the same cable, enclosure, or raceway without regard to voltage characteristics, provided all conductors are insulated for the maximum voltage of any conductor in the cable, enclosure, or raceway.

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-100 General definitions. (1) All definitions listed in the National Electrical Code and chapter 19.28 RCW are recognized in this chapter unless other specific definitions are given in this chapter. The definitions in this section apply to all parts of this chapter. Some sections may have definitions specific to that section.

(2) "Accreditation" is a determination by the department that a laboratory meets the requirements of this chapter and is therefore authorized to evaluate electrical products that are for sale in the state of Washington.

(3) "Administrative law judge" means an administrative law judge (ALJ) appointed pursuant to chapter 34.12 RCW and serving in board proceedings pursuant to chapter 19.28 RCW and this chapter.

(4) "ANSI" means American National Standards Institute. Copies of ANSI standards are available from the National Conference of States on Building Codes and Standards, Inc.

(5) "Appeal" is a request for review of a department action by the board as authorized by chapter 19.28 RCW.

(6) "Appellant" means any person, firm, partnership, corporation, or other entity that has filed an appeal or request for board review.

(7) "Appliance" means household appliance.

(8) "ASTM" means the American Society for Testing and Materials. Copies of ASTM documents are available from ASTM International.

(9) "AWG" means American Wire Gauge.

(10) "Basement" means that portion of a building that is partly or completely below grade plane. A basement shall be considered as a story above grade plane and not a basement where the finished surface of the floor above the basement is:

(a) More ~~((that))~~ than 1829 mm (six feet) above grade plane;

(b) More than 1829 mm (six feet) above the finished ground level for more than 50% of the total building perimeter; or

(c) More than 3658 mm (twelve feet) above the finished ground level at any point. Also see "mezzanine" and "story."

(11) "Board" means the electrical board established and authorized under chapter 19.28 RCW.

(12) "Chapter" means chapter 296-46B WAC unless expressly used for separate reference.

(13) "Category list" is a list of nonspecific product types determined by the department.

(14) A "certified electrical product" is an electrical product to which a laboratory, accredited by the state of Washington, has the laboratory's certification mark attached.

(15) A "certification mark" is a specified laboratory label, symbol, or other identifying mark that indicates the manufacturer produced the product in compliance with appropriate standards or that the product has been tested for specific end uses.

(16) "Certificate of competency" includes the certificates of competency for master journeyman electrician, master specialty electrician, journeyman, and specialty electrician.

(17) A laboratory "certification program" is a specified set of testing, inspection, and quality assurance procedures, including appropriate implementing authority, regulating the evaluation of electrical products for certification marking by an electrical products certification laboratory.

(18) A "complete application" includes the submission of all appropriate fees, documentation, and forms.

(19) "Construction," for the purposes of chapter 19.28 RCW, means electrical construction.

(20) "Coordination (selective)" as defined in NEC 100 shall be determined and documented by a professional engineer registered under chapter 18.43 RCW.

(21) "Department" means the department of labor and industries of the state of Washington.

(22) "Director" means the director of the department, or the director's designee.

(23) "Egress - unobstructed (as applied to NEC 110.26 (C)(2)(a))" means an egress path that allows a worker to travel to the exit from any other area in the room containing the equipment described in NEC 110.26 (C)(2) without having to pass through that equipment's required working space.

(24) "Electrical equipment" includes electrical conductors, conduit, raceway, apparatus, materials, components, and other electrical equipment not exempted by RCW 19.28.006 (9). Any conduit/raceway of a type listed for electrical use is considered to be electrical equipment even if no wiring is installed in the conduit/raceway at the time of the conduit/raceway installation.

~~((24))~~ (25) An "electrical products certification laboratory" is a laboratory or firm accredited by the state of Washington to perform certification of electrical products.

~~((25))~~ (26) An "electrical products evaluation laboratory" is a laboratory or firm accredited by the state of Washington to perform on-site field evaluation of electrical products for safety.

~~((26) "Exit, and unobstructed (as applied to NEC 110.26 (C)(2)(a))" means an exit path that allows a worker to travel to the exit from any other area in the room containing the equipment described in NEC 110.26 (C)(2) without having to pass through that equipment's required working space.))~~

(27) "Field evaluated" means an electrical product to which a field evaluation mark is attached. Field evaluation must include job site inspection unless waived by the department, and may include component sampling and/or laboratory testing.

(28) "Field evaluation mark" is a specified laboratory label, symbol, or other identifying mark indicating the manufacturer produced the product in essential compliance with

appropriate standards or that the product has been evaluated for specific end uses.

(29) A "field evaluation program" is a specified set of testing, inspection, and quality assurance procedures, including appropriate implementing authority regulating the testing and evaluation of electrical products for field evaluation marking.

(30) The "filing" is the date the document is actually received in the office of the chief electrical inspector.

(31) "Final judgment" means any money that is owed to the department under this chapter, including fees and penalties, or any money that is owed to the department as a result of an individual's or contractor's unsuccessful appeal of a citation.

(32) "Fished wiring" is when cable or conduit is installed within the finished surfaces of an existing building or building structure (e.g., wall, floor or ceiling cavity).

(33) "Household appliance" means utilization equipment installed in a dwelling unit that is built in standardized sizes or types and is installed or connected as a unit to perform one or more functions such as cooking and other equipment installed in a kitchen, clothes drying, clothes washing, portable room air conditioning units and portable heaters, etc. Fixed electric space-heating equipment covered in NEC 424 (furnaces, baseboard and wall heaters, electric heat cable, etc.) and fixed air-conditioning/heat pump equipment (NEC 440) are not household appliances. Household appliance does not mean any utilization equipment that:

(a) Supplies electrical power, other than Class 2, to other utilization equipment; or

(b) Receives electrical power, other than Class 2, through other utilization equipment.

(34) HVAC/refrigeration specific definitions:

(a) "HVAC/refrigeration" means heating, ventilation, air conditioning, and refrigeration.

(b) "HVAC/refrigeration component" means electrical power and limited energy components within the "HVAC/refrigeration system," including, but not limited to: Pumps, compressors, motors, heating coils, controls, switches, thermostats, humidistats, low-voltage damper controls, outdoor sensing controls, outside air dampers, stand-alone duct smoke detectors, air monitoring devices, zone control valves and equipment for monitoring of HVAC/refrigeration control panels and low-voltage connections. This definition excludes equipment and components of non-"HVAC/refrigeration control systems."

(c) "HVAC/refrigeration control panel" means an enclosed, manufactured assembly of electrical components designed specifically for the control of a HVAC/refrigeration system. Line voltage equipment that has low voltage, NEC Class 2 control or monitoring components incidental to the designed purpose of the equipment is not an HVAC/refrigeration control panel (e.g., combination starters).

(d) "HVAC/refrigeration control system" means a network system regulating and/or monitoring a HVAC/refrigeration system. Equipment of a HVAC/refrigeration control system includes, but is not limited to: Control panels, data centers, relays, contactors, sensors, and cables related to the monitoring and control of a HVAC/refrigeration system(s).

(e) "HVAC/refrigeration equipment" means the central unit primary to the function of the "HVAC/refrigeration system." HVAC/refrigeration includes, but is not limited to: Heat pumps, swamp coolers, furnaces, compressor packages, and boilers.

(f) "HVAC/refrigeration system" means a system of HVAC/refrigeration: Wiring, equipment, and components integrated to generate, deliver, or control heated, cooled, filtered, refrigerated, or conditioned air. This definition excludes non-HVAC/refrigeration control systems (e.g., fire alarm systems, intercom systems, building energy management systems, and similar non-HVAC/refrigeration systems) (see Figure 920-1 and Figure 920-2).

(35) "IBC" means the International Building Code. Copies of the IBC are available from the International Code Council.

(36) An "individual" or "party" or "person" means an individual, firm, partnership, corporation, association, government subdivision or unit thereof, or other entity.

(37) An "installation" includes the act of installing, connecting, repairing, modifying, or otherwise performing work on an electrical system, component, equipment, or wire except as exempted by WAC 296-46B-925.

(38) An "identification plate" is a phenolic or metallic plate or other similar material engraved in block letters at least 1/4" (6 mm) high unless specifically required to be larger by this chapter, suitable for the environment and application. The letters and the background must be in contrasting colors. Screws, rivets, or methods specifically described in this chapter must be used to affix an identification plate to the equipment or enclosure.

(39) "License" means a license required under chapter 19.28 RCW.

(40) "Labeled" means an electrical product that bears a certification mark issued by a laboratory accredited by the state of Washington.

(41) A "laboratory" may be either an electrical product(s) certification laboratory or an electrical product(s) evaluation laboratory.

(42) A "laboratory operations control manual" is a document to establish laboratory operation procedures and may include a laboratory quality control manual.

(43) "Like-in-kind" means having similar characteristics such as voltage requirement, current draw, circuit overcurrent and short circuit characteristics, and function within the system and being in the same location. Like-in-kind also includes any equipment component authorized by the manufacturer as a suitable component replacement part.

(44) For the purpose of WAC 296-46B-940(6), a "line-man" is a person employed by a serving electrical utility or employed by a licensed general electrical contractor who carries, on their person, evidence that they:

(a) Have graduated from a department-approved line-man's apprenticeship course; or

(b) Are currently registered in a department-approved lineman's apprenticeship course and are working under the direct one hundred percent supervision of a journeyman electrician or a graduate of a lineman's apprenticeship course approved by the department. The training received in the lineman's apprenticeship program must include training in

applicable articles of the currently adopted National Electrical Code.

(45) "Listed" means equipment has been listed and identified by a laboratory approved by the state of Washington for the appropriate equipment standard per this chapter.

(46) "Low voltage" means:

(a) NEC, Class 1 power limited circuits at 30 volts maximum.

(b) NEC, Class 2 circuits powered by a Class 2 power supply as defined in NEC ((725.41)) 725.121(A).

(c) NEC, Class 3 circuits powered by a Class 3 power supply as defined in NEC ((725.41)) 725.121(A).

(d) Circuits of telecommunications systems as defined in chapter 19.28 RCW.

(47) "Mezzanine" is the intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than one-third of the area of the room or space in which the level or levels are located. Also see "basement" and "story."

(48) "NEC" means National Electrical Code. Copies of the NEC are available from the National Fire Protection Association.

(49) "NEMA" means National Electrical Manufacturer's Association. Copies of NEMA standards are available from the National Electrical Manufacturer's Association.

(50) "NESC" means National Electrical Safety Code. Copies of the NESC are available from the Institute of Electrical and Electronics Engineers, Inc.

(51) "NETA" means International Electrical Testing Association, Inc. Copies of the NETA standards and information are available from the International Electrical Testing Association, Inc.

(52) "NFPA" means the National Fire Protection Association. Copies of NFPA documents are available from the National Fire Protection Association.

(53) "NRTL" means Nationally Recognized Testing Laboratory accredited by the federal Occupational Safety and Health Administration (OSHA) after meeting the requirements of 29 CFR 1910.7.

(54) "Point of contact" (~~for utility work, means the point at which a customer's electrical system connects to the serving utility system~~) or "point of connection" means the service point.

(55) "Proceeding" means any matter regarding an appeal before the board including hearings before an administrative law judge.

(56) "Public area or square" is an area where the public has general, clear, and unrestricted access.

(57) A "quality control manual" is a document to maintain the quality control of the laboratory's method of operation. It consists of specified procedures and information for each test method responding to the requirements of the product standard. Specific information must be provided for portions of individual test methods when needed to comply with the standard's criteria or otherwise support the laboratory's operation.

(58) "RCW" means the Revised Code of Washington. Copies of electrical RCWs are available from the department and the office of the code reviser.

(59) "Readily accessible" means the definition as defined in NEC 100. In addition, it means that, except for keys, no tools or other devices are necessary to gain access (e.g., covers secured with screws, etc.).

(60) Service specific definitions replacing those found in NEC Article 100:

(a) "Service drop" means the overhead service conductors from the service point to the connection to the service-entrance conductors at the building or other structure.

(b) "Service-entrance conductors, overhead system" means the service conductors between the terminals of the service equipment and a point usually outside the building, clear of building walls, where joined by tap or splice to the service drop or service point.

(c) "Service-entrance conductors, underground system" means the service conductors between the terminals of the service equipment and the point of connection to the service lateral or service point. Where the service equipment is located outside the building walls, there may be no service-entrance conductors or they may be entirely outside the building.

(d) "Service lateral" means the underground service conductors from the service point to the point of connection to the service-entrance conductors in a terminal box, meter, or other enclosure. Where there is not a terminal box, meter, or other enclosure, the point of connection is the point of entrance of the service conductors into the building.

(61) A "stand-alone amplified sound or public address system" is a system that has distinct wiring and equipment for audio signal generation, recording, processing, amplification, and reproduction. This definition does not apply to telecommunications installations.

~~((60))~~ (62) "Service" or "served" means that as defined in RCW 34.05.010(19) when used in relation to department actions or proceedings.

~~((61))~~ (63) A "sign," when required by the NEC, for use as an identification method means "identification plate."

(64) "Story" is that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. Next above means vertically and not necessarily directly above. Also see "basement" and "mezzanine."

~~((62))~~ (65) "Structure," for the purposes of this chapter and in addition to the definition in the NEC, means something constructed either in the field or factory that is used or intended for supporting or sheltering any use or occupancy as defined by the IBC.

~~((63))~~ (66) A "telecommunications local service provider" is a regulated or unregulated (e.g., by the Federal Communications Commission or the utilities and transportation commission as a telephone or telecommunications provider) firm providing telecommunications service ahead of the telecommunications network demarcation point to an end-user's facilities.

~~((64))~~ (67) "TIA/EIA" means the Telecommunications Industries Association/Electronic Industries Association which publishes the TIA/EIA Telecommunications Building Wiring Standards. Standards and publications are adopted by TIA/EIA in accordance with the American National Standards Institute (ANSI) patent policy.

~~((65))~~ (68) A "training school" is a public community or technical college or not-for-profit nationally accredited technical or trade school licensed by the work force training and education coordinating board under chapter 28C.10 RCW.

~~((66))~~ (69) "Under the control of a utility" for the purposes of RCW 19.28.091 and 19.28.101 is when electrical equipment is not owned by a utility and:

(a) Is located in a vault, room, closet, or similar enclosure that is secured by a lock or seal so that access is restricted to the utility's personnel; or

(b) The utility is obligated by contract to maintain the equipment and the contract provides that access to the equipment is restricted to the utility's personnel or other qualified personnel.

~~((67))~~ (70) "UL" means Underwriters Laboratory.

~~((68))~~ (71) "Utility" means an electrical utility.

~~((69))~~ (72) "Utility system" means electrical equipment owned by or under the control of a serving utility that is used for the transmission or distribution of electricity from the source of supply to the point of contact and is defined in section 90.2 (b)(5) of the National Electrical Code, 1981 edition (see RCW 19.28.010(1)).

~~((70))~~ (73) "Utilization voltage" means the voltage level employed by the utility's customer for connection to lighting fixtures, motors, heaters, or other electrically operated equipment other than power transformers.

~~((71))~~ (74) "Variance" is a modification of the electrical requirements as adopted in chapter 19.28 RCW or any other requirements of this chapter that may be approved by the chief electrical inspector if assured that equivalent objectives can be achieved by establishing and maintaining effective safety.

~~((72))~~ (75) "WAC" means the Washington Administrative Code. Copies of this chapter of the WACs are available from the department and the office of the code reviser.

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-110 General—Requirements for electrical installations.

~~((012 Mechanical execution of work.~~

~~(1) Unused openings. Unused openings in boxes, raceways, auxiliary gutters, cabinets, cutout boxes, meter socket enclosures, equipment cases, or housings shall be effectively closed to afford protection substantially equivalent to the wall of the equipment. Where metallic plugs or plates are used with nonmetallic enclosures, they shall be recessed at least 6 mm (1/4") from the outer surface of the enclosure. Unused openings do not include weep holes, unused mounting holes, or any other opening with less than 15 square inches of open area.))~~ **003 Examination, identification, installation, and use of equipment.**

(1) Listed electrical conduit can only be installed and used in accordance with its listing (i.e., as an electrical raceway for electrical conductors). If used as a sleeve for electrical conductors or other listed electrical conduits, the installation of a listed electrical conduit will be assumed to be for use as an electrical raceway and must be installed as allowed by

chapter 19.28 RCW and this chapter (e.g., owner exemption, electrical contractor, etc.).

011 Deteriorating agents.

(2) Electrical equipment and wiring that has been submerged or exposed to water must comply with the following:

(a) All breakers, fuses, controllers, receptacles, lighting switches/dimmers, electric heaters, and any sealed device/equipment (e.g., relays, contactors, etc.) must be replaced.

(b) All other electrical equipment (e.g., wiring, breaker panelboards, disconnect switches, switchgear, motor control centers, boiler controls, HVAC/R equipment, electric motors, transformers, appliances, water heaters, and similar appliances) must be replaced or reconditioned by the original manufacturer or by its approved representative.

016 Flash protection.

~~((2))~~ (3) The flash protection marking required by NEC 110.16 must be an identification plate or label approved by the electrical inspector and may be installed either in the field or in the factory. The plate or label may be mounted using adhesive.

022 Identification of disconnecting means.

~~((3))~~ (4) For the purposes of legibly marking a disconnecting means, as required in NEC 110.22, an identification plate is required unless the disconnect is a circuit breaker/fused switch installed within a panelboard and the circuit breaker/fused switch is identified by a panelboard schedule. In other than dwelling units, the identification plate must include the identification designation of the circuit source panelboard that supplies the disconnect.

~~((4) Where electrical equipment is installed to obtain a series combination rating, the identification as required by NEC 110.22, must be in the form of an identification plate that is substantially yellow in color. The words "CAUTION—SERIES COMBINATION RATED SYSTEM" must be on the label in letters at least 13 mm (1/2") high.))~~

030 Over 600 volts - general.

(5) Each cable operating at over 600 volts and installed on customer-owned systems must be legibly marked in a permanent manner at each termination point and at each point the cable is accessible. The required marking must use phase designation, operating voltage, and circuit number if applicable.

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-210 Wiring and protection—Branch circuits. 008(A) Dwelling units GFCI requirements.

(1) In a garage or unfinished basement, a red receptacle with a red cover plate, supplying a fire alarm system is not required to have ground-fault circuit-interrupter protection. The receptacle must be identified for use only with the fire alarm system by an identification plate or engraved cover with letters at least 1/4" high.

008(B) Other than dwelling units - GFCI requirements.

~~((1))~~ (2) GFCI requirements.

(a) For the purposes of NEC 210.8(B), kitchen means any area where utensils, dishes, etc., are cleaned or where food or beverages are prepared or cooked.

(b) All 125-volt, 15- and 20-ampere receptacles installed in wet locations must have Class A ground-fault circuit interrupter protection((s)) for personnel.

011 Branch circuits.

~~((2))~~ (3) A raceway system or one dedicated 15-ampere minimum, 120 volt circuit((s)) must be taken to all unfinished space((s)) areas adaptable to future dwelling unit living areas that are not readily accessible to the service or branch circuit panelboard. One circuit or raceway is required for each 480 square feet or less of unfinished space area. If the total adjacent unfinished space area is less than 480 square feet, the circuit can be an extension of an existing circuit. The circuits must terminate in a suitable box(es). The box must contain an identification of the intended purpose of the circuit(s). The branch circuit panelboard must have adequate space and capacity for the intended load(s).

012 Arc-fault circuit-interrupter protection.

~~((3) For the purpose of)~~ (4) NEC 210.12(B)((s)) is amended to require AFCI protection only for dwelling unit bedroom spaces.

(a) Dwelling unit bedroom spaces include spaces that:

(i) Are used as the bedroom:

~~((a))~~ (ii) Are accessed only through the bedroom;

~~((b))~~ (iii) Are ancillary to the bedroom's function (e.g., closets, sitting areas, etc.); ~~and~~

~~((c))~~ (iv) Contain branch circuits that supply 125-volt, 15- and 20-ampere, outlets ~~((must be protected by an arc-fault circuit interrupter listed to provide protection per NEC 210.12.~~

For the purposes of this section, such spaces will include, but not be limited to, spaces such as closets and sitting areas, but will not include); and

(v) Are not bathrooms.

(b) If a new circuit(s) is added in an existing dwelling unit bedroom, an existing outlet(s) that is not connected to the new circuit(s) does not require arc-fault circuit interrupter protection if the outlet(s) was installed before December 1, 2005.

(c) If an existing circuit, installed before December 1, 2005, is extended, arc-fault circuit interrupter protection is not required.

(d) Arc-fault circuit interrupter protection is not required to be used for smoke or fire alarm outlets.

025 Common area branch circuits.

~~((4))~~ (5) For the purpose of NEC 210.25, loads for septic or water well systems that are shared by no more than two dwelling units may be supplied from either of the two dwelling units if approved by the local building official and local health department.

~~(051(B)(5) Receptacle outlet locations.~~

~~(5) Receptacle outlets installed in appliance garages may be counted as a required countertop outlet.)~~

052(A)(2) Dwelling unit receptacle outlets.

(6) For the purpose of NEC 210.52 (A)(2)(1), "similar openings" include the following configurations that are a permanent part of the dwelling configuration or finish:

(a) Window seating; and

(b) Bookcases or cabinets that extend from the floor to a level at least 1.7 meters (five (5) feet six (6) inches) above the floor.

Any outlets eliminated by such window seating, bookcases, or cabinets must be installed elsewhere within the room.

052(E)(3) Outdoor outlets.

(7) For the purposes of NEC 210.52 (E)(3), the exception will read: Balconies, decks, or porches with an area of less than 1.86 m² (20 ft²) are not required to have a receptacle installed.

052(B) Receptacle outlet locations.

(8) Receptacle outlets installed in appliance garages may be counted as a required countertop outlet.

052(C) Countertops.

~~((7))~~ (9) A receptacle(s) is not required to be installed in the area directly behind a sink or range as shown in NEC 210.52, Figure 210.52 (C)(1). Outlets must be installed within 24" on either side of a sink or range as shown in Figure 210.52 (C)(12).

~~((8))~~ (10) If it is impracticable to install the outlet(s) required in NEC ~~((21.52))~~ 210.52 (C)(3), a receptacle is not required on any peninsular counter surface as required by NEC 210.52 (C)(3) so long as the peninsular counter area extends no farther than 6' from the face of the adjoining countertop. Any outlet(s) eliminated using this subsection must be installed in the wall space at the point where the peninsula connects to the wall countertop in addition to the outlets required by NEC 210.52 (C)(1).

AMENDATORY SECTION (Amending WSR 03-09-111, filed 4/22/03, effective 5/23/03)

WAC 296-46B-215 Wiring and protection—Feeders.

005 Diagrams of feeders.

(1) Other than plan review projects, the installer must provide a one-line diagram showing the service and feeder details for the project before the initial inspection can be approved for all nondwelling services or feeders:

(a) Larger than 400 amperes; or

(b) Over 600 volts.

The diagram must be signed and dated by the project owner if the owner is doing the work, or the assigned administrator or master electrician if an electrical contractor is doing the work. The diagram must show:

(c) All services including: Wire size(s), wire type(s), service size(s) (e.g., voltage, phase, ampacity), overcurrent protection, available symmetrical fault current at the service point, equipment short-circuit rating, total load before and after demand factors have been applied including any demand factors used, and a panel schedule where multiple disconnecting devices are present; and

(d) All feeders including: Wire size(s), wire type(s), feeder size(s) (e.g., voltage, phase, ampacity), overcurrent protection, total calculated load before and after demand factors have been applied including any demand factors used, and a panel schedule(s) where multiple disconnecting devices are present.

If the installer deviates, in any way, from the service/feeder design shown on the diagram, a supplemental diagram must be supplied to the inspector showing the most recent design before inspection can proceed. Load reductions and moving branch circuit locations within a panelboard do

not require a supplemental diagram. Written documentation must also be provided to the inspector that the supplemental diagram was provided to the project owner at the time of submission to the inspector.

010 (~~(Feeders--)~~) Ground fault protection testing.

(2) Equipment ground fault protection systems required by the NEC must be tested prior to being placed into service to verify proper installation and operation of the system as determined by the manufacturer's published instructions. This test or a subsequent test must include all system feeders. A firm having qualified personnel and proper equipment must perform the tests required. A copy of the manufacturer's performance testing instructions and a written performance acceptance test record signed by the person performing the test must be provided for the inspector's records at the time of inspection. The performance acceptance test record must include test details including, but not limited to, all trip settings and measurements taken during the test.

AMENDATORY SECTION (Amending WSR 05-10-024, filed 4/26/05, effective 6/30/05)

WAC 296-46B-225 Wiring and protection—Outside branch circuits and feeders.

030 Number of supplies.

(1) For the purposes of NEC 225.30(A) and this section, if a property has only a single building that is supplied from a remote service, the building may be supplied by no more than two feeders originating from the service equipment. The service equipment must contain overcurrent protection appropriate to each feeder. The building disconnecting means required by NEC 225.32 must be located within sight and within 5' of each other.

032 Location of outside feeder disconnecting means.

(2) The building disconnecting means required by NEC 225.32 must be provided to disconnect all ungrounded conductors that supply or pass through a building or structure per the requirements of NEC 225.32 (except for Exceptions 1, 2, 3, or 4) in accordance with (a) or (b) of this subsection ((+)) or (2) of this section).

((+)) (a) Outside location: Except for an outdoor generator set described in a NEC 700, 701, or 702 system, where the feeder disconnecting means is installed outside a building or structure, it must be on the building or structure or within sight and within fifteen feet of the building or structure supplied. The building disconnecting means may supply only one building/structure unless the secondary building(s)/structure(s) has a separate building disconnecting means meeting the requirements of the NEC and this subsection. The disconnecting means must have an identification plate with at least one-half-inch high letters identifying:

((+)) (i) The building/structure served; and

((+)) (ii) Its function as the building/structure main disconnect(s).

((+)) (b) Inside location: The feeder disconnecting means may be installed anywhere inside a building or structure when there is a feeder disconnecting means, located elsewhere on the premises, with overcurrent protection sized for the feeder conductors.

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-230 Wiring and protection—Services.

001 General service requirements.

(1) The owner, the owner's agent, or the electrical contractor making the installation must consult the serving utility regarding the utility's service entrance requirements for equipment location and meter equipment requirements before installing the service and equipment. Provisions for a meter and related equipment, an attachment of a service drop, or an underground service lateral must be made at a location acceptable to the serving utility. The point of contact for a service drop must permit the clearances required by the NEC.

(2) A firewall must have a minimum two-hour rating as defined by the local building official to be considered a building separation in accordance with Article 100 NEC.

(3) The height of the center of the service meter must be as required by the serving utility. Secondary instrument transformer metering conductor(s) are not permitted in the service raceway.

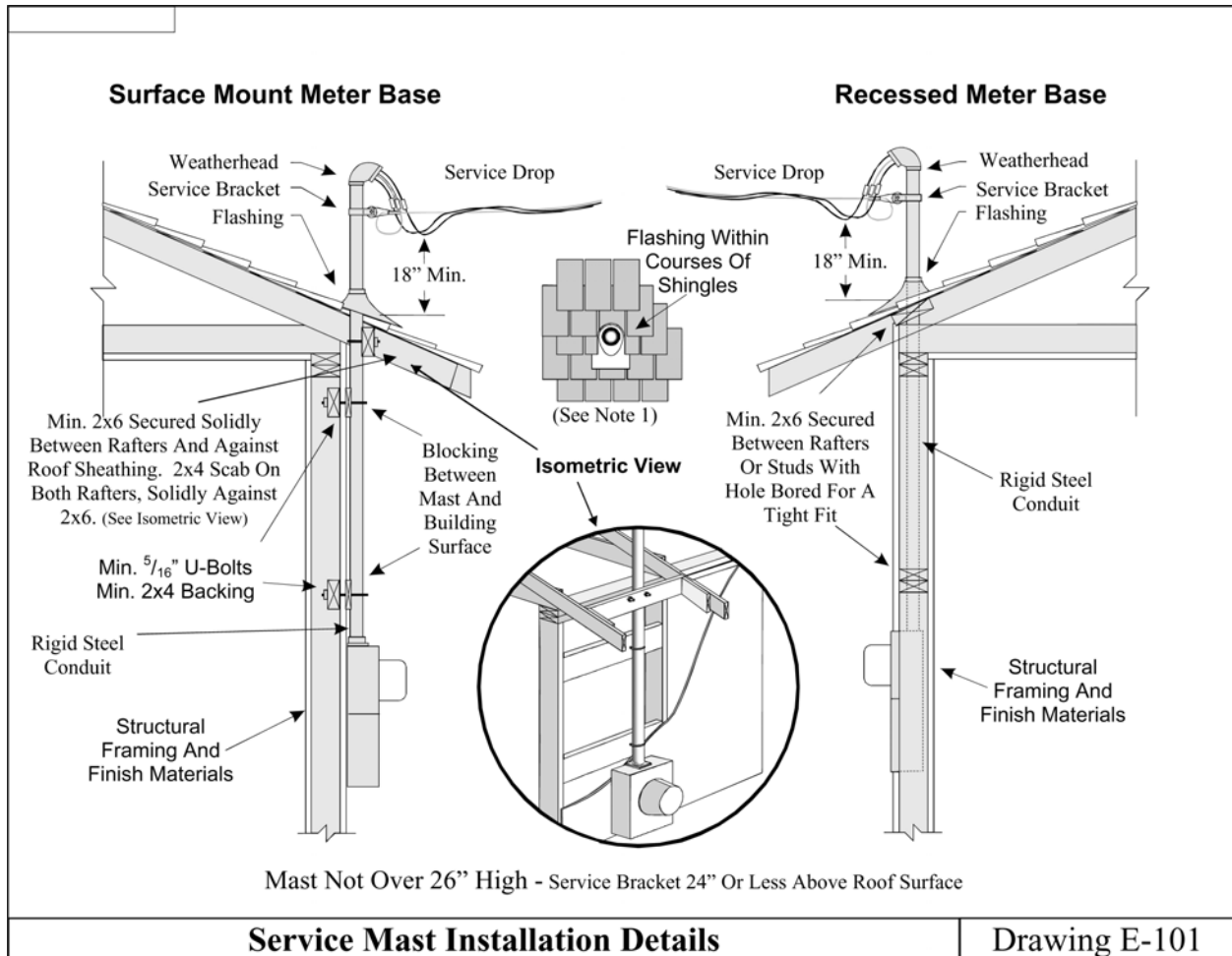
028 Service or other masts.

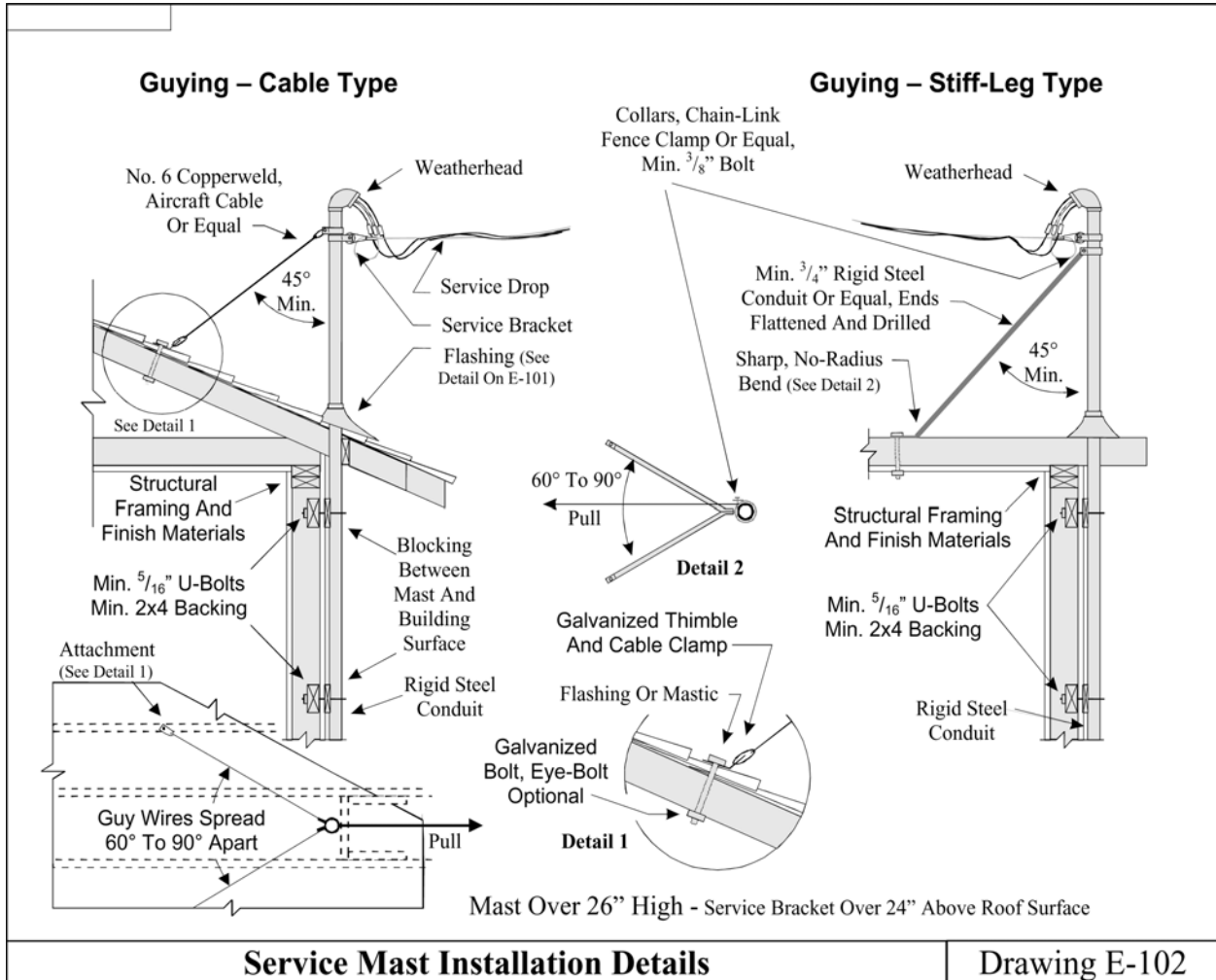
(4) Conduit extended through the roof to provide means of attaching:

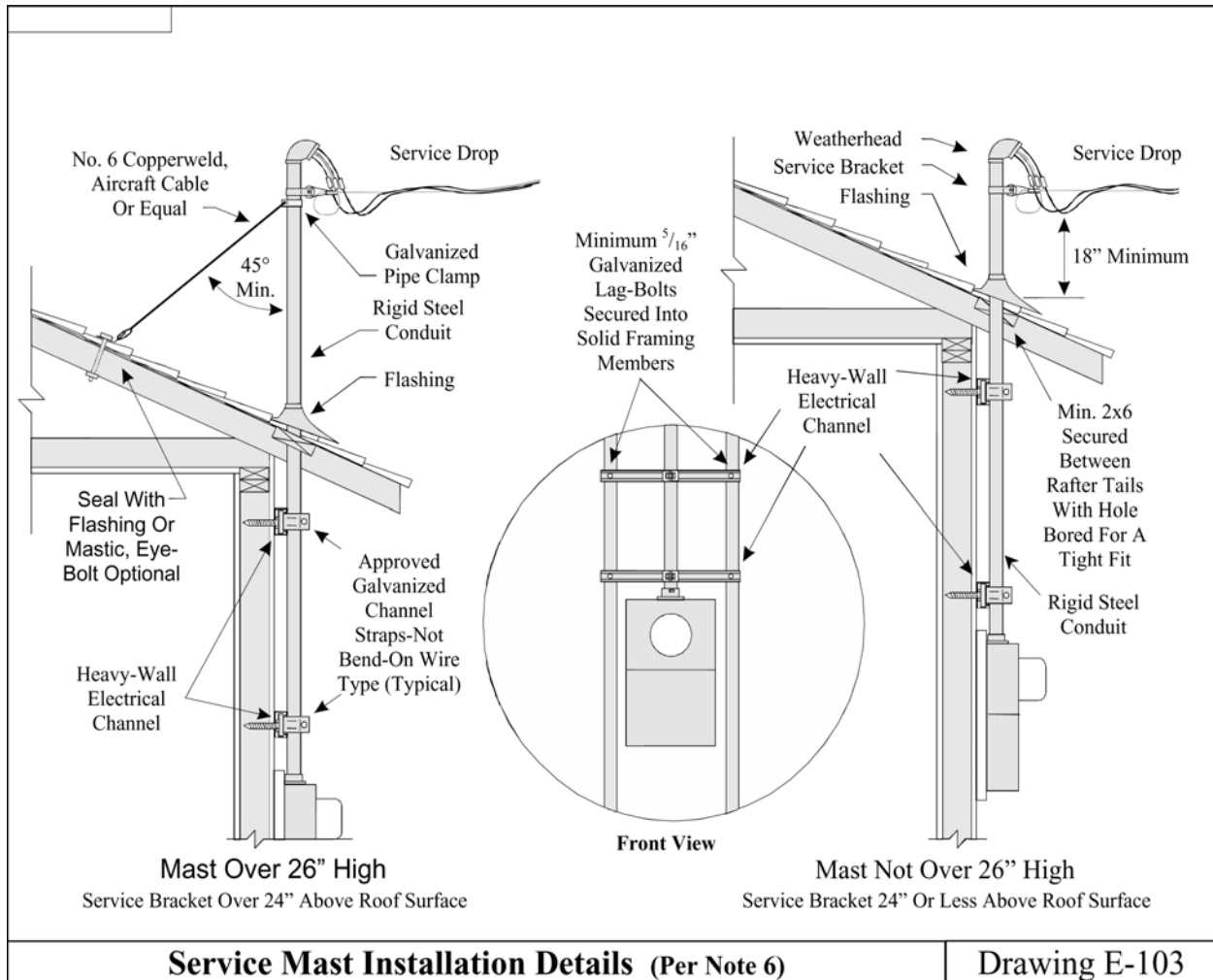
(a) All overhead drops for service, feeder, or branch circuits exceeding #1 AWG aluminum or #3 AWG copper must be rigid steel galvanized conduit no smaller than two inches.

(b) All overhead drops for service, feeder or branch circuits not exceeding #1 AWG aluminum or #3 AWG copper must be rigid steel galvanized conduit no smaller than one and one-quarter inch. The installation must comply with drawings E-101 and/or E-102, or must provide equivalent strength by other approved means. Masts for altered or relocated installations will be permitted to comply with drawing E-103.

(c) For the purposes of NEC 225.19 and 230.24, a residential patio cover, that is not over one story and not over twelve feet in height and is used only for recreation or outdoor living purposes and not as a carport, garage, storage room or habitable room as described in Appendix Chapter 1 in the IBC and Appendix Chapter H in the IRC, is not considered a roof. Overhead conductor spans must maintain a minimum 900 mm (36") clearance above these covers.







Notes to drawings E-101, E-102, and E-103

- (1) An approved roof flashing must be installed on each mast where it passes through a roof. Plastic, nonhardening mastic must be placed between lead-type flashings and the conduit. Neoprene type flashings will also be permitted to be used.
- (2) Masts must be braced, secured, and supported in such a manner that no pressure from the attached conductors will be exerted on a roof flashing, meter base, or other enclosures.
- (3) Utilization of couplings for a mast ~~(are)~~ is permitted only below the point the mast is braced, secured, or supported. There must be a minimum of two means of support above any couplings used. A properly installed cable or stiff leg type support qualifies as one of the two required means of support.
- (4) Except as otherwise required by the serving utility, service mast support guys must be installed if the service drop attaches to the mast more than twenty-four inches above the roof line or if the service drop is greater than one hundred feet in length from the pole or support. Masts for support of other

than service drops must comply with this requirement as well.

- (5) Intermediate support masts must be installed in an approved manner with methods identical or equal to those required for service masts.
- (6) For altered services, where it is impractical to install U bolt mast supports due to interior walls remaining closed, it will be permissible to use other alternate mast support methods such as heavy gauge, galvanized, electrical channel material that is secured to two or more wooden studs with five-sixteenths inch diameter or larger galvanized lag bolts.
- (7) Conductors must extend at least eighteen inches from all mastheads to permit connection to the connecting overhead wiring.

040 Service conductors - two-family and multiple-occupancy buildings.

(5) Two-family and multiple-occupancy buildings. A second or additional service drop or lateral to a building having more than one occupancy will be permitted to be installed at a location separate from other service drops or laterals to the building provided that all the following conditions are complied with:

(a) Each service drop or lateral must be sized in accordance with the NEC for the calculated load to be served by the conductors;

(b) Each service drop or lateral must terminate in listed metering/service equipment;

(c) Each occupant must have access to the occupant's service disconnecting means;

(d) No more than six service disconnects may be supplied from a single transformer;

(e) All service drops or laterals supplying a building must originate at the same transformer or power supply;

(f) A permanent identification plate must be placed at each service disconnect location that identifies all other service disconnect locations in or on the building, the area or units served by each, the total number of service disconnecting means on the building/structure and the area or units served. If a structure consists of multiple buildings (i.e., by virtue of fire separation), all service disconnects in or on the entire structure must be labeled to identify all service disconnects in or on the structure; and

(g) A permanent identification plate must be placed at each feeder disconnecting means identifying the area or units served if the feeder disconnecting means is remote from the area or unit served.

042 Service conductor - size and rating.

(6) If the service conductors have a lesser ampacity than the overcurrent protection, permitted by NEC 230.90 or NEC 310.15, or the equipment rating that they terminate in or on, an identification plate showing the ampacity of the conductors must be installed on the service equipment.

043 Wiring methods for 600 volts, nominal or less.

(7) The installation of service conductors not exceeding 600 volts, nominal, within a building or structure is limited to the following methods: Galvanized or aluminum rigid metal conduit; galvanized intermediate metal conduit; wireways; busways; auxiliary gutters; ~~((rigid nonmetallic))~~ minimum schedule 40 rigid polyvinyl chloride conduit; cablebus; or mineral-insulated, metal-sheathed cable (type MI).

(8) Electrical metallic tubing must not be installed as the wiring method for service entrance conductors inside a building. Existing electrical metallic tubing, installed prior to October 1984, which is properly grounded and used for service entrance conductors may be permitted to remain if the conduit is installed in a nonaccessible location and is the proper size for the installed conductors.

(9) In addition to methods allowed in the NEC, the grounded service conductor is permitted to be identified with a yellow jacket or with one or more yellow stripes.

~~((062))~~ **070 Service equipment - ~~((general))~~ disconnecting means.**

(10) ~~In addition to the requirements of NEC 230.71(A),~~ service equipment, subpanels, and similar electrical equipment must be installed so that they are readily accessible and may not be installed in ~~((bathrooms;))~~ clothes closets, toilet rooms, or shower rooms. All indoor service equipment and subpanel equipment must have adequate working space and be adequately illuminated.

(11) ~~((Temporary construction service equipment may only be used for construction purposes and must be discon-~~

~~ected when the permanent service is connected unless the department grants an extension of time.~~

070 Service disconnecting means.

~~((12))~~ The service disconnecting means must be installed at a readily accessible location in accordance with (a) or (b) of this subsection.

(a) Outside location: Service disconnecting means will be permitted on the building or structure or within sight and within fifteen feet of the building or structure served. The building disconnecting means may supply only one building/structure. The service disconnecting means must have an identification plate with one-half-inch high letters identifying:

(i) The building/structure served; and

(ii) Its function as the building/structure main service disconnect(s).

(b) Inside location: When the service disconnecting means is installed inside the building or structure, it must be located so that the service raceway extends no more than fifteen feet inside the building/structure.

095 Ground-fault protection of equipment.

~~((13))~~ ~~(12)~~ Equipment ground-fault protection systems required by the NEC must be tested prior to being placed into service to verify proper installation and operation of the system as determined by the manufacturer's published instructions. This test or a subsequent test must include all service voltage feeders. A firm having qualified personnel and proper equipment must perform the tests required. A copy of the manufacturer's performance testing instructions and a written performance acceptance test record signed by the person performing the test must be provided for the inspector's records at the time of inspection. The performance acceptance test record must include test details including, but not limited to, all trip settings and measurements taken during the test.

200 Wiring methods exceeding 600 volts.

~~((14))~~ ~~(13)~~ The installation of service conductors exceeding 600 volts, nominal, within a building or structure must be limited to the following methods: Galvanized rigid metal conduit, galvanized intermediate metal conduit, schedule 80 ~~((rigid nonmetallic))~~ polyvinyl chloride conduit, metal-clad cable that is exposed for its entire length, cablebus, or busways.

~~((15))~~ ~~(14)~~ In addition to methods allowed in the NEC, the grounded service conductor is permitted to be identified with a yellow jacket or with one or more yellow stripes.

NEW SECTION

WAC 296-46B-240 Overcurrent protection.

024(F) Not located over steps.

If the overcurrent device is a part of a panelboard that is being repaired or replaced in an existing location, the installation is allowed to be made above the stairs.

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-250 Wiring and protection— Grounding and bonding.

~~((032 Two or more buildings or structures.~~

~~(1) Effective August 1, 2003, an equipment grounding conductor must be installed with the circuit conductors between buildings and/or structures. A grounded conductor (i.e., neutral) is not permitted to be used in place of a separate equipment grounding conductor between buildings and/or structures.)~~ **028(D)(3) Separately derived system with more than one enclosure.**

(1) NEC 250.28 (D)(3) is amended to read: Where a separately derived system supplies more than a single enclosure, the system bonding jumper for each enclosure shall be sized in accordance with 250.28 (D)(1) based on the largest ungrounded feeder/tap conductor serving that enclosure, or a single system bonding jumper shall be installed at the source and sized in accordance with 250.28 (D)(1) based on the equivalent size of the largest supply conductor determined by the largest sum of the areas of the corresponding conductors of each set.

052 Grounding electrodes.

~~(2) ((If a ground resistance test is not performed to ensure a resistance to ground of twenty-five ohms or less, two or more electrodes as specified in NEC 250.52 must be installed a minimum of six feet apart. However, a temporary construction service is not required to have more than one made electrode.~~

~~(3))~~ If a concrete encased electrode is installed, inspection may be accomplished by the following methods:

(a) At the time of inspection of other work on the project, providing the concrete encased electrode is accessible for a visual inspection;

(b) At the time of the service inspection providing the installer has provided a method so the inspector can verify the continuity of the electrode conductor along its entire length (e.g., attaching a length of copper wire to one end of the electrode that reaches the location of the grounding electrode conductor that will enable the inspector to measure the resistance with a standard resistance tester). The concrete encased electrode does not have to be accessible for a visual inspection; or

(c) Other method when prior approval, on a job site basis, is given by the inspector.

If a special inspection trip is required to inspect a grounding electrode conductor, a trip fee will be charged for that inspection in addition to the normal permit fee.

056 Resistance of rod, pipe, and plate electrodes.

(3) For rod, pipe and plate electrodes, if a ground resistance test is not performed to ensure a resistance to ground of twenty-five ohms or less, two or more electrodes as specified in NEC 250.52 must be installed a minimum of six feet apart. A temporary construction service is not required to have more than one made electrode.

(4) For services only, when multiple buildings or structures are located adjacent, but structurally separate from each other, any installed rod, pipe, or plate electrodes used for those services must be installed so that each building's or structure's electrodes are not less than 1.8 m (6 ft) apart from the adjacent building's or structure's electrodes.

068 Accessibility.

(5) The termination point of a grounding electrode conductor tap to the grounding electrode conductor must be

accessible unless the connection is made using an exothermic or irreversible compression connection.

090 Bonding.

~~((5))~~ (6) Metallic stubs or valves used in nonmetallic plumbing systems are not required to be bonded to the electrical system unless required by an electrical equipment manufacturer's instructions.

~~((6))~~ (7) Hot and cold water plumbing lines are not required to be bonded together if, at the time of inspection, the inspector can determine the lines are mechanically and electrically joined by one or more metallic mixing valves.

094 Bonding for other systems.

(8) NEC 250.94 is not adopted.

(9) An accessible means external to enclosures for connecting intersystem bonding and grounding electrode conductors must be provided at the service equipment and at the disconnecting means for any additional buildings or structures by at least one of the following means:

(a) Exposed nonflexible metallic raceways;

(b) Exposed grounding electrode conductor or electrode;

(c) Approved means for the external connection of a copper or other corrosion-resistant bonding or grounding conductor to the grounded raceway or equipment.

104(B) Bonding - other metal piping.

(10) For flexible metal gas piping, installed new or extended from an existing rigid metal piping system, either:

(a) Provide a copy of the manufacturer's bonding instructions to the inspector at the time of inspection and follow those instructions; or

(b) The bonding conductor for the gas system must:

(i) Be a minimum 6 AWG copper; and

(ii) Terminate at:

(A) An accessible location at the gas meter end of the gas piping system on either a solid iron gas pipe or a cast flexible gas piping fitting using a listed grounding connector; and

(B) Either the service equipment enclosure, service grounding electrode conductor or electrode, or neutral conductor bus in the service enclosure.

184 Solidly grounded neutral systems over 1 kV.

~~((7))~~ (11) In addition to the requirements of NEC 250.184(A), the following applies for:

(a) Existing installations.

(i) The use of a concentric shield will be allowed for use as a neutral conductor for extension, replacement, or repair, if all of the following are complied with:

(A) The existing system uses the concentric shield as a neutral conductor;

(B) Each individual conductor contains a separate concentric shield sized to no less than thirty-three and one-half percent of the ampacity of the phase conductor for three-phase systems or one hundred percent of the ampacity of the phase conductor for single-phase systems;

(C) The new or replacement cable's concentric shield is enclosed inside an outer insulating jacket; and

(D) Existing cable (i.e., existing cable installed directly in the circuit between the work and the circuit's overcurrent device) successfully passes the following tests:

• A cable maintenance high potential dielectric test. The test must be performed in accordance with the cable manu-

facturer's instruction or the 2001 NETA maintenance test specifications; and

- A resistance test of the cable shield. Resistance must be based on the type, size, and length of the conductor used as the cable shield using the conductor properties described in NEC Table 8 Conductor Properties.

An electrical engineer must provide a specific certification to the electrical plan review supervisor in writing that the test results of the maintenance high potential dielectric test and the resistance test have been reviewed by the electrical engineer and that the cable shield is appropriate for the installation. The electrical engineer must stamp the certification document with the engineer's stamp and signature. The document may be in the form of a letter or electrical plans.

Testing results are valid for a period of seven years from the date of testing. Cable will not be required to be tested at a shorter interval.

(ii) A concentric shield used as a neutral conductor in a multigrounded system fulfills the requirements of an equipment grounding conductor.

(b) New installations.

(i) New installations do not include extensions of existing circuits.

(ii) The use of the concentric shield will not be allowed for use as a neutral conductor for new installations. A listed separate neutral conductor meeting the requirements of NEC 250.184(A) must be installed.

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-300 Wiring methods and materials—Wiring methods.

001 Wiring methods.

(1) Cables and raceways for telecommunications, power limited, NEC Class 2 and Class 3 conductors must be installed in compliance with Chapter 3 NEC unless other methods are specifically allowed or required elsewhere in the NEC, chapter 19.28 RCW, or this chapter.

005 Underground installations.

(2) Induction loops.

See WAC ((~~296-46B-901(23))~~) 296-46B-010(17) for induction detection loops that are made in a public roadway and regulated by a governmental agency.

Other induction loops must comply with the following requirements:

(a) General:

(i) A preformed direct burial induction loop is designed to be installed within the road surface base (e.g., concrete or asphalt) or below the road surface of a road with an unpaved surface (e.g., gravel or brick pavers);

(ii) A saw-cut induction detection loop is designed to be installed into a groove saw-cut into an existing paved road surface (e.g., concrete or asphalt);

(iii) The loop system includes the loop and the lead-in conductor;

(iv) The loop system must be:

(A) Tested to assure that at 500 volts DC, the resistance between the conductor and ground equals or exceeds 50 megohms; and

(B) Without splice; or

(C) If spliced, the splice must be soldered and appropriately insulated;

(v) The lead-in conductor must comply with the following:

(A) Must be stranded and have a lay (i.e., twist) of two turns per foot; and

(B) If installed in an electrical raceway;

- Are not required to be listed or suitable for wet locations; and

- Must have a burial cover of at least 6"; or

- If direct buried;

- Must be listed for the use; and

- Must have a burial cover of at least 18".

(b) Preformed direct burial induction detection loops must conform with the following:

(i) The loop conductor must be rated for direct burial and be a minimum of No. 16 AWG;

(ii) The loop design must not allow movement of the loop conductor within the outer jacket. The outer jacket containing the loop conductor is not required to be listed;

(iii) The loop yoke casing (i.e., the location where the lead-in conductor is connected to the loop):

(A) Includes any device used to house the "loop to lead-in splice" or to otherwise couple the loop with the lead-in electrical raceway;

(B) Is not required to be listed; and

(C) Must have a coupler that will create a waterproof bond with the electrical raceway, containing the lead-in conductor, or a direct buried lead-in conductor.

(c) Saw-cut induction detection loops:

(i) The loop conductor must be cross-linked polyethylene or EPR Type USE insulation and be a minimum of No. 18 AWG stranded;

(ii) The saw-cut groove must not cut into rebar installed within the roadway.

011 Support of raceways, cables, or boxes in suspended ceilings.

(3) NEC power limited, Class 2, and Class 3 cables must be secured in compliance with NEC 334.30 and must be secured to boxes in compliance with NEC 314.17.

(4) Telecommunications cables must be secured in a manner that will not cause damage to the cables and at intervals not exceeding five feet. Cables are considered adequately supported when run through holes in building structural elements or other supporting elements. Telecommunications cables may be fished into inaccessible hollow spaces of finished buildings. Clamps or fittings are not required where telecommunications cables enter boxes.

(5) Optical fiber cables must be secured in a manner that will not cause damage to the cables and at intervals not exceeding five feet. Cables are considered adequately supported when run through holes in building structural elements or other supporting elements. Optical fiber cables may be fished into inaccessible hollow spaces of finished buildings. Supports must allow a bending radius that will not cause damage to the cables.

(6) Where not restricted by the building code official or Article 300 NEC, the wires required in NEC 300.11(A) may

support raceways, cables, or boxes under the following conditions:

(a) Raceways and/or cables are not larger than three-quarter-inch trade size;

(b) No more than two raceways or cables are supported by a support wire. The two-cable limitation does not apply to telecommunications cables, Class 2 cables, or Class 3 cables on support wires installed exclusively for such cables. The support wire must be adequate to carry the cable(s) weight and all attached cables must be secured with approved fittings; or

(c) Raceways and cables are secured to the support wires by fittings designed and manufactured for the purpose.

In addition to (a), (b), and (c) of this subsection, the following conditions must be complied with:

(d) The support wires are minimum #12 AWG and are securely fastened to the structural ceiling and to the ceiling grid system; and

(e) The raceways or cables serve equipment that is located within the ceiling cavity or is mounted on or supported by the ceiling grid system. Telecommunications cables, Class 2 cables, or Class 3 cables supported as required by this section, may pass through ceiling cavities without serving equipment mounted on or supported by the ceiling grid system.

017 Conductors in raceway.

(7) Cables will be permitted in all raceway systems if:

(a) The cable is appropriate for the environment; and

(b) The percentage fill does not exceed that allowed in NEC Chapter 9, Table 1.

AMENDATORY SECTION (Amending WSR 05-10-024, filed 4/26/05, effective 6/30/05)

WAC 296-46B-334 Wiring methods and materials—Nonmetallic-sheathed cable.

010 Nonmetallic-sheathed cable.

(1) The building classification, for subsections (2), (3), and (4) of this section, will be as determined by the building official. For the purposes of this section, Type III, IV and V may be as defined in the International Building Code adopted in the state of Washington. The installer must provide the inspector documentation substantiating the type of building construction and finish material rating(s) prior to any electrical inspection.

(2) This section replaces NEC 334.10(2). In multifamily dwellings, Type NM, Type NMC, and Type NMS cable(s) may be used in structures of Types III, IV, and V construction except as prohibited in NEC 334.12.

(3) This section replaces NEC 334.10(3). In all other structures, Type NM, Type NMC, and Type NMS cable(s) may be used in structures of Types III, IV, and V construction except as prohibited in NEC 334.12. All cable(s) must be concealed within walls, floors, or ceilings that provide a thermal barrier of material that has at least a 15-minute finish rating as identified in listings of fire-rated assemblies.

(4) This section replaces NEC 334.10(4). Cable trays in structures of Types III, IV, and V construction, where the cable(s) is identified for the use, except as prohibited in NEC 334.12.

015 Exposed work.

(5) Where Type NMC cable is installed in shallow chases in plaster, masonry, concrete, adobe or similar material, the cable must be protected against nails or screws by:

(a) A steel plate at least 1.59 mm (1/16 in.) thick and covered with plaster, adobe, or similar finish; or

(b) Being recessed in a chase at least 6.985 cm (2 3/4 in.) deep, as measured from the finished surface, and covered with plaster, adobe, or similar finish. The cable(s) must be at least 6.35 mm (2 1/2 in.) from the finished surface.

(6) The requirements for nonmetallic sheathed cable protection in NEC 334.15(C) do not apply in crawl spaces.

AMENDATORY SECTION (Amending WSR 03-09-111, filed 4/22/03, effective 5/23/03)

WAC 296-46B-358 Wiring methods and materials—Electrical metallic tubing.

012 Electrical metallic tubing.

(1) In addition to complying with the provisions of Article 358 NEC, electrical metallic tubing may not be installed in direct contact with the earth or in concrete on or below grade. Also see NEC 300.6 for resistance to corrosion.

(2) Where electrical metallic tubing is installed in wet locations, an equipment grounding conductor must be provided within the raceway and sized per NEC 250.122.

AMENDATORY SECTION (Amending WSR 05-10-024, filed 4/26/05, effective 6/30/05)

WAC 296-46B-410 Equipment for general use—Luminaires.

~~((004))~~ **010 Luminaires.**

(1) All luminaires within an enclosed shower area or within five feet of the waterline of a bathtub must be enclosed, unless specifically listed for such use; these luminaires, with exposed metal parts that are grounded, must be ground fault circuit interrupter protected.

~~((018 Exposed luminaire (fixture) parts.~~

~~(2) Replacement luminaires that are directly wired or attached to boxes supplied by wiring methods that do not provide a ready means for grounding and that have exposed conductive parts will be permitted only where the luminaires are provided with ground-fault-circuit-interrupter protection and marked "no equipment ground.")~~

030 Flexible cord connection of electric discharge luminaires.

~~((2))~~ (2) A ground-type attachment plug cap and receptacle connection at the source junction box is not required when the flexible cord complies with NEC 410.30 and the following:

(a) Connection to a source junction box must utilize an approved cable connector or clamp;

(b) The maximum length of the cord for a suspended pendant drop from a permanently installed junction box to a suitable tension take-up device above the pendant luminaire must not exceed six feet;

(c) The flexible cord must be supported at each end with an approved cord grip or strain relief connector fitting/device that will eliminate all stress on the conductor connections;

(d) The flexible cord must be a minimum #14 AWG copper;

(e) The flexible cord ampacity must be determined in NEC Table 400.5(A) column A;

(f) The flexible cord must be hard or extra hard usage; and

(g) A vertical flexible cord supplying electric discharge luminaires must be secured to the luminaire support as per NEC 334.30(A).

042 Exposed luminaire (fixture) parts.

(3) Replacement luminaires that are directly wired or attached to boxes supplied by wiring methods that do not provide a ready means for grounding and that have exposed conductive parts will be permitted only where the luminaires are provided with ground-fault circuit-interrupter protection and marked "no equipment ground."

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-430 Motors, motor circuits, and controllers.

007 Marking on motors and multimotor equipment.

Except as required by the National Electrical Code, there is no requirement for motors to be identified for use or listed/field evaluated by a laboratory. All motors must be manufactured according to National Electrical Manufacturer's Association (NEMA) standards for motors except motors that:

(1) Are a component part of equipment listed or field evaluated by a laboratory; or

(2) Are a component part of industrial utilization equipment approved by the department per WAC (~~(296-46B-901)~~ 296-46B-903).

NEW SECTION

WAC 295-46B-445 Wind driven generator equipment. This equipment includes alternators or generators that produce electrical current through the conversion of wind energy into electrical energy. Wind driven generation equipment must demonstrate conformance to applicable safety standards recognized by the department.

Installation.

(1) A wind driven generator system design review must be submitted at the time of the inspection request. Permit holders must submit a copy of the wind driven generator equipment manufacturer's installation information and a legible one-line diagram of the wind driven generator design and calculations used to determine voltage and current within the generation system to the electrical inspector. This diagram must show the wind driven generator equipment, devices, overcurrent protection, conductor sizing, grounding, ground fault protection if required, and any system interconnection points.

(2) For utility interactive systems, any person making interconnections between the generator system and the utility distribution network must consult the serving utility and is required to meet all additional utility standards.

(3) All wind driven generator equipment and disconnecting means must be permanently identified as to their purpose,

maximum voltages and type of current within the system with an identification plate.

NEW SECTION

WAC 296-46B-500 Hazardous (classified) locations, Classes I, II, and III, Divisions 1 and 2.
005 Classification of locations.

Classification of locations may only be done by the authority having jurisdiction or a professional engineer registered in Washington who uses appropriate National Fire Protection Standards as a basis for classification. The authority having jurisdiction is allowed to make the final determination in cases of conflict.

NEW SECTION

WAC 296-46B-505 Class I, Zone 0, 1, and 2 locations.
007 Implementation of zone classification.

For the purposes of NEC 505.7, qualified person means a professional engineer registered in Washington.

NEW SECTION

WAC 296-46B-513 Special occupancies—Aircraft hangers.

001 Scope.

The scope for NEC 513 applies only when the property containing the building is classified or zoned as an aircraft hanger by the authority having jurisdiction.

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-517 Special occupancies—Health care facilities.

001 Health care facilities.

In health care facilities, the following methods must be used to determine adequate capacity and ratings of equipment providing electrical power for the essential electrical systems defined in Article 517 NEC:

(1) Systems in new facilities:

(a) Emergency system: The emergency branch must consist of two branches known as:

(i) Life safety system: The feeder conductors and equipment used to supply electrical power to the life safety branch must be determined by summation of the connected loads as determined by Article 220 NEC and may not be subjected to any reduction due to the diversity of the loads. Feeder and equipment will be subject to a one hundred twenty-five percent multiplier for continuous loads in accordance with Article 220 NEC.

(ii) Critical branch system: The feeder conductors and equipment must be calculated in accordance with Article 220 NEC, including a level of diversity as determined by such article.

(b) Equipment branch: The feeder conductors and equipment used to supply electrical power to the equipment branch of the essential electrical system must be calculated in accordance with Article 220 NEC, including a level of diversity as determined by such article.

(c) Generator sizing: The rating of the generator(s) supplying electrical power to the essential system of a health care facility must meet or exceed the summation of the loads determined in (a) and (b) of this subsection with no additional demand factors applied. Momentary X-ray loads may be ignored if the generator is rated at least three hundred percent of the largest momentary X-ray load connected.

(2) Existing essential systems in facilities to which additional load is to be added:

(a) Existing loads: The existing loads of the separate branches of the essential electrical system may be determined by WAC ~~((296-46B-901-(15)(i)))~~ 296-46B-900 (3)(j).

(b) Added loads: Added loads to the separate branches of the essential electrical system must be determined by subsection (1) of this section.

(c) Generator sizing: The rating of the generator(s) supplying electrical power to the essential electrical system must meet or exceed the summation of the loads determined by (a) and (b) of this subsection with no additional demand factors applied.

NEW SECTION

WAC 296-46B-547 Special occupancies—Agricultural buildings.

001 Scope.

NEC 547 requirements apply only when the agricultural building is greater than 1,000 square feet and is used as part of a business or commercial farming activity.

AMENDATORY SECTION (Amending WSR 06-05-028, filed 2/7/06, effective 5/1/06)

WAC 296-46B-555 Special occupancies—Marinas and boatyards. (1) For the purposes of NEC 555.1, the scope of work includes private, noncommercial docking facilities.

(2) For the purposes of NEC 555.5, transformer terminations must be located a minimum of twelve inches above the deck of a dock (datum plane requirements do not apply for this section).

(3) For the purposes of NEC 555.7, adjacent means within sight.

(4) For the purposes of NEC 555.9, all electrical connections must be installed a minimum of twelve inches above the deck of a pier unless the connections are approved for wet locations (datum plane requirements do not apply for this section).

(5) For the purposes of NEC 555.10, all enclosures must be corrosion resistant. All gasketed enclosures must be arranged with a weep hole to discharge condensation.

(6) For the purposes of NEC 555.11, gasketed enclosures are only required for wet locations.

(7) For the purposes of NEC 555.13, the following wiring methods are allowed:

(a) All wiring installed in a damp or wet location must be suitable for wet locations.

(b) Extra-hard usage portable power cables rated not less than 75°C, 600 volts, listed for wet locations and sunlight resistance and having an outer jacket rated for the environment are permitted. Portable power cables are permitted as a

permanent wiring method under or within docks and piers or where provided with physical protection. The requirements of NEC 555.13 (B)(4)(b) do not apply.

(c) Overhead wiring must be installed at the perimeter of areas where boats are moored, stored, moved, or serviced to avoid possible contact with masts and other parts of boats.

(d) For the purposes of NEC 555.13 (B)(5), the wiring methods of Chapter 3 NEC will be permitted.

(8) For the purposes of NEC 555.19, receptacles must be mounted not less than twelve inches above the deck surface of the pier or dock (datum plane requirements do not apply for this section). Shore power receptacles that provide shore power for boats must be rated not less than 20 amperes and must be single outlet type and must be of the locking and grounding type or pin and sleeve type.

(9) For the purposes of NEC ~~((555.21, electrical wiring and equipment located at or serving dispensing stations must comply with Article 514 NEC in addition to the requirements of this section:~~

(a) Boundary classifications:

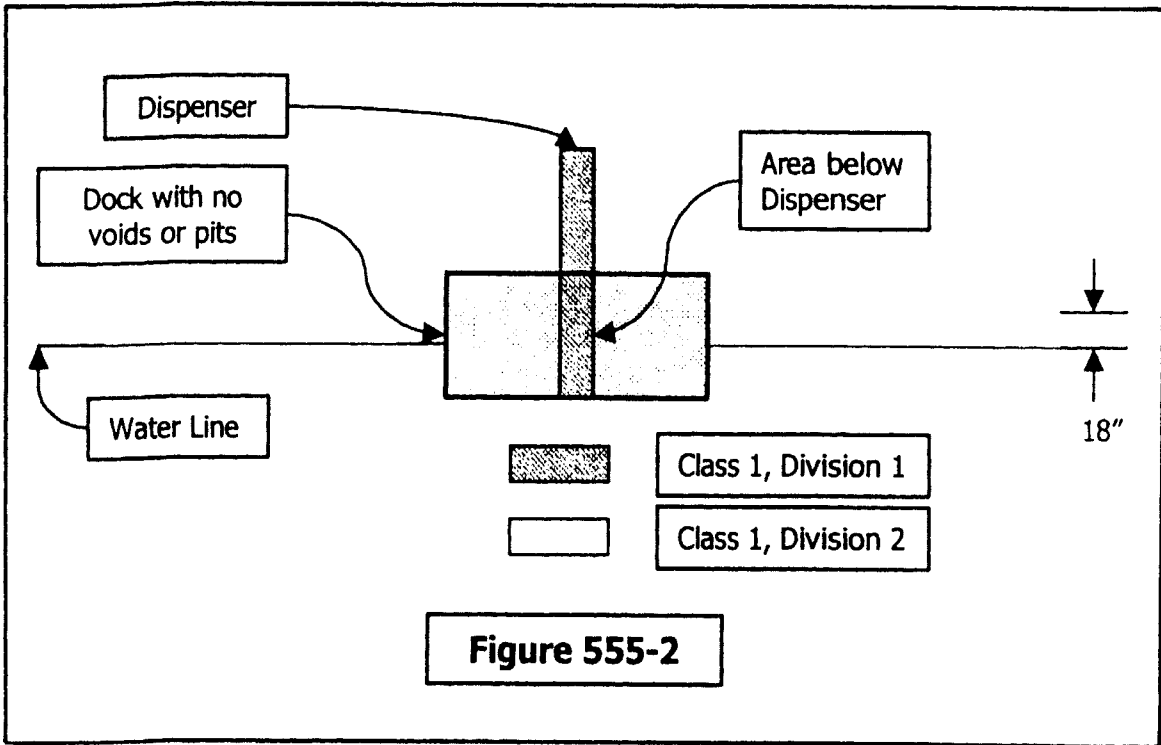
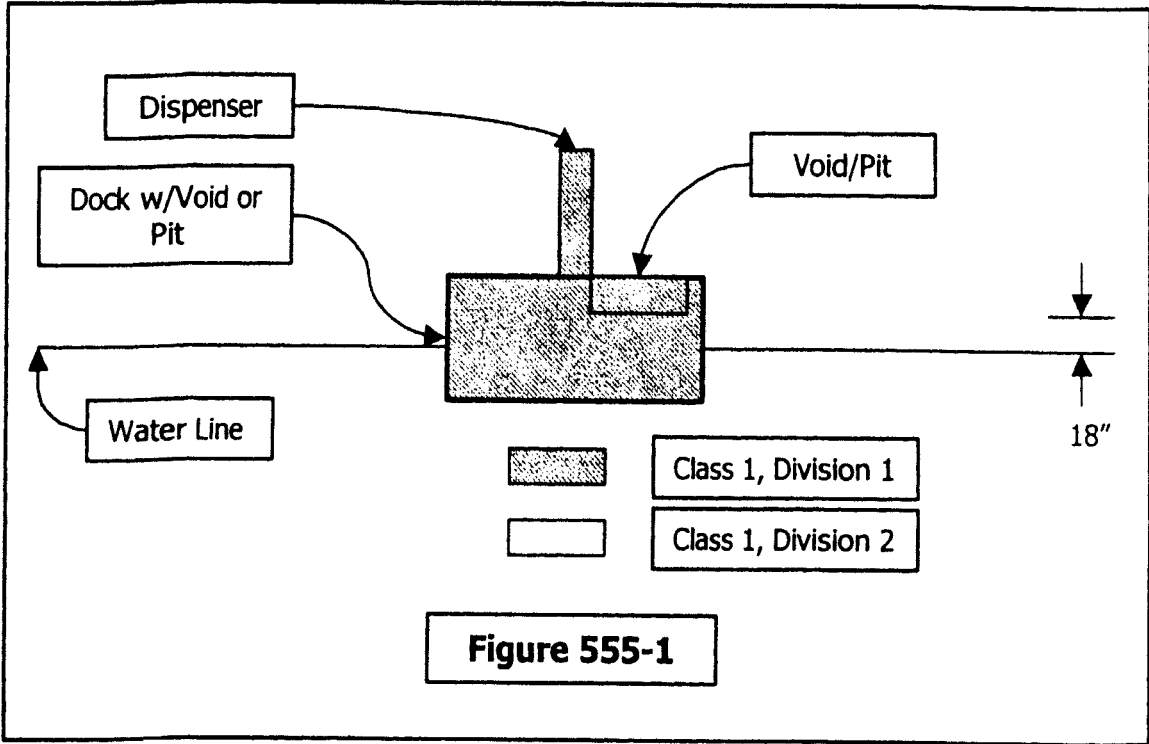
(i) Class I, Division 1. The area under the dispensing unit is a Class I, Division 1 location. If a dock has one or more voids, pits, vaults, boxes, depressions, or similar spaces where flammable liquid or vapor can accumulate below the dock surface and within twenty feet horizontally of the dispensing unit, then the area below the top of the dock and within twenty feet horizontally of the dispensing unit is a Class I, Division 1 location. See Figure 555-1.

(ii) Class I, Division 2. The area eighteen inches above the water line and within twenty feet horizontally of the dispensing unit is a Class I, Division 2 location. If a dock has one or more voids, pits, vaults, boxes, depressions, or similar spaces where flammable liquid or vapor can accumulate below the dock surface and within twenty feet horizontally of the dispensing unit, then the area to eighteen inches above the top and adjacent to the sides of the dock and within twenty feet horizontally of the dispensing unit is a Class I, Division 2 location. See Figure 555-2.

(b) Portable power cable will be allowed as a permanent wiring method in Class I, Division 2 locations when protected from physical damage.

~~(10) For the purposes of NEC 555.23, the datum plane requirements do not apply)) 555.21 (B)(1), delete exception No. 1 and No. 2 and replace with:~~

Dock, pier, or wharf sections that do not support fuel dispensers and may abut a section(s) that supports a fuel dispenser(s) are permitted to be unclassified where documented air space between the sections is provided and where flammable liquids or vapors cannot travel to these sections. See NEC 500.4(A) for documentation requirements.



AMENDATORY SECTION (Amending WSR 05-10-024, filed 4/26/05, effective 6/30/05)

WAC 296-46B-590 Special occupancies—Temporary installations.

001 Temporary installations.

(1) For the purposes of this section, any circuit used for construction purposes is considered to be temporary.

003 Temporary installations - time constraints.

(2) Temporary construction service equipment may only be used for construction purposes and must be disconnected when the permanent service is connected unless the department grants an extension of time.

004 Temporary installations - splices.

~~((2))~~ (3) A splice or junction box is required for all wiring splice or junction connections in a temporary installation.

AMENDATORY SECTION (Amending WSR 03-09-111, filed 4/22/03, effective 5/23/03)

WAC 296-46B-600 Special equipment—Electric signs and outline lighting.

001 Electrical signs - general.

(1) All electrical signs within the scope of UL Standard 48, the electrical sign standard, must be listed. All electrical signs outside the scope of UL Standard 48 will be inspected for compliance with the NEC.

~~((009 Awning electrical signs.))~~

(2) Luminaires in outdoor awnings must be suitable for wet locations and be connected by a wiring method suitable for wet locations.

(3) Fluorescent luminaires must be located at least six inches from the awning fabric. Incandescent lamps or luminaires must be located at least eighteen inches from the awning fabric. A disconnecting means must be installed per Article 600 NEC.

(4) Listed awning signs must be installed in compliance with the manufacturer's instructions and the NEC.

010 Portable or mobile outdoor electrical signs.

(5) A weatherproof receptacle outlet that is weatherproof with the supply cord connected must be installed within six feet of each electrical sign.

(6) Extension cords are not permitted to supply portable outdoor signs.

(7) All portable outdoor electrical signs must be listed or field evaluated by a laboratory accredited by the department.

030 Neon tubing.

(8) NEC 600, Part II, Field-Installed Skeleton Tubing, will apply to all neon tubing and neon circuit conductors.

NEW SECTION

WAC 296-46B-645 Information technology equipment.

017 Power distribution units.

Power distribution units that are used for information technology equipment will be permitted to have multiple panelboards with a single cabinet, provided that the power distribution unit is utilization equipment listed for information technology application.

AMENDATORY SECTION (Amending WSR 03-09-111, filed 4/22/03, effective 5/23/03)

WAC 296-46B-680 Special equipment—Swimming pools, fountains and similar installations.

001 General.

(1) Package spa or hot tubs. Electrical heating, pumping, filtering, and/or control equipment installed within five feet of a spa or hot tub must be listed or field evaluated as a package with the spa or hot tub.

(2) A factory assembled skid pack of electrical heating, pumping, filtering, and/or control equipment (skid pack) must be installed more than five feet from a spa or hot tub and shall be listed as a package unit.

(3) The maintenance disconnect and field installed, listed electrical equipment for a hot tub, spa, or swim spa must be located at least five feet from the hot tub, spa or swim spa. Field installed listed equipment must meet the following additional requirements:

(a) The heater is listed as a "spa heater or swimming pool heater";

(b) The pump is listed as a "spa pump" or "swimming pool/spa pump" (the pump may be combined with a filter assembly); and

(c) Other listed equipment such as panelboards, conduit, and wire are suitable for the environment and comply with the applicable codes.

(4) Field installed, listed electrical equipment for a swimming pool must be located at least five feet from the swimming pool. Field installed listed equipment must meet the following additional requirements:

(a) The heater must be listed as a "swimming pool heater or a spa heater";

(b) The pump must be listed as a "swimming pool pump" or "spa pump" or "swimming pool/spa pump"; and

(c) Other equipment such as panelboards, conduit, and wire must be suitable for the environment and comply with the applicable codes.

The five-foot separation may be reduced by the installation of a permanent barrier, such as a solid wall, fixed glass windows or doors, etc. The five-foot separation will be determined by the shortest path or route that a cord can travel from the spa, hot tub, swim spa, or swimming pool to an object.

(5) The field assembly or installation of "recognized components" will not be permitted.

(6) Hydromassage bathtubs must be listed as a unit and bear a listing mark which reads "hydromassage bathtub."

(7) Manufacturers' instructions must be followed as part of the listing requirements.

(8) Electrical components which have failed and require replacement must be replaced with identical products unless the replacement part is no longer available; in which case, a like-in-kind product may be substituted provided the mechanical and grounding integrity of the equipment is maintained.

(9) Cut-away-type display models may not be sold for other than display purposes and are not expected to bear a listing mark.

025 Feeders.

(10) NEC 680.25(A) as amended to read: A feeder between the service equipment and the remote panelboard is

permitted to run in flexible metal conduit, an approved cable assembly that includes an equipment grounding conductor within its outer sheath (the equipment grounding conductor must comply with NEC 250.24 (A)(5)), rigid metal conduit, intermediate metal conduit, liquidtight flexible nonmetallic conduit, rigid polyvinyl chloride conduit, reinforced thermosetting resin conduit, electrical metallic tubing (when installed on or within a building or crawl space), and electrical nonmetallic tubing (when installed within a building or crawl space). Aluminum conduit is not permitted.

040 Spas and hot tubs.

~~((40))~~ (11) NEC 680.42(C) will apply for interior and exterior wiring to outdoor installations of spas and hot tubs.

NEW SECTION

WAC 296-46B-690 Solar photovoltaic systems.

002 Definitions.

(1) Photovoltaic system. The photovoltaic system may conduct alternating current, direct current, or both and will comprise all interconnected circuits to the point of connection with the building distribution circuits or utility service conductors.

(2) Support structure, foundation, and tracker. For the purposes of this section, those portions of the array or tracker that are exclusively mechanical and are built specifically for the purpose of physically supporting the modules or panels will not be considered part of the photovoltaic system as defined by this article.

004 Installation.

(3) A photovoltaic system design review must be submitted at the time of the inspection request. Permit holders must submit, to the electrical authority having jurisdiction, copies of the photovoltaic equipment manufacturer's installation information, accompanied by a legible one-line diagram of the photovoltaic design and calculations used to determine voltage and current within the photovoltaic system. This diagram must show the photovoltaic equipment, devices, overcurrent protection, conductor sizing, grounding, ground fault protection if required, and any system interconnection points.

(4) For utility interactive systems, persons making interconnections between solar photovoltaic system and the utility distribution network must consult the serving utility and are required to meet all additional utility standards.

007 Maximum voltage.

(5) The open-circuit voltage temperature coefficients supplied in the instructions of listed photovoltaic modules will be used to determine the maximum direct current photovoltaic system voltage. Otherwise the voltage will be calculated using Table 690.7 of the NEC. For the purposes of this calculation, a temperature correction factor of 1.25 will be used unless another factor can be justified and is approved by the authority having jurisdiction.

053 Direct-current photovoltaic power source.

(6) All photovoltaic equipment and disconnecting means must be permanently identified as to their purpose, maximum voltages, and type of current within the system with an identification plate. All photovoltaic circuits must be identified at each overcurrent protection device(s) and panel directory(ies).

(7) Required "WARNING" labels as specified by NEC 690 are required to be an identification plate on or immediately adjacent to the pertinent equipment.

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-700 Emergency systems.

001 Emergency systems - general.

(1) In all health or personal care facilities defined in this chapter, educational facilities, institutional facilities, hotels, motels, and places of assembly for one hundred or more persons, all exit and emergency lights must be installed in accordance with Article 700 NEC and located as required in standards adopted by the state building code council under chapter 19.27 RCW.

008 Signs.

(2) The sign(s) required in NEC 700.8 must be placed at the service disconnecting means and the meter base if the service disconnecting means and meter base are not located within sight and within 5' of each other.

009 Emergency systems - equipment identification.

~~((2))~~ (3) All exit and emergency lights, whether or not required by the NEC, must be installed in accordance with Article 700 NEC.

~~((3))~~ (4) All boxes and enclosures, for Article 700 NEC systems, larger than six inches by six inches, including transfer switches, generators, and power panels for emergency systems and circuits must be permanently identified with an identification plate that is substantially orange in color, except in existing health care facilities the existing nameplate identification color scheme can be retained for transfer switches, generators, and power panels for existing emergency systems that are not being replaced or modified. All other device and junction boxes for emergency systems and circuits must be substantially orange in color, both inside and outside.

027 Coordination.

~~((4))~~ (5) The requirements for selective coordination described in NEC 700.27 are not required where the emergency system was installed prior to June 1, 2006. For new emergency systems that are supplied from an existing emergency system installed prior to June 1, 2006, the new portion of the emergency system must comply with NEC 700.27. The ground fault sensing function of overcurrent protective devices will only be required to selectively coordinate with the ground fault sensing functions of other overcurrent protective devices.

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-701 Legally required standby systems.

008 Signs.

(1) The sign(s) required in NEC 701.8 must be placed at the service disconnecting means and the meter base if the service disconnecting means and meter base are not located within sight and within 5' of each other.

018 Coordination.

(2) The requirements for selective coordination described in NEC 701.18 are not required where the legally required standby system was installed prior to June 1, 2006. For new legally required standby systems that are supplied from an existing legally required standby system installed prior to June 1, 2006, the new portion of the legally required standby system must comply with NEC 701.18. The ground fault sensing function of overcurrent protective devices will only be required to selectively coordinate with the ground fault sensing functions of other overcurrent protective devices.

NEW SECTION**WAC 246-46B-702 Optional standby systems.
008 Signs.**

The sign(s) required in NEC 702.8 must be placed at the service disconnecting means and the meter base if the service disconnecting means and meter base are not located within sight and within 5' of each other.

PART B - ELECTRICAL PLAN REVIEW

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-900 Electrical (~~work permits and fees~~) plan review. (~~General.~~

(1) ~~When an electrical work permit is required by chapter 19.28 RCW or this chapter, inspections may not be made, equipment must not be energized, or services connected unless:~~

- (a) A valid electrical work permit is completely and legibly filled out and readily available;
- (b) The classification or type of facility to be inspected and the exact scope and location of the electrical work to be performed are clearly shown on the electrical work permit;
- (c) The address where the inspection is to be made is clearly identifiable from the street, road or highway that serves the premises; and
- (d) Driving directions are provided for the inspectors' use.

(2) An electrical work permit is valid for only one specific site address.

(3) Except as provided in subsection (8) of this section, a valid electrical work permit must be posted on the job site at a readily accessible and conspicuous location prior to beginning electrical work and at all times until the electrical inspection process is completed.

~~Permit responsibility for.~~

(4) Each person, firm, partnership, corporation, or other entity must furnish a valid electrical work permit for the installation, alteration, or other electrical work performed or to be performed solely by that entity. When the permitted work is performed solely or in part by another entity, the electrical work permit purchaser must request approval from the chief electrical inspector to take responsibility for the work of the original installing entity. Each electrical work permit application must be signed by the electrical contractor's administrator (or designee) or the person, or authorized rep-

resentative of the firm, partnership, corporation, or other entity that is performing the electrical installation or alteration. Permits purchased electronically do not require a handwritten signature. An entity designated to sign electrical permits must provide written authorization of the purchaser's designation when requested by the department.

(5) ~~Permits to be obtained by customers. Whenever a serving electrical utility performs work for a customer under one of the exemptions in WAC 296-46B-925 and the work is subject to inspection, the customer is responsible for obtaining all required permits.~~

(6) Except for emergency repairs to existing electrical systems, electrical work permits must be obtained and posted at the job site prior to beginning the installation or alteration. An electrical work permit for emergency repairs to existing electrical systems must be obtained and posted at the job site no later than the next business day after the work is begun.

(7) Fees must be paid in accordance with the inspection fee schedule, WAC 296-46B-905. The amount of the fee due is calculated based on the fee effective at the date payment is made. If the project is required to have an electrical plan review, the plan review fees will be based on the fees effective at the date the plans are received by the department for review.

~~Permit requirements for.~~

(8) As required by chapter 19.28 RCW or this chapter, an electrical work permit is required for the installation, alteration, or maintenance of all electrical systems or equipment except for:

(a) Travel trailers;

(b) Class A basic electrical work which includes:

(i) The ~~like-in-kind replacement~~ of a: Contactor, relay, timer, starter, circuit board, or similar control component; household appliance; circuit breaker; fuse; residential luminaire; lamp; snap switch; dimmer; receptacle outlet; thermostat; heating element; luminaire ballast with an exact same ballast; component(s) of electric signs, outline lighting, skeleton neon tubing when replaced on-site by an appropriate electrical contractor and when the sign, outline lighting or skeleton neon tubing electrical system is not modified; ten horsepower or smaller motor;

(ii) Induction detection loops described in WAC 296-46B-300(2) and used to control gate access devices;

(iii) Heat cable repair; and

(iv) Embedding premanufactured heat mats in tile grout where the mat is listed by an approved testing laboratory and comes from the manufacturer with preconnected lead-in conductors. All listing marks and lead-in conductor labels must be left intact and visible for evaluation and inspection by the installing electrician and the electrical inspector.

Unless specifically noted, the exemptions listed do not include: The replacement of an equipment unit, assembly, or enclosure that contains an exempted component or combination of components (e.g., an electrical furnace/heat pump, industrial milling machine, etc.) or any appliance/equipment described in this section for Class B permits.

A provisional electrical work permit label may be posted in lieu of an electrical work permit. If a provisional electrical work permit label is used, an electrical work permit must be

obtained within two working days after posting the provisional electrical work permit label.

(9) An electrical work permit is required for all installations of telecommunications systems on the customer side of the network demarcation point for projects greater than ten telecommunications outlets. All backbone installations regardless of size and all telecommunications cable or equipment installations involving penetrations of fire barriers or passing through hazardous locations require permits and inspections. For the purposes of determining the inspection threshold for telecommunications projects greater than ten outlets, the following will apply:

(a) An outlet is the combination of jacks and mounting hardware for those jacks, along with the associated cable and telecommunications closet terminations, that serve one workstation. In counting outlets to determine the inspection threshold, one outlet must not be associated with more than six standard four-pair cables or more than one twenty-five-pair cable. Therefore, installations of greater than sixty standard four-pair cables or ten standard twenty-five-pair cables require permits and inspections. (It is not the intent of the statute to allow large masses of cables to be run to workstations or spaces serving telecommunications equipment without inspection. Proper cable support and proper loading of building structural elements are safety concerns. When considering total associated cables, the telecommunications availability at one workstation may count as more than one outlet.)

(b) The installation of greater than ten outlets and the associated cables along any horizontal pathway from a telecommunications closet to work areas during any continuous ninety-day period requires a permit and inspection.

(c) All telecommunications installations within the residential dwelling units of single-family, duplex, and multi-family dwellings do not require permits or inspections. In residential multifamily dwellings, permits and inspections are required for all backbone installations, all fire barrier penetrations, and installations of greater than ten outlets in common areas.

(d) No permits or inspections are required for installation or replacement of cord and plug-connected telecommunications equipment or for patch cord and jumper cross-connected equipment.

(e) Definitions of telecommunications technical terms will come from chapter 19.28 RCW, this chapter, TIA/EIA standards, and NEC.

Permit—inspection and approval:

(10) Requests for inspections:

(a) Requests for inspections must be made no later than three business days after completion of the electrical/telecommunications installation or one business day after any part of the installation has been energized, whichever occurs first.

(b) Requests for after hours or weekend inspections must be made by contacting the local electrical inspection supervisor at least three working days prior to the requested date of inspection. The portal-to-portal inspection fees required for after hours or weekend inspections are in addition to the cost of the original electrical work permit.

(c) Emergency requests to inspect repairs necessary to preserve life and equipment safety may be requested at any time.

(d) Inspections for annual electrical maintenance permits and annual telecommunications permits may be done on a regular schedule arranged by the permit holder with the department.

(11) Final inspection approval will not be made until all inspection fees are paid in full.

Permit—duration/refunds:

(12) Electrical work permits will expire one year after the date of purchase unless electrical work is actively and consistently in progress and inspections requested. Refunds are not available for:

(a) Expired electrical work permits;

(b) Electrical work permits where the electrical installation has begun; or

(c) Any electrical work permit where an electrical inspection or electrical inspection request has been made.

Permit—annual telecommunications:

(13) The chief electrical inspector can allow annual permits for the inspection of telecommunications installations to be purchased by a building owner or licensed electrical/telecommunications contractor. The owner's full-time telecommunications maintenance staff, or a licensed electrical/telecommunications contractor(s) can perform the work done under this annual permit. The permit holder is responsible for correcting all installation deficiencies. The permit holder must make available, to the electrical inspector, all records of all the telecommunications work performed and the valid electrical or telecommunications contractor's license numbers for all contractors working under the permit.

Permit—annual electrical:

(14) The chief electrical inspector can allow annual permits for the inspection of electrical installations to be purchased by a building owner or licensed electrical contractor. This type of permit is available for commercial/industrial locations employing a full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor.

The permit holder is responsible for correcting all installation deficiencies. The permit holder must make available, to the electrical inspector, all records of all electrical work performed.

This type of electrical permit may be used for retrofit, replacement, maintenance, repair, upgrade, and alterations to electrical systems at a single plant or building location. This type of permit does not include new or increased service or new square footage.

Provisional electrical work permit—use/duration/refunds:

(15) Only licensed electrical or telecommunications contractors can use provisional electrical work permits.

(16) If a provisional electrical work permit label is used, the following requirements must be met:

(a) Prior to beginning the work, the certified electrician or telecommunications worker performing the installation must affix the provisional electrical work permit label on the cover of the panelboard, overcurrent device, or telecommunications equipment supplying the circuit or equipment.

(b) The job site portion of the label must include the following:

- (i) Date the work is begun;
- (ii) Contractor's name;
- (iii) Contractor's license number; and
- (iv) Short description of the work.

(c) The contractor portion of the label must include the following:

- (i) Date the work is begun;
- (ii) Contractor's license number;
- (iii) Job site address;
- (iv) Owner's name; and
- (v) Short description of the work.

(d) The label must be filled in using sunlight and weather resistant ink.

(e) The contractor must return the contractor's portion of the label to the department of labor and industries, electrical section office having jurisdiction for the inspection, within two working days after the job site portion of the label is affixed. Either receipt by department of labor and industries or postmark to a valid department of labor and industries electrical address is acceptable for meeting this requirement.

(f) The contractor must return the contractor's portion of the label to the Department of Labor & Industries, Chief Electrical Inspector, within five working days after destroying or voiding any label.

(g) The contractor is responsible for safekeeping of all purchased labels.

(17) Refunds are not available for provisional electrical work permit labels.

(18) Provisional electrical work permit labels will be sold in blocks of twenty.

(19) Any contractor purchasing a provisional electrical work permit label may be audited for compliance with the provisions for purchasing, inspection, reporting of installations, and any other requirement of usage.

Class B electrical work permit – use.

(20) The electrical contractor must return the contractor's portion of the Class B label to the department of labor and industries, chief electrical inspector, within five working days after destroying or voiding any label.

(21) The electrical contractor is responsible for safekeeping of all purchased Class B labels.

(22) Only licensed electrical/telecommunication contractors can use the Class B basic electrical inspection/random inspection process. Health care, large commercial, or industrial facilities using an employee who is a certified electrician(s) can use the Class B random electrical inspection process after permission from the chief electrical inspector.

(23) If the Class B random electrical inspection process is used, the following requirements must be met:

(a) The certified electrician/telecommunications worker performing the installation must affix a Class B installation label on the cover of the panelboard or overcurrent device supplying power to the circuit or equipment prior to beginning the work.

(b) The job site portion of the label must include the following:

- (i) Date of the work;
- (ii) Electrical/telecommunication contractor's name;

(iii) Electrical/telecommunication contractor's license number;

(iv) Installing electrician's certificate number, except for telecommunication work. For thermostat installations described in WAC 296-46B-965(15), the installing trainee may enter their training certificate number; and

(v) Short description of the work.

(c) The contractor portion of the label must include the following:

(i) Date of the work;

(ii) Electrical/telecommunication contractor's license number;

(iii) Installing electrician's certificate number, except for telecommunication work;

(iv) Job site address;

(v) Contact telephone number for the job site (to be used to arrange inspection); and

(vi) Short description of the work.

(d) The label must be filled in using sunlight and weather resistant ink.

(e) The electrical/telecommunication contractor must return the contractor's portion of the label to the Department of Labor and Industries, Electrical Section, Chief Electrical Inspector, P.O. Box 44460, Olympia, WA 98504-4460 within fifteen working days after the job site portion of the Class B installation label is affixed.

(24) Class B basic installation labels will be sold in blocks. Installations where a Class B basic installation label is used will be inspected on a random basis as determined by the department.

(a) If any such random inspection fails, a subsequent label in the block must be inspected.

(b) If any such subsequent installation fails inspection, another label in the block must be inspected until a label is approved without a correction(s).

(c) A fee is required for any inspection required when a correction(s) is issued as a result of the inspection of any Class B label or if an inspection is required because of (a) or (b) of this subsection. See WAC 296-46B-905(15) for fees.

(25) Any electrical/telecommunication contractor or other entity using the Class B basic electrical inspection/random inspection process may be audited for compliance with the provisions for purchasing, inspection, reporting of installations, and any other requirement of usage.

(26) Class B basic electrical work means work other than Class A basic electrical work. See WAC 296-46B-900(8) for Class A definition.

(a) Class B basic electrical work includes the following:

(i) Extension of not more than one branch electrical circuit limited to one hundred twenty volts and twenty amps each where:

(A) No cover inspection is necessary. For the purposes of this section, cover inspection does not include work covered by any surface that may be removed for inspection without damaging the surface; and

(B) The extension does not supply more than two devices or outlets as defined by the NEC. A device allowed in an extended circuit includes: General use snap switches/receptacles, luminaires, thermostats, speakers, etc., but does

not include wiring/cabling systems, isolating switches, magnetic contactors, motor controllers, etc.

(ii) Like-in-kind replacement of:

(A) A single luminaire not exceeding two hundred seventy-seven volts and twenty amps; or

(B) A motor larger than ten horsepower; or

(C) The internal wiring of a furnace, air conditioner, refrigeration unit or household appliance; or

(D) An electric/gas/oil furnace not exceeding two hundred forty volts and one hundred amps when the furnace is connected to an existing branch circuit. For the purposes of this section, a boiler is not a furnace; or

(E) An individually controlled electric room heater (e.g., baseboard, wall, fan forced air, etc.), air conditioning unit or refrigeration unit not exceeding two hundred forty volts, thirty minimum circuit amps when the unit is connected to an existing branch circuit; or

(F) Circuit modification required to install not more than five residential load control devices in a residence where installed as part of an energy conservation program sponsored by an electrical utility and where the circuit does not exceed two hundred forty volts and thirty amps.

(iii) The following low voltage systems:

(A) Repair and replacement of devices not exceeding one hundred volt-amperes in Class 2, Class 3, or power limited low voltage systems in one and two family dwellings; or

(B) Repair and replacement of devices not exceeding one hundred volt-amperes in Class 2, Class 3, or power limited low voltage systems in other buildings, provided the equipment is not for fire alarm or nurse call systems and is not located in an area classified as hazardous by the NEC; or

(C) The installation of Class 2 or 3 device(s) or wiring for thermostat, audio, security, burglar alarm, intercom, amplified sound, public address, or access control systems. This does not include fire alarm, nurse call, lighting control, industrial automation/control or energy management systems; or

(D) Telecommunications cabling and equipment requiring inspection in RCW 19.28.470;

(iv) The replacement of not more than ten standard receptacles with GFCI receptacles;

(v) The conversion of not more than ten snap switches to dimmers for the use of controlling a luminaire(s) conversion.

(b) Class B basic electrical work does not include any work in:

(i) Areas classified as Class (I), Class (II), Class (III), or zone locations per NEC 500; or

(ii) Areas regulated by NEC 517 or 680; or

(iii) Any work where electrical plan review is required; or

(iv) Fire alarm, nurse call, lighting control, industrial automation/control or energy management systems.)) **Classification or definition of occupancies.**

(1) Occupancies are classified and defined as follows:

(a) Educational facility refers to a building or portion of a building used primarily for educational purposes by six or more persons at one time for twelve hours per week or four hours in any one day. Educational occupancy includes:

Schools (preschool through grade twelve), colleges, academies, universities, and trade schools.

(b) Institutional facility refers to a building or portion of a building used primarily for detention or correctional occupancies where some degree of restraint or security is required for a time period of twenty-four or more hours. Such occupancies include, but are not restricted to: Penal institutions, reformatories, jails, detention centers, correctional centers, and residential-restrained care.

(c) Health or personal care facility. Health or personal care facility refers to buildings or parts of buildings that contain, but are not limited to, facilities that are required to be licensed by the department of social and health services or the department of health (e.g., hospitals, nursing homes, private alcoholism hospitals, private psychiatric hospitals, boarding homes, alcoholism treatment facilities, maternity homes, birth centers or childbirth centers, residential treatment facilities for psychiatrically impaired children and youths, and renal hemodialysis clinics) and medical, dental, or chiropractic offices or clinics, outpatient or ambulatory surgical clinics, and such other health care occupancies where patients who may be unable to provide for their own needs and safety without the assistance of another person are treated.

(i) "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, abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis.

(ii) "Nursing home," "nursing home unit" or "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.

(iii) "Boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing board and domiciliary care to seven or more aged persons not related by blood or marriage to the operator. It must not include any home, institution, or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution, or section thereof.

(iv) "Private alcoholism hospital" means an institution, facility, building, or equivalent designed, organized, maintained, or operated to provide diagnosis, treatment, and care of individuals demonstrating signs or symptoms of alcoholism, including the complications of associated substance use and other medical diseases that can be appropriately treated and cared for in the facility and providing accommodations, medical services, or other necessary services over a continuous period of twenty-four hours or more for two or more individuals unrelated to the operator, provided that this chapter will not apply to any facility, agency, or other entity which is owned and operated by a public or governmental body.

(v) "Alcoholism treatment facility" means a private place or establishment, other than a licensed hospital, operated primarily for the treatment of alcoholism.

(vi) "Private psychiatric hospital" means a privately owned and operated establishment or institution which: Provides accommodations and services over a continuous period of twenty-four hours or more, and is expressly and exclusively for observing, diagnosing, or caring for two or more individuals with signs or symptoms of mental illness who are not related to the licensee.

(vii) "Maternity home" means any home, place, hospital, or institution in which facilities are maintained for the care of four or more women, not related by blood or marriage to the operator, during pregnancy or during or within ten days after delivery: Provided, however, that this definition will not apply to any hospital approved by the American College of Surgeons, American Osteopathic Association, or its successor.

(viii) "Birth center" or "childbirth center" means a type of maternity home which is a house, building, or equivalent organized to provide facilities and staff to support a birth service provided that the birth service is limited to low-risk maternal clients during the intrapartum period.

(ix) "Ambulatory surgical facility" means a facility, not a part of a hospital, providing surgical treatment to patients not requiring inpatient care in a hospital. This term does not include a facility in the offices of private physicians or dentists, whether for individual or group practice, if the privilege of using such facility is not extended to physicians or dentists outside the individual or group practice. (NEC: Ambulatory Health Care Center.)

(x) "Hospice care center" means any building, facility, place, or equivalent, organized, maintained, or operated specifically to provide beds, accommodations, facilities, or services over a continuous period of twenty-four hours or more for palliative care of two or more individuals, not related to the operator, who are diagnosed as being in the latter stages of an advanced disease which is expected to lead to death.

(xi) "Renal hemodialysis clinic" means a facility in a building or part of a building which is approved to furnish the full spectrum of diagnostic, therapeutic, or rehabilitative services required for the care of renal dialysis patients (including inpatient dialysis furnished directly or under arrangement). (NEC: Ambulatory Health Care Center.)

(xii) "Medical, dental, and chiropractic clinic" means any clinic or physicians' office where patients are not regularly kept as bed patients for twenty-four hours or more. Electrical plan review is not required.

(xiii) "Residential treatment facility for psychiatrically impaired children and youth" means a residence, place, or facility designed or organized to provide twenty-four-hour residential care or long-term individualized, active treatment for clients who have been diagnosed or evaluated as psychiatrically impaired.

(xiv) "Adult residential rehabilitation center" means a residence, place, or facility designed or organized primarily to provide twenty-four-hour residential care, crisis and short-term care or long-term individualized active treatment and rehabilitation for clients diagnosed or evaluated as psychiat-

rically impaired or chronically mentally ill as defined herein or in chapter 71.24 RCW.

(xv) "Group care facility" means a facility other than a foster-family home maintained or operated for the care of a group of children on a twenty-four-hour basis.

(d) Licensed day care centers.

(i) "Child day care center" means a facility providing regularly scheduled care for a group of children one month of age through twelve years of age for periods less than twenty-four hours.

(ii) "School-age child care center" means a program operating in a facility other than a private residence accountable for school-age children when school is not in session. The facility must meet department of licensing requirements and provide adult supervised care and a variety of developmentally appropriate activities.

(iii) "Family child day care home" means the same as "family child care home" and "a child day care facility" licensed by the state, located in the family abode of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home. Electrical plan review is not required.

Plan review for educational, institutional or health care facilities/buildings.

(2) Plan review is a part of the electrical inspection process; its primary purpose is to determine:

(a) That service/feeder conductors are calculated and sized according to the proper NEC or WAC article or section;
(b) The classification of hazardous locations; and
(c) The proper design of emergency and standby systems.

(3) Electrical plan review.

(a) Electrical plan review is not required for:

(i) Lighting specific projects that result in an electrical load reduction on each feeder involved in the project;

(ii) Low voltage systems;

(iii) Modifications to existing electrical installations where all of the following conditions are met:

- Service or distribution equipment involved is rated not more than 400 amperes and does not exceed 250 volts;

- Does not involve emergency systems other than listed unit equipment per NEC 700.12(F);

- Does not involve branch circuits or feeders of an essential electrical system as defined in NEC 517.2; and

- Service and feeder load calculations are increased by 5% or less.

(iv) Stand-alone utility fed services that do not exceed 250 volts, 400 amperes where the project's distribution system does not include:

- Emergency systems other than listed unit equipment per NEC 700.12(F);

- Critical branch circuits or feeders as defined in NEC 517.2; or

- A required fire pump system.

(b) Electrical plan review is required for all other new or altered electrical projects in educational, institutional, or health care occupancies classified or defined in this chapter.

(c) If a review is required, the electrical plan must be submitted for review and approval before the electrical work is begun.

(d) Electrical plans.

(i) The plan must be submitted for plan review prior to beginning any electrical inspection. If a plan is rejected during the plan review process, no electrical inspection(s) may proceed until the plan is resubmitted and a conditional acceptance is granted.

(ii) The submitted plan will receive a preliminary review within seven business days after receipt by the department or city authorized to do electrical inspections.

(iii) If the submitted plan:

- Is rejected at the preliminary review, no inspection(s) will be made on the project.
- Receives conditional acceptance, the permit holder may request a preliminary inspection(s) in writing to the department or city authorized to do electrical inspections. The request must note that the preliminary inspection(s) is conditional and subject to any alterations required from the final plan review process.

(iv) Once the submitted plan has preliminary plan review approval, a copy of the submitted plan must be available on the job site for use by the electrical inspector.

(v) The final approved plan must be available on the job site, for use by the electrical inspector, after it is approved, but no later than prior to the final electrical inspection.

(vi) If the final approved plan requires changes from the conditionally accepted plan, alterations to the project may be required to make the project comply with the approved plan.

(vii) If the installer deviates from the service/feeder design shown on the final approved plan, a supplemental plan must be submitted for review before inspection can proceed. Load reductions or moving branch circuit locations within a panelboard do not require resubmission.

(e) All electrical plans for educational facilities, hospitals, and nursing homes must be prepared by, or under the direction of, a consulting engineer registered under chapter 18.43 RCW, and chapters 246-320, 180-29, and 388-97 WAC and stamped with the engineer's mark and signature.

(f) Refer plans for review to the Electrical Section, Department of Labor and Industries, P.O. Box 44460, Olympia, Washington 98504-4460 or the city authorized to do electrical inspections.

(g) Plans for projects within cities that perform electrical inspections must be submitted to that city for review.

(h) Plans to be reviewed must be legible, identify the name and classification of the facility, clearly indicate the scope and nature of the installation and the person or firm responsible for the electrical plans. The plans must clearly show the electrical installation or alteration in floor plan view, include all switchboard and panelboard schedules and when a service or feeder is to be installed or altered, must include a riser diagram, load calculation, fault current calculation, and interrupting rating of equipment. Where existing electrical systems are to supply additional loads, the plans must include documentation that proves adequate capacity and ratings. The plans must be submitted with a plan review submittal form available from the department or city authorized to do electrical inspections. Plan review fees are not

required to be paid until the review is completed. Plans will not be returned until all fees are paid. Fees will be calculated based on the date the plans are received by the department or city authorized to do electrical inspections.

(i) The department may perform the plan review for new or altered electrical installations of other types of construction when the owner or electrical contractor makes a voluntary request for review. A city authorized to do electrical inspections may require a plan review of any electrical system.

(j) For existing structures where additions or alterations to feeders and services are proposed, NEC 220.87(1) may be used. If NEC 220.87(1) is used, the following is required:

(i) The date of the measurements.

(ii) A statement attesting to the validity of the demand data, signed by a professional electrical engineer or the electrical administrator of the electrical contractor performing the work.

(iii) A diagram of the electrical system identifying the point(s) of measurement.

(iv) Building demand measured continuously on the highest-loaded phase of the feeder or service over a thirty-day period, with the demand peak clearly identified. Demand peak is defined as the maximum average demand over a fifteen-minute interval.

Notes to Tables 900-1 and 900-2.

1. A city authorized to do electrical inspections may require plan review on facility types not reviewed by the department.

**Table 900-1
Health or Personal Care Facilities**

Health or Personal Care Facility Type	Plan Review Required
<u>Hospital</u>	<u>Yes</u>
<u>Nursing home unit or long-term care unit</u>	<u>Yes</u>
<u>Boarding home</u>	<u>Yes</u>
<u>Assisted living facility</u>	<u>Yes</u>
<u>Private alcoholism hospital</u>	<u>Yes</u>
<u>Alcoholism treatment facility</u>	<u>Yes</u>
<u>Private psychiatric hospital</u>	<u>Yes</u>
<u>Maternity home</u>	<u>Yes</u>
<u>Ambulatory surgery facility</u>	<u>Yes</u>
<u>Renal hemodialysis clinic</u>	<u>Yes</u>
<u>Residential treatment facility for psychiatrically impaired children and youth</u>	<u>Yes</u>
<u>Adult residential rehabilitation center</u>	<u>Yes</u>

Table 900-2

Educational and Institutional Facilities, Places of Assembly, or Other Facilities

Educational, Institutional, or Other Facility Types	Plan Review Required
<u>Educational</u>	<u>Yes</u>
<u>Institutional</u>	<u>Yes</u>

PART C - PERMITS AND FEES

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-901 General ((inspections, inspectors, city inspection, variance))—Electrical work permits and fees. ((1) Electrical inspectors will give information as to the interpretation or application of the standards in this chapter, but will not lay out work or act as consultants for contractors, owners, or users.

(2) The department may enforce city electrical ordinances where those governmental agencies do not make electrical inspections under an established program.

(3) A variance from the electrical installation requirements of chapter 19.28 RCW or this chapter may be granted by the department when it is assured that equivalent objectives can be achieved by establishing and maintaining effective safety.

(a) Any electrical permit holder may request a variance.

(b) The permit holder must make the request in writing, using a form provided by the department, to the chief electrical inspector. The request must include:

- (i) A description of the installation as installed or proposed;
- (ii) A detailed list of the applicable code violations;
- (iii) A detailed list of safety violations;
- (iv) A description of the proposal for meeting equivalent objectives for code and/or safety violations; and
- (v) Appropriate variance application fee as listed in WAC 296-46B-905.

Inspection.

(4) Electrical wiring or equipment subject to this chapter must be sufficiently accessible, at the time of inspection, to allow the inspector to visually inspect the installation to verify conformance with the NEC and any other electrical requirements of this chapter.

(5) Cables or raceways, fished according to the NEC, do not require visual inspection.

(6) All required equipment grounding conductors installed in concealed cable or flexible conduit systems must be completely installed and made up at the time of the rough-in cover inspection.

(7) The installation of all structural elements and mechanical systems (e.g., framing, plumbing, ducting, etc.) must be complete in the area(s) where electrical inspection is requested. Prior to completion of an exterior wall cover inspection, either:

(a) The exterior shear panel/sheathing nail inspection must be completed by the building code inspector; or

(b) All wiring and device boxes must be a minimum of 63 mm (2 1/2") from the exterior surface of the framing member; or

(c) All wiring and device boxes must be protected by a steel plate a minimum of 1.6 mm (1/16") thick and of appropriate width and height installed to cover the area of the wiring or box.

(8) In order to meet the minimum electrical safety standards for installations, all materials, devices, appliances, and equipment, not exempted in chapter 19.28 RCW, must conform to applicable standards recognized by the department, be listed, or field evaluated. Other than as allowed in subsection (20) of this section, equipment must not be energized until such standards are met unless specific permission has been granted by the chief electrical inspector.

(9) The department will recognize the state department of transportation as the inspection authority for telecommunications systems installation within the rights-of-way of state highways provided the department of transportation maintains and enforces an equal, higher or better standard of construction and of materials, devices, appliances and equipment than is required for telecommunications systems installations by chapter 19.28 RCW and this chapter.

Inspection move on buildings and structures.

(10) All buildings or structures relocated into or within the state:

(a) Other than residential, wired inside the United States (U.S.) must be inspected to ensure compliance with current requirements of chapter 19.28 RCW and the rules developed by the department.

(b) Wired outside the U.S. or Canada must be inspected to ensure compliance with all current requirements of chapter 19.28 RCW and the rules developed by the department.

(11) Residential buildings or structures wired in the U.S., to NEC requirements, and moved into or within a county, city, or town must be inspected to ensure compliance with the NEC requirements in effect at the time and place the original wiring was made. The building or structure must be inspected to ensure compliance with all current requirements of chapter 19.28 RCW and the rules developed by the department if:

(a) The original occupancy classification of the building or structure is changed as a result of the move; or

(b) The building or structure has been substantially remodeled or rehabilitated as a result of the move.

(12) Residential buildings or structures wired in Canada to Canadian Electrical Code (CEC) standards and moved into or within a county, city, or town, must be inspected to ensure compliance with the following minimum safety requirements:

(a) Service, service grounding, and service bonding must comply with the current chapter 19.28 RCW and rules adopted by the department.

(b) Canadian Standards Association (CSA) listed Type NMD cable is allowed with the following qualifications:

(i) CSA listed Type NMD cable, American Wire Gauge #10 and smaller installed after 1964 utilizing an equipment grounding conductor smaller than the phase conductors, must be:

(A) Replaced with a cable utilizing a full-size equipment grounding conductor; or

(B) Protected by a ground fault circuit interrupter protection device.

(ii) CSA listed Type NMD cable, #8 AWG and larger, must:

(A) Utilize an equipment grounding conductor sized according to the requirements of the NEC in effect at the time of the installation;

(B) Be protected by a ground fault circuit interrupter protection device; or

(C) Be replaced.

(e) Other types of wiring and cable must be:

(i) Replaced with wiring listed or field evaluated in accordance with U.S. standards by a laboratory approved by the department; or

(ii) Protected by a ground fault circuit interrupter protection device and are fault circuit protection device.

(d) Equipment, other than wiring or panelboards, manufactured and installed prior to 1997, must be listed and identified by laboratory labels approved by the department or CSA labels.

(e) All panelboards must be listed and identified by testing laboratory labels approved by the department with the following qualifications:

(i) CSA listed panelboards labeled "Suitable for Use as Service Equipment" will be considered to be approved as "Suitable for Use only as Service Equipment."

(ii) CSA listed panelboards must be limited to a maximum of 42 circuits.

(iii) CSA listed panelboards used as lighting and appliance panelboards as described in the NEC, must meet all current requirements of the NEC and this chapter.

(f) Any wiring or panelboards replaced or changed as a result of the move must meet current requirements of chapter 19.28 RCW and this chapter.

(g) The location, type, and ground fault circuit interrupter protection of receptacles and equipment in a bathroom, kitchen, basement, garage, or outdoor area must meet the Washington requirements in effect at the time the wiring was installed.

(h) 4, 15-ampere, kitchen small appliance circuits will be accepted in lieu of 2, 20-ampere, kitchen small appliance circuits. Receptacles will not be required to be added on kitchen peninsular or island counters.

(i) Spacing requirements for all other receptacles must meet the Washington requirements in effect at the time the wiring was installed.

(j) Receptacles installed above baseboard or fixed wall space heaters must be removed and the outlet box covered with a blank cover. The receptacle is required to be relocated as closely as possible to the existing location.

(k) Lighting outlet and switch locations must meet the Washington requirements in effect at the time the wiring was installed.

(l) Dedicated 20-ampere small appliance circuits are not required in dining rooms.

(m) Electric water heater branch circuits must be adequate for the load.

(n) The location, type, and circuit protection of feeders must meet the Washington requirements in effect at the time the wiring was installed.

Classification or definition of occupancies.

(13) Occupancies are classified and defined as follows:

(a) Educational facility refers to a building or portion of a building used primarily for educational purposes by six or more persons at one time for twelve hours per week or four hours in any one day. Educational occupancy includes: Schools (preschool through grade twelve), colleges, academies, universities, and trade schools.

(b) Institutional facility refers to a building or portion of a building used primarily for detention and correctional occupancies where some degree of restraint or security is required for a time period of twenty-four or more hours. Such occupancies include, but are not restricted to: Penal institutions, reformatories, jails, detention centers, correctional centers, and residential-restrained care.

(c) Health or personal care facility. Health or personal care facility refers to buildings or parts of buildings that contain, but are not limited to, facilities that are required to be licensed by the department of social and health services or the department of health (e.g., hospitals, nursing homes, private alcoholism hospitals, private psychiatric hospitals, boarding homes, alcoholism treatment facilities, maternity homes, birth centers or childbirth centers, residential treatment facilities for psychiatrically impaired children and youths, and renal hemodialysis clinics) and medical, dental or chiropractic offices or clinics, outpatient or ambulatory surgical clinics, and such other health care occupancies where patients who may be unable to provide for their own needs and safety without the assistance of another person are treated.

(i) "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.

(ii) "Nursing home," "nursing home unit" or "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.

(iii) "Boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing board and domiciliary care to seven or more aged persons not related by blood or marriage to the operator. It must not include any home, institution, or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution, or section thereof.

(iv) "Private alcoholism hospital" means an institution, facility, building, or equivalent designed, organized, maintained, and operated to provide diagnosis, treatment, and care of individuals demonstrating signs or symptoms of alcoholism, including the complications of associated substance use

and other medical diseases that can be appropriately treated and cared for in the facility and providing accommodations, medical services, and other necessary services over a continuous period of twenty-four hours or more for two or more individuals unrelated to the operator, provided that this chapter will not apply to any facility, agency, or other entity which is owned and operated by a public or governmental body.

(v) "Alcoholism treatment facility" means a private place or establishment, other than a licensed hospital, operated primarily for the treatment of alcoholism.

(vi) "Private psychiatric hospital" means a privately owned and operated establishment or institution which provides accommodations and services over a continuous period of twenty-four hours or more, and is expressly and exclusively for observing, diagnosing, or caring for two or more individuals with signs or symptoms of mental illness, who are not related to the licensee.

(vii) "Maternity home" means any home, place, hospital, or institution in which facilities are maintained for the care of four or more women, not related by blood or marriage to the operator, during pregnancy or during or within ten days after delivery. Provided, however, that this definition will not apply to any hospital approved by the American College of Surgeons, American Osteopathic Association or its successor.

(viii) "Birth center" or "childbirth center" means a type of maternity home which is a house, building, or equivalent organized to provide facilities and staff to support a birth service, provided that the birth service is limited to low-risk maternal clients during the intrapartum period.

(ix) "Ambulatory surgical facility" means a facility, not a part of a hospital, providing surgical treatment to patients not requiring inpatient care in a hospital. This term does not include a facility in the offices of private physicians or dentists, whether for individual or group practice, if the privilege of using such facility is not extended to physicians or dentists outside the individual or group practice. (NEC; Ambulatory Health Care Center.)

(x) "Hospice care center" means any building, facility, place, or equivalent, organized, maintained, and operated specifically to provide beds, accommodations, facilities, and services over a continuous period of twenty-four hours or more for palliative care of two or more individuals, not related to the operator, who are diagnosed as being in the latter stages of an advanced disease which is expected to lead to death.

(xi) "Renal hemodialysis clinic" means a facility in a building or part of a building which is approved to furnish the full spectrum of diagnostic, therapeutic, and rehabilitative services required for the care of renal dialysis patients (including inpatient dialysis furnished directly or under arrangement). (NEC; Ambulatory Health Care Center.)

(xii) "Medical, dental, and chiropractic clinic" means any clinic or physicians' office where patients are not regularly kept as bed patients for twenty-four hours or more. Electrical plan review not required.

(xiii) "Residential treatment facility for psychiatrically impaired children and youth" means a residence, place, or facility designed and organized to provide twenty-four hour residential care and long-term individualized, active treat-

ment for clients who have been diagnosed or evaluated as psychiatrically impaired.

(xiv) "Adult residential rehabilitation center" means a residence, place, or facility designed and organized primarily to provide twenty-four hour residential care, crisis and short-term care and/or long-term individualized active treatment and rehabilitation for clients diagnosed or evaluated as psychiatrically impaired or chronically mentally ill as defined herein or in chapter 71.24 RCW.

(xv) "Group care facility" means a facility other than a foster family home maintained and operated for the care of a group of children on a twenty-four hour basis.

(d) Licensed day care centers:

(i) "Child day care center" means a facility providing regularly scheduled care for a group of children one month of age through twelve years of age for periods less than twenty-four hours; except, a program meeting the definition of a family child care home will not be licensed as a day care center without meeting the requirements of WAC 388-150-020(5).

(ii) "School-age child care center" means a program operating in a facility other than a private residence accountable for school-age children when school is not in session. The facility must meet department of licensing requirements and provide adult supervised care and a variety of developmentally appropriate activities.

(iii) "Family child day care home" means the same as "family child care home" and "a child day care facility" licensed by the state, located in the family abode of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home. Electrical plan review not required.

Plan review for educational, institutional or health care facilities and other buildings.

(14) Plan review is a part of the electrical inspection process; its primary purpose is to determine:

(a) That service/feeder conductors are calculated and sized according to the proper NEC or WAC article or section;

(b) The classification of hazardous locations; and

(c) The proper design of emergency and standby systems.

(15) Electrical plan review:

(a) Electrical plan review is not required for:

(i) Lighting specific projects that result in an electrical load reduction on each feeder involved in the project;

(ii) Low voltage systems;

(iii) Modifications to existing electrical installations where all of the following conditions are met:

• Service or distribution equipment involved is rated not more than 400 amperes and does not exceed 250 volts;

• Does not involve emergency systems other than listed unit equipment per NEC 700.12(F);

• Does not involve branch circuits or feeders of an essential electrical system as defined in NEC 517.2; and

• Service and feeder load calculations are increased by 5% or less.

(iv) Stand-alone utility fed services that do not exceed 250 volts, 400 amperes where the project's distribution system does not include:

- Emergency systems other than listed unit equipment per NEC 700.12(F);

- Critical branch circuits or feeders as defined in NEC 517.2; or

- A required fire pump system.

(b) Electrical plan review is required for all other new or altered electrical projects in educational, institutional, or health care occupancies classified or defined in this chapter.

(c) If a review is required, the electrical plan must be submitted for review and approval before the electrical work is begun.

(d) Electrical plans.

(i) The plan must be submitted for plan review prior to beginning any electrical inspection. If a plan is rejected during the plan review process, no electrical inspection(s) may proceed until the plan is resubmitted and a conditional acceptance is granted.

(ii) The submitted plan will receive a preliminary review within seven business days after receipt by the department.

(iii) If the submitted plan:

- Is rejected at the preliminary review, no inspection(s) will be made on the project.

- Receives conditional acceptance, the permit holder may request a preliminary inspection(s) in writing to the department. The request must note that the preliminary inspection(s) is conditional and subject to any alterations required from the final plan review process.

(iv) Once the submitted plan has plan review approval, the approved plan must be available on the job site for use by the electrical inspector.

(v) The approved plan must be available on the job site, for use by the electrical inspector, prior to the final electrical inspection.

(vi) If the approved plan requires changes from the conditionally accepted plan, alterations to the project may be required to make the project comply with the approved plan.

(e) All electrical plans for educational facilities, hospitals and nursing homes must be prepared by, or under the direction of, a consulting engineer registered under chapter 18.43 RCW, and chapters 246-320, 180-29, and 388-97 WAC and stamped with the engineer's mark and signature.

(f) Refer plans for department review to the Electrical Section, Department of Labor and Industries, P.O. Box 44460, Olympia, Washington 98504-4460.

(g) Plans for projects within cities that perform electrical inspections within their jurisdiction, and provide an electrical plan review program that equals or exceeds the department's program in plans examiner minimum qualifications per chapter 19.28 RCW, must be submitted to that city for review, unless the agency regulating the installation specifically requires review by the department.

(h) Plans to be reviewed by the department must be legible, identify the name and classification of the facility, clearly indicate the scope and nature of the installation and the person or firm responsible for the electrical plans. The plans must clearly show the electrical installation or alteration in floor plan view, include switchboard and/or panelboard schedules and when a service or feeder is to be installed or altered, must include a riser diagram, load calculation, fault current calculation and interrupting rating of

equipment. Where existing electrical systems are to supply additional loads, the plans must include documentation that proves adequate capacity and ratings. The plans must be submitted with a plan review submittal form available from the department. Plan review fees are not required to be paid until the review is completed. Plans will not be returned until all fees are paid. Fees will be calculated based on the date the plans are received by the department.

(i) The department may perform the plan review for new or altered electrical installations of other types of construction when the owner or electrical contractor makes a voluntary request for review.

(j) For existing structures where additions or alterations to feeders and services are proposed, Article 220.87(1) NEC may be used. If Article 220.87(1) NEC is used, the following is required:

(i) The date of the measurements.

(ii) A statement attesting to the validity of the demand data, signed by a professional electrical engineer or the electrical administrator of the electrical contractor performing the work.

(iii) A diagram of the electrical system identifying the point(s) of measurement.

(iv) Building demand measured continuously on the highest loaded phase of the feeder or service over a thirty-day period, with demand peak clearly identified. (Demand peak is defined as the maximum average demand over a fifteen-minute interval.)

Wiring methods for designated building occupancies.

(16) Wiring methods, equipment and devices for health or personal care, educational and institutional facilities as defined or classified in this chapter and for places of assembly for one hundred or more persons must comply with Tables 901-1 and 901-2 of this chapter and the notes thereto. The local building authority will determine the occupant load of places of assembly.

(17) Listed tamper-resistant receptacles or listed tamper-resistant receptacle cover plates are required in all licensed day care centers, all licensed children group care facilities and psychiatric patient care facilities where accessible to children five years of age and under. Listed tamper-resistant receptacles are required in psychiatric patient care facilities where accessible to psychiatric patients over five years of age.

Notes to Tables 901-1 and 901-2.
1. Wiring methods in accordance with the NEC unless otherwise noted.
2. Metallic or nonmetallic raceways, MI, MC, or AC cable, except that in places of assembly located within educational or institutional facilities, wiring methods must conform to NEC 518.4(A). Places of assembly located within educational or institutional facilities may not be wired according to NEC 518.4 (B) or (C).
3. Limited energy system may use wiring methods in accordance with the NEC.

Table 901-1 Health or Personal Care Facilities

Health or Personal Care Facility Type ⁽⁴⁾	Plan Review Required
Hospital	Yes
Nursing home unit or long-term care unit	Yes
Boarding home or assisted living facility	Yes
Private alcoholism hospital	Yes
Alcoholism treatment facility	Yes
Private psychiatric hospital	Yes
Maternity home	Yes
Birth center or childbirth center	No
Ambulatory surgery facility	Yes
Hospice care center	No
Renal hemodialysis clinic	Yes
Medical, dental, and chiropractic clinic	No
Residential treatment facility for psychiatrically impaired children and youth	Yes
Adult residential rehabilitation center	Yes
Group care facility	No

Table 901-2 Educational and Institutional Facilities, Places of Assembly or Other Facilities

Educational, Institutional or Other Facility Types	Plan Review Required
Educational ⁽²⁾⁽³⁾	Yes
Institutional ⁽²⁾⁽³⁾	Yes
Places of Assembly for 100 or more persons ⁽¹⁾	No
Child day care center ⁽¹⁾	No
School-age child care center ⁽¹⁾	No
Family child day care home, family child care home, or child day care facility ⁽¹⁾	No

Industrial control panel and industrial utilization equipment inspection:

(18) Specific definitions for this section:

(a) "Department evaluation" means a review in accordance with subsection (19)(e) of this section.

(b) "Engineering evaluation" means a review in accordance with subsection (19)(d) of this section.

(c) "Food processing plants" include buildings or facilities used in a manufacturing process, but do not include:

- (i) Municipal or other government facilities;
- (ii) Educational facilities or portions thereof;
- (iii) Institutional facilities or portions thereof;

- (iv) Restaurants;
- (v) Farming, ranching, or dairy farming operations;
- (vi) Residential uses; or
- (vii) Other installations not used for direct manufacturing purposes.

(d) In RCW 19.28.901, "industrial control panel" means a factory or user-wired assembly of industrial control equipment such as motor controllers, switches, relays, power supplies, computers, cathode ray tubes, transducers, and auxiliary devices used in the manufacturing process to control industrial utilization equipment. The panel may include disconnecting means and motor branch circuit protective devices. Industrial control panels include only those used in a manufacturing process in a food processing or industrial plant.

(e) "Industrial plants" include buildings or facilities used in a manufacturing process or a manufacturing training facility (e.g., educational shop area in an educational or institutional facility), but do not include:

- (i) Municipal or other government facilities;
- (ii) Other educational facilities or portions thereof;
- (iii) Other institutional facilities or portions thereof;
- (iv) Restaurants;
- (v) Farming, ranching, or dairy farming operations;
- (vi) Residential uses; or
- (vii) Other installations not used for direct manufacturing purposes.

(f) "Industrial utilization equipment" means equipment directly used in a manufacturing process in a food processing or industrial plant, in particular the processing, treatment, moving, or packaging of a material. Industrial utilization equipment does not include: Cold storage, warehousing, or similar storage equipment.

(g) "Manufacturing process" means to make or process a raw material or part into a finished product for sale using industrial utilization equipment. A manufacturing process does not include the storage of a product for future distribution (e.g., cold storage, warehousing, and similar storage activity).

(h) "Normal department inspection" is a part of the department electrical inspection process included with the general wiring inspection of a building, structure, or other electrical installation. Normal department inspection will only be made for equipment solely using listed or field-evaluated components and wired to the requirements of the NEC. Fees for the normal department inspections required under this chapter are included in the electrical work permit fee calculated for the installation and are not a separate inspection fee. However, inspection time associated with such equipment is subject to the progress inspection rates in WAC 296-46B-905.

(i) For the purposes of this section, "panel" means a single box or enclosure containing the components comprising an industrial control panel. A panel does not include any wiring methods connecting multiple panels or connecting a panel(s) and other electrical equipment.

(19) Industrial control panels and industrial utilization equipment will be determined to meet the minimum electrical safety standards for installations by:

(a) Listing or field evaluation of the entire panel or equipment;

(b) Normal department inspection for compliance with codes and rules adopted under this chapter; or

(c) By engineer review (see (d) of this subsection) or through June 30, 2007, by department evaluation showing compliance with appropriate standards. Appropriate standards are NEMA, ANSI, NFPA 79, UL 508A, International Electrotechnical Commission 60204, or their equivalent. Industrial utilization equipment is required to conform to a nationally or internationally recognized standard applicable for the particular industrial utilization equipment. Compliance must be shown as follows:

(i) The equipment's manufacturer must document, by letter to the equipment owner, the equipment's conformity to an appropriate standard(s). The letter must state:

(A) The equipment manufacturer's name;

(B) The type of equipment;

(C) The equipment model number;

(D) The equipment serial number;

(E) The equipment supply voltage, amperes, phasing;

(F) The standard(s) used to manufacture the equipment.

Except for the reference of construction requirements to ensure the product can be installed in accordance with the National Electrical Code, the National Electrical Code is not considered a standard for the purposes of this section;

(G) Fault current interrupting rating of the equipment or the owner may provide documentation showing that the fault current available at the point where the building wiring connects to the equipment is less than 5,000 AIC; and

(H) The date the equipment was manufactured. Equipment that was manufactured prior to January 1, 1985, is not required to meet (e)(i)(F) of this subsection.

(ii) The equipment owner must document, by letter to the chief electrical inspector, the equipment's usage as industrial utilization equipment as described in this section and provide a copy of the equipment manufacturer's letter described in (e)(i) of this subsection. The owner's letter must be accompanied by the fee required in WAC 296-46B-905(14).

For the purposes of this section, the owner must be a food processing or industrial plant as described in this section.

(iii) The chief electrical inspector will evaluate the equipment manufacturer's letter, equipment owner's letter, and the individual equipment.

If the equipment is determined to have had electrical modifications since the date of manufacture, the chief electrical inspector will not approve equipment using this method.

(iv) If required by the chief electrical inspector, the owner must provide the department with a copy, in English, of the standard(s) used and any documentation required by the chief electrical inspector to support the claims made in the equipment manufacturer's or owner's letter. At the request of the owner, the department will obtain a copy of any necessary standard to complete the review. If, per the owner's request, the department obtains the copy of the standard, the owner will be billed for all costs associated with obtaining the standard.

If the industrial utilization equipment has been determined to be manufactured to a standard(s) appropriate for

industrial utilization equipment as determined by the chief electrical inspector per RCW 19.28.901(1), the equipment will be marked with a department label.

The department will charge a marking fee as required in WAC 296-46B-905(14). Once marked by the department, the equipment is suitable for installation anywhere within the state without modification so long as the equipment is being used as industrial utilization equipment. If payment for marking is not received by the department within thirty days of marking the equipment, the department's mark(s) will be removed and the equipment ordered removed from service.

(v) If the equipment usage is changed to other than industrial utilization equipment or electrical modifications are made to the equipment, the equipment must be successfully listed or field evaluated by a laboratory approved by the department.

(vi) The equipment must be permanently installed at the owner's facility and inspected per the requirements of RCW 19.28.101.

(d) An engineering review where an engineer, accredited by the department, shows the equipment to be in compliance with appropriate standards in (c) of this subsection. See WAC 296-46B-997 for the requirements to become an accredited engineer. Appropriate standards are NEMA, ANSI, NFPA 79, UL 508A, International Electrotechnical Commission 60204, or their equivalent. Industrial utilization equipment is required to conform to a nationally or internationally recognized standard applicable for the particular industrial utilization equipment. The engineer must:

(i) Document, by letter to the chief electrical inspector, the equipment's conformity to an appropriate standard(s) and the fault current interrupting rating of the equipment.

(ii) Affix a permanent label to the equipment showing:

(A) Engineer's name;

(B) Date of approval;

(C) Equipment serial number; and

(D) The following statement: "This equipment meets appropriate standards for industrial utilization equipment."

(20) The department may authorize, on a case-by-case basis, use of the industrial control panel or equipment, for a period not to exceed six months or as approved by the chief electrical inspector after use is begun, before its final inspection, listing, or evaluation.

Traffic management systems:

(21) The department will perform the electrical inspection and acceptance of traffic management systems within its jurisdiction. A traffic management system includes:

(a) Traffic illumination systems;

(b) Traffic signal systems;

(c) Traffic monitoring systems;

(d) The electrical service cabinet and all related components and equipment installed on the load side of the service cabinet supplying electrical power to the traffic management system; and

(e) Signalization system(s) necessary for the operation of a light rail system.

A traffic management system can provide signalization for controlling vehicular traffic, pedestrian traffic, or rolling stock.

(22) The department recognizes that traffic signal conductors, pole and bracket cables, signal displays, and traffic signal controllers/cabinets and associated components used in traffic management systems are acceptable for the purpose of meeting the requirements of chapter 19.28 RCW provided they conform with the following standards or are listed on the Washington state department of transportation (WSDOT) qualified products list:

- (a) WSDOT/APWA Standard Specifications and Plans;
- (b) WSDOT Design Manual;
- (c) International Municipal Signal Association (IMSA);
- (d) National Electrical Manufacturer's Association (NEMA);
- (e) Federal Standards 170/Controller Cabinets;
- (f) Manual for Uniform Road, Bridge, and Municipal Construction;
- (g) Institute of Transportation Engineers (ITE); or
- (h) Manual of Uniform Traffic Control Devices (MUTCD).

(23) Associated induction detection loop or similar circuits will be accepted by the department without inspection.

(24) For the licensing requirements of chapter 19.28 RCW, jurisdictions will be considered owners of traffic management systems when doing electrical work for other jurisdiction(s) under a valid interlocal agreement, as permitted by chapter 39.34 RCW. Interlocal agreements for traffic management systems must be filed with the department prior to work being performed for this provision to apply.

(25) Jurisdictions, with an established electrical inspection authority, and WSDOT may perform electrical inspection on their rights of way for each other by interlocal agreement. They may not perform electrical inspection on other rights of way except as allowed in chapter 19.28 or 39.34 RCW.

(26) Underground installations.

(a) In other than open trenching, raceways will be considered "fished" according to the NEC and do not require visual inspection.

(b) The department will conduct inspections in open trenching within its jurisdiction. The electrical work permit purchaser must coordinate the electrical inspection. A written request (e.g., letter, e-mail, fax, etc.) for inspection, made to the department office having the responsibility to perform the inspection, must be made a minimum of two working days prior to the day inspection is needed (e.g., two working days—10:00 a.m. Tuesday request for a 10:00 a.m. Thursday inspection, excluding holidays and weekends).

If, after proper written request, the department fails to make an electrical inspection at the time requested, underground conduit may be covered after inspection by the local government jurisdiction's project inspector/designee. Written documentation of a local government jurisdiction inspection must be provided to the department when requested. Written documentation will include:

- (i) Date and time of inspection;
- (ii) Location;
- (iii) Installing firm;
- (iv) Owner;
- (v) Type of conduit;
- (vi) Size of conduit;

(vii) Depth of conduit; and

(viii) Project inspector/designee name and contact information.

(27) Identification of traffic management system components. Local government jurisdictions or WSDOT may act as the certifying authority for the safety evaluation of all components.

(a) An electrical service cabinet must contain only listed components. The electrical service cabinet enclosure is not required to be listed but will conform to the standards in subsection (2) of this section.

(b) The local government jurisdiction must identify, as acceptable, the controller cabinet or system component(s) with an identification plate. The identification plate must be located inside the cabinet and may be attached with adhesive.

(28) Conductors of different circuits in same cable, enclosure, or raceway. All traffic management system circuits will be permitted to occupy the same cable, enclosure, or raceway without regard to voltage characteristics, provided all conductors are insulated for the maximum voltage of any conductor in the cable, enclosure, or raceway.) (1) When an electrical work permit is required by chapter 19.28 RCW or this chapter, inspections may not be made, equipment must not be energized, or services connected unless:

(a) A valid electrical work permit is completely and legibly filled out and readily available;

(b) The classification or type of facility to be inspected and the exact scope and location of the electrical work to be performed are clearly shown on the electrical work permit;

(c) The address where the inspection is to be made is clearly identifiable from the street, road or highway that serves the premises; and

(d) Driving directions are provided for the inspectors' use.

(2) An electrical work permit is valid for only one specific site address.

(3) Except as provided in subsection (8) of this section, a valid electrical work permit must be posted on the job site at a readily accessible and conspicuous location prior to beginning electrical work and at all times until the electrical inspection process is completed.

Permit - responsibility for.

(4) Each person, firm, partnership, corporation, or other entity must furnish a valid electrical work permit for the installation, alteration, or other electrical work performed or to be performed solely by that entity. When the permitted work is performed solely or in part by another entity, the electrical work permit purchaser must request approval from the chief electrical inspector or the city that is authorized to do electrical inspections to take responsibility for the work of the original installing entity. Each electrical work permit application must be signed by the electrical contractor's administrator (or designee) or the person, or authorized representative of the firm, partnership, corporation, or other entity that is performing the electrical installation or alteration. Permits purchased electronically do not require a handwritten signature. An entity designated to sign electrical permits must provide written authorization of the purchaser's designation when requested by the department or city that is authorized to do electrical inspections.

(5) Permits to be obtained by customers. Whenever a serving electrical utility performs work for a customer under one of the exemptions in WAC 296-46B-925 and the work is subject to inspection, the customer is responsible for obtaining all required permits.

(6) Posting of permits: Where an electrical work permit is required, the work permit must be obtained and posted at the job site prior to beginning any electrical work. Exceptions:

(a) For an owner, an electrical work permit for emergency repairs to an existing electrical system(s) must be obtained and posted at the job site no later than the next business day after the work is begun.

(b) For an electrical contractor, in a city's jurisdiction where the city is authorized to do electrical inspections and does not have a provisional and a Class B permit system, an electrical work permit for emergency repairs to an existing electrical system(s) must be obtained and posted at the job site no later than the next business day after the work is begun.

(7) Fees must be paid in accordance with the inspection fee schedule in Part C of this chapter. The amount of the fee due is calculated based on the fee effective at the date payment is made. If the project is required to have an electrical plan review, the plan review fees will be based on the fees effective at the date the plans are received by the department for review. In a city where the department is doing inspections as the city's contractor, a supplemental fee may apply.

Permit - requirements for.

(8) As required by chapter 19.28 RCW or this chapter, an electrical work permit is required for the installation, alteration, or maintenance of all electrical systems or equipment except for:

(a) Travel trailers;

(b) Class A basic electrical work which includes:

(i) The like-in-kind replacement of a: Contactor, relay, timer, starter, circuit board, or similar control component; household appliance; circuit breaker; fuse; residential luminaire; lamp; snap switch; dimmer; receptacle outlet; thermostat; heating element; luminaire ballast with an exact same ballast; component(s) of electric signs, outline lighting, skeleton neon tubing when replaced on-site by an appropriate electrical contractor and when the sign, outline lighting or skeleton neon tubing electrical system is not modified; ten horsepower or smaller motor;

(ii) Induction detection loops described in WAC 296-46B-300(2) and used to control gate access devices;

(iii) Heat cable repair; and

(iv) Embedding premanufactured heat mats in tile grout where the mat is listed by an approved testing laboratory and comes from the manufacturer with preconnected lead-in conductors. All listing marks and lead-in conductor labels must be left intact and visible for evaluation and inspection by the installing electrician and the electrical inspector.

Unless specifically noted, the exemptions listed do not include: The replacement of an equipment unit, assembly, or enclosure that contains an exempted component or combination of components (e.g., an electrical furnace/heat pump, industrial milling machine, etc.) or any appliance/equipment described in this section for Class B permits.

In the department's jurisdiction, a provisional electrical work permit label may be posted in lieu of an electrical work permit. If a provisional electrical work permit label is used, an electrical work permit must be obtained within two working days after posting the provisional electrical work permit label.

(9) An electrical work permit is required for all installations of telecommunications systems on the customer side of the network demarcation point for projects greater than ten telecommunications outlets. All backbone installations regardless of size and all telecommunications cable or equipment installations involving penetrations of fire barriers or passing through hazardous locations require permits and inspections. For the purposes of determining the inspection threshold for telecommunications projects greater than ten outlets, the following will apply:

(a) An outlet is the combination of jacks and mounting hardware for those jacks, along with the associated cable and telecommunications closet terminations, that serve one workstation. In counting outlets to determine the inspection threshold, one outlet must not be associated with more than six standard four-pair cables or more than one twenty-five-pair cable. Therefore, installations of greater than sixty standard four-pair cables or ten standard twenty-five-pair cables require permits and inspections. (It is not the intent of the statute to allow large masses of cables to be run to workstations or spaces serving telecommunications equipment without inspection. Proper cable support and proper loading of building structural elements are safety concerns. When considering total associated cables, the telecommunications availability at one workstation may count as more than one outlet.)

(b) The installation of greater than ten outlets and the associated cables along any horizontal pathway from a telecommunications closet to work areas during any continuous ninety-day period requires a permit and inspection.

(c) All telecommunications installations within the residential dwelling units of single-family, duplex, and multi-family dwellings do not require permits or inspections. In residential multifamily dwellings, permits and inspections are required for all backbone installations, all fire barrier penetrations, and installations of greater than ten outlets in common areas.

(d) No permits or inspections are required for installation or replacement of cord and plug connected telecommunications equipment or for patch cord and jumper cross-connected equipment.

(e) Definitions of telecommunications technical terms will come from chapter 19.28 RCW, this chapter, TIA/EIA standards, and NEC.

Permit - inspection and approval.

(10) Requests for inspections.

(a) Requests for inspections must be made no later than three business days after completion of the electrical/telecommunications installation or one business day after any part of the installation has been energized, whichever occurs first.

(b) Requests for after hours or weekend inspections must be made by contacting the local electrical inspection supervisor at least three working days prior to the requested date of

inspection. The portal-to-portal inspection fees required for after hours or weekend inspections are in addition to the cost of the original electrical work permit.

(c) Emergency requests to inspect repairs necessary to preserve life and equipment safety may be requested at any time.

(d) Inspections for annual electrical maintenance permits and annual telecommunications permits may be done on a regular schedule arranged by the permit holder with the department.

(11) Final inspection approval will not be made until all inspection fees are paid in full.

Permit - duration/refunds.

(12) Electrical work permits will expire one year after the date of purchase unless electrical work is actively and consistently in progress and inspections requested. Refunds are not available for:

(a) Expired electrical work permits;

(b) Electrical work permits where the electrical installation has begun; or

(c) Any electrical work permit where an electrical inspection or electrical inspection request has been made.

Permit - annual telecommunications.

(13) The chief electrical inspector or city that is authorized to do electrical inspections can allow annual permits for the inspection of telecommunications installations to be purchased by a building owner or licensed electrical/telecommunications contractor. The owner's full-time telecommunications maintenance staff, or a licensed electrical/telecommunications contractor(s) can perform the work done under this annual permit. The permit holder is responsible for correcting all installation deficiencies. The permit holder must make available, to the electrical inspector, all records of all the telecommunications work performed and the valid electrical or telecommunications contractor's license numbers for all contractors working under the permit.

Permit - annual electrical.

(14) The chief electrical inspector or city that is authorized to do electrical inspections can allow annual permits for the inspection of electrical installations to be purchased by a building owner or licensed electrical contractor. This type of permit is available for commercial/industrial locations employing a full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor.

The permit holder is responsible for correcting all installation deficiencies. The permit holder must make available, to the electrical inspector, all records of all electrical work performed.

This type of electrical permit may be used for retrofit, replacement, maintenance, repair, upgrade, and alterations to electrical systems at a single plant or building location. This type of permit does not include new or increased service or new square footage.

Permit - temporary installations.

(15) For temporary electrical installations, the department will consider a permit applicant to be the owner per RCW 19.28.261 under the conditions below:

Any person, firm, partnership, corporation, or other entity registered as a general contractor under chapter 18.27

RCW will be permitted to install a single electrical service per address for the purposes of temporary power during the construction phase of a project, when all of the following conditions are met:

(a) The installation is limited to the mounting and bracing of a preassembled pole or pedestal mounted service, the installation of a ground rod or ground plate, and the connection of the grounding electrode conductor to the ground rod or plate;

(b) The total service size does not exceed 200 amperes, 250 volts nominal;

(c) The service supplies no feeders;

(d) Branch circuits not exceeding 50 amperes each are permitted, provided such branch circuits supply only receptacles that are either part of the service equipment or are mounted on the same pole;

(e) The general contractor owns the electrical equipment;

(f) The general contractor has been hired by the property owner as the general contractor for the project;

(g) The general contractor must purchase an electrical work permit for the temporary service, request inspection, and obtain approval prior to energizing the service.

NEW SECTION

WAC 296-46B-902 Equipment standards approval, city ordinances. (1) Any city that does electrical or telecommunications inspections must declare their intent to do inspections by ordinance. See RCW 19.28.010(3) for city inspection and inspector requirements. The department may enforce city electrical or telecommunications ordinances where those governmental agencies do not make inspections under an established program.

Evaluation engineers, testing laboratories, and equipment standards.

(2) As authorized in RCW 19.28.010(1), the department is the sole authority for determining testing laboratory accreditation. See WAC 296-46B-997 and 296-46B-999 for information regarding evaluation engineers, testing laboratories, and equipment standards.

NEW SECTION

WAC 296-46B-903 Equipment standards.

General.

(1) The standard(s) used, as the basis of electrical product certification, field evaluation, or department approval must be determined by the department to provide an adequate level of safety or define an adequate level of safety performance. Except for the reference of construction requirements to ensure the product can be installed in accordance with the National Electrical Code, field evaluations, by an approved laboratory, shall not use the National Electrical Code as standard for product evaluation.

(2) Generally, standards will be:

(a) Developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the

electrical products safety field. A standard is used to control the quality and safety of a product;

(b) Compatible with and be maintained current with periodic revisions of applicable national codes and installation standards; and

(c) Approved by the department. The department will evaluate the proposed standard to determine that it provides an adequate level of safety.

(3) All ANSI safety designated electrical product standards may be deemed acceptable for their intended use without further qualification.

(4) If the product safety standard is not ANSI, the standard must be reviewed and approved by the department as an appropriate electrical product safety standard as a part of the field evaluation or department inspection process.

Industrial control panel and industrial utilization equipment inspection.

(5) Specific definitions for this section:

(a) "Department evaluation" means a review in accordance with subsection (6)(b) of this section.

(b) "Engineering evaluation" means a review in accordance with subsection (6)(c) of this section.

(c) "Food processing plants" include buildings or facilities used in a manufacturing process, but do not include:

- (i) Municipal or other government facilities;
- (ii) Educational facilities or portions thereof;
- (iii) Institutional facilities or portions thereof;
- (iv) Restaurants;
- (v) Farming, ranching, or dairy farming operations;
- (vi) Residential uses; or
- (vii) Other installations not used for direct manufacturing purposes.

(d) In RCW 19.28.901, "industrial control panel" means a factory or user wired assembly of industrial control equipment such as motor controllers, switches, relays, power supplies, computers, cathode ray tubes, transducers, and auxiliary devices used in the manufacturing process to control industrial utilization equipment. The panel may include disconnecting means and motor branch circuit protective devices. Industrial control panels include only those used in a manufacturing process in a food processing or industrial plant.

(e) "Industrial plants" include buildings or facilities used in a manufacturing process or a manufacturing training facility (e.g., educational shop area in an educational or institutional facility), but do not include:

- (i) Municipal or other government facilities;
- (ii) Other educational facilities or portions thereof;
- (iii) Other institutional facilities or portions thereof;
- (iv) Restaurants;
- (v) Farming, ranching, or dairy farming operations;
- (vi) Residential uses; or
- (vii) Other installations not used for direct manufacturing purposes.

(f) "Industrial utilization equipment" means equipment directly used in a manufacturing process in a food processing or industrial plant, in particular the processing, treatment, moving, or packaging of a material. Industrial utilization equipment does not include: Cold storage, warehousing, or similar storage equipment.

(g) "Manufacturing process" means to make or process a raw material or part into a finished product for sale using industrial utilization equipment. A manufacturing process does not include the storage of a product for future distribution (e.g., cold storage, warehousing, and similar storage activity).

(h) "Normal department inspection" is a part of the department electrical inspection process included with the general wiring inspection of a building, structure, or other electrical installation. Normal department inspection will only be made for equipment solely using listed or field evaluated components and wired to the requirements of the NEC. Fees for the normal department inspections required under this chapter are included in the electrical work permit fee calculated for the installation and are not a separate inspection fee. However, inspection time associated with such equipment is subject to the progress inspection rates in Part C of this chapter.

(i) For the purposes of this section, "panel" means a single box or enclosure containing the components comprising an industrial control panel. A panel does not include any wiring methods connecting multiple panels or connecting a panel(s) and other electrical equipment.

(6) Industrial control panels and industrial utilization equipment will be determined to meet the minimum electrical safety standards for installations by:

(a) Listing or field evaluation of the entire panel or equipment;

(b) Normal department inspection for compliance with codes and rules adopted under this chapter; or

(c) An engineering evaluation review where an engineer, accredited by the department, shows the equipment to be in compliance with an appropriate industrial equipment standard(s).

(i) See WAC 296-46B-997 for the requirements to become an accredited engineer.

(ii) The engineer may review equipment upon request by the equipment owner or the equipment manufacturer.

(iii) The engineer must notify the department of the intent to evaluate and submit a final approval report, within 10 days after applying the approval label or disapproving the equipment, using forms provided by the department. See Part C of this chapter for fee information.

(iv) The equipment may be reviewed for compliance with the standard(s) before the equipment is located in Washington.

(v) Appropriate standards are:

- (A) NEMA;
- (B) ANSI;
- (C) NFPA 79;
- (D) UL 508A;
- (E) International Electrotechnical Commission 60204;

or

(F) Their equivalent.

(vi) In cases where equipment has been previously reviewed and approved by an accredited engineer or the department and found to meet an appropriate standard(s), the equipment information will be placed on a "reviewed and approved industrial utilization equipment list" established and maintained by the department. The list may be used by a

reviewing engineer to aid in evaluating other like equipment. Because standards change over time, equipment will be removed from the list three years after the last successful review. The list will contain the following information:

- (A) Equipment manufacturer name;
- (B) Model and serial numbers;
- (C) Voltage, full load current, phasing; and asymmetrical fault current rating of the equipment;
- (D) Accessory items approved for use with the equipment;
- (E) Standard(s) to which the equipment was built;
- (F) Application of use for the equipment;
- (G) Original reviewing engineer's name; and
- (H) Date of the original review approval.

(vii) If the engineer uses the "reviewed and approved industrial utilization equipment list," the engineer will visually determine that the equipment being reviewed is the exact same model as equipment on the list.

(viii) Before the engineer's approval label can be applied, the engineer must visually inspect the equipment on site to determine that the equipment is in factory original good condition, has not been modified electrically, and the equipment use is appropriate to the standard(s).

(ix) When the review is completed and the equipment is eligible for approval, the engineer must personally affix a permanent label to the equipment showing:

- (A) Engineer's name;
- (B) Date of approval;
- (C) Equipment serial number;
- (D) Equipment voltage, full load current, phasing, and fault interrupting rating; and
- (E) The following statement: "This equipment meets appropriate standards for industrial utilization equipment."

(7) The department may authorize, on a case-by-case basis, use of the industrial control panel or equipment, for a period not to exceed six months or as approved by the chief electrical inspector after use is begun, before its final inspection, listing, field evaluation, or engineering evaluation is complete.

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-906 Inspection fees. To calculate inspection fees, the amperage is based on the conductor ampacity or the overcurrent device rating. The total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) of this section, PROGRESS INSPECTIONS.

The amount of the fee due is calculated based on the fee effective at the date of a department assessed fee (e.g., plan review or fee due) or when the electrical permit is purchased.

(1) Residential.

(a) Single- and two-family residential (New Construction).

Notes:

- (1) Square footage is the area included within the surrounding exterior walls of a building exclusive of any interior courts. (This includes any floor area in an attached garage, basement, or unfinished living space.)
- (2) "Inspected with the service" means that a separate service inspection fee is included on the same electrical work permit.
- (3) "Inspected at the same time" means all wiring is to be ready for inspection during the initial inspection trip.
- (4) An "outbuilding" is a structure that serves a direct accessory function to the residence, such as a pump house or storage building. Outbuilding does not include buildings used for commercial type occupancies or additional dwelling occupancies.

(i) First 1300 sq. ft.	\$73.00
Each additional 500 sq. ft. or portion of	\$23.40
(ii) Each outbuilding or detached garage - inspected at the same time as a dwelling unit on the property	\$30.50
(iii) Each outbuilding or detached garage - inspected separately	\$48.10
(iv) Each swimming pool - inspected with the service	\$48.10
(v) Each swimming pool - inspected separately	\$73.00
(vi) Each hot tub, spa, or sauna - inspected with the service	\$30.50
(vii) Each hot tub, spa, or sauna - inspected separately	\$48.10
(viii) Each septic pumping system - inspected with the service	\$30.50
(ix) Each septic pumping system - inspected separately	\$48.10

(b) Multifamily residential and miscellaneous residential structures, services and feeders (New Construction).

Each service and/or feeder		
Ampacity	Service/Feeder	Additional Feeder
0 to 200	\$78.70	\$23.40
201 to 400	\$97.80	\$48.10
401 to 600	\$134.30	\$66.90
601 to 800	\$172.30	\$91.80
801 and over	\$245.70	\$184.30

(c) Single or multifamily altered services or feeders including circuits.

(i) Each altered service and/or altered feeder		
Ampacity	Service/Feeder	
0 to 200	\$66.90	
201 to 600	\$97.80	
601 and over	\$147.40	
(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder)		\$36.30

(d) Single or multifamily residential circuits only (no service inspection).

Note:

Altered or added circuit fees are calculated per panelboard. Total cost of the alterations in an individual panel should not exceed the cost of a complete altered service or feeder of the same rating, as shown in subsection (1) RESIDENTIAL (c) (table) of this section.

(i) 1 to 4 circuits (see note above)	\$48.10
(ii) Each additional circuit (see note above)	\$5.30

(e) Mobile homes, modular homes, mobile home parks, and RV parks.

(i) Mobile home or modular home service or feeder only	\$48.10
(ii) Mobile home service and feeder	\$78.70

(f) Mobile home park sites and RV park sites.

Note:

For master service installations, see subsection (2) COMMERCIAL/INDUSTRIAL of this section.

- (i) First site service or site feeder \$48.10
- (ii) Each additional site service; or additional site feeder inspected at the same time as the first service or feeder \$30.50

(2) Commercial/industrial.

(a) New service or feeder, and additional new feeders inspected at the same time (includes circuits).

Note:

For large COMMERCIAL/INDUSTRIAL projects that include multiple feeders, "inspected at the same time" can be interpreted to include additional inspection trips for a single project. The additional inspections must be for electrical work specified on the permit at the time of purchase. The permit fee for such projects must be calculated ((from (2)(a)(i)(table) of) using this section. However, the total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) PROGRESS INSPECTIONS of this section.

Ampacity	Service/Feeder	Additional Feeder
0 to 100	\$78.70	\$48.10
101 to 200	\$95.80	\$61.30
201 to 400	\$184.30	\$73.00
401 to 600	\$214.80	\$85.80
601 to 800	\$277.70	\$116.90
801 to 1000	\$339.00	\$141.40
1001 and over	\$369.80	\$197.30

(b) Altered services/feeders (no circuits).

(i) Service/feeder

Ampacity	Service/Feeder
0 to 200	\$78.70
201 to 600	\$184.30
601 to 1000	\$277.70
1001 and over	\$308.40

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder) \$66.90

(c) Circuits only.

Note:

Altered/added circuit fees are calculated per panelboard. Total cost of the alterations in a panel (or panels) should not exceed the cost of a new feeder (or feeders) of the same rating, as shown in subsection (2) COMMERCIAL/INDUSTRIAL (2)(a)((+))(table) above.

- (i) First 5 circuits per branch circuit panel \$61.30
- (ii) Each additional circuit per branch circuit panel \$5.30
- (d) **Over 600 volts surcharge per permit.** \$61.30

(3) Temporary service(s).

Note:

(1) See WAC ((296-46B-527)) 296-46B-590 for information about temporary installations.

(2) Temporary stage or concert inspections requested outside of normal business hours will be subject to the portal-to-portal hourly fees in subsection (11) OTHER INSPECTIONS. The fee for such after hours inspections shall be the greater of the fee from this subsection or the portal-to-portal fee.

Temporary services, temporary stage or concert productions.

Ampacity	Service/Feeder	Additional Feeder
0 to 60	\$42.20	\$21.60
61 to 100	\$48.10	\$23.40
101 to 200	\$61.30	\$30.50
201 to 400	\$73.00	\$36.40

401 to 600	\$97.80	\$48.10
601 and over	\$110.90	\$55.30

(4) Irrigation machines, pumps, and equipment.

Irrigation machines.

- (a) Each tower - when inspected at the same time as a service and feeder from (2) COMMERCIAL/INDUSTRIAL \$5.30
- (b) Towers - when not inspected at the same time as a service and feeder - 1 to 6 towers \$73.00
- (c) Each additional tower \$5.30

(5) Miscellaneous - commercial/industrial and residential.

(a) **A Class 2 low-voltage thermostat** and its associated cable controlling a single piece of utilization equipment or a single furnace and air conditioner combination.

- (i) First thermostat \$36.40
- (ii) Each additional thermostat inspected at the same time as the first \$11.40

(b) Class 2 or 3 low-voltage systems and telecommunications systems.

Includes all telecommunications installations, fire alarm, nurse call, energy management control systems, industrial and automation control systems, lighting control systems, and similar Class 2 or 3 low-energy circuits and equipment not included in WAC ((296-46B-110)) 296-46B-908 for Class B work.

- (i) First 2500 sq. ft. or less \$42.20
- (ii) Each additional 2500 sq. ft. or portion thereof \$11.40

(c) Signs and outline lighting.

- (i) First sign (no service included) \$36.40
- (ii) Each additional sign inspected at the same time on the same building or structure \$17.30

(d) Berth at a marina or dock.

Note:

Five berths or more shall be permitted to have the inspection fees based on appropriate service and feeder fees from section (2) COMMERCIAL/INDUSTRIAL ((+)) above.

- (i) Berth at a marina or dock \$48.10
- (ii) Each additional berth inspected at the same time \$30.50

(e) Yard pole, pedestal, or other meter loops only.

- (i) Yard pole, pedestal, or other meter loops only \$48.10
- (ii) Meters installed remote from the service equipment and inspected at the same time as a service, temporary service or other installations \$11.40

(f) Emergency inspections requested outside of normal working hours.

Regular fee plus surcharge of: \$91.80

(g) Generators.

Note:

Permanently installed generators: Refer to the appropriate residential or commercial new/altered service or feeder section.

Portable generators: Permanently installed transfer equipment for portable generators \$66.90

(h) Electrical - annual permit fee.

Note:

See WAC ((296-46B-900)) 296-46B-901(14).

For commercial/industrial location employing full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor. Note, all yearly maintenance contracts must detail the number of contractor electricians necessary to complete the work required under the contract. This number will be used as a basis for calculating the appropriate fee. Each inspection is based on a 2-hour maximum.

	Inspections	Fee
1 to 3 plant electricians	12	\$1,765.50

4 to 6 plant electricians	24	\$3,532.80
7 to 12 plant electricians	36	\$5,298.90
13 to 25 plant electricians	52	\$7,066.20
More than 25 plant electricians	52	\$8,833.50

(i) Telecommunications - annual permit fee.

Notes:

- (1) See WAC ((296-46B-900)) 296-46B-901(13).
- (2) Annual inspection time required may be estimated by the purchaser at the rate for "OTHER INSPECTIONS" in this section, charged portal-to-portal per hour.

For commercial/industrial location employing full-time telecommunications maintenance staff or having a yearly maintenance contract with a licensed electrical/telecommunications contractor.

2-hour minimum	\$146.10
Each additional hour, or portion thereof, of portal-to-portal inspection time	\$73.00

(j) Permit requiring ditch cover inspection only.

Each 1/2 hour, or portion thereof	\$36.40
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(k) Cover inspection for elevator/conveyance installation. This item is only available to a licensed/registered elevator contractor.

(6) Carnival inspections.

(a) First carnival field inspection each calendar year.

(i) Each ride and generator truck	\$17.30
(ii) Each remote distribution equipment, concession, or gaming show	\$5.30
(iii) If the calculated fee for first carnival field inspection above is less than \$89.00, the minimum inspection fee shall be:	\$91.80

(b) Subsequent carnival inspections.

(i) First ten rides, concessions, generators, remote distribution equipment, or gaming show	\$91.80
(ii) Each additional ride, concession, generator, remote distribution equipment, or gaming show	\$5.30

(c) Concession(s) or ride(s) not part of a carnival.

(i) First field inspection each year of a single concession or ride, not part of a carnival	\$73.00
(ii) Subsequent inspection of a single concession or ride, not part of a carnival	\$48.10

(7) Trip fees.

(a) Requests by property owners to inspect existing installations. (This fee includes a maximum of one hour of inspection time. All inspection time exceeding one hour will be charged at the rate for progressive inspections.)	\$73.00
(b) Submitter notifies the department that work is ready for inspection when it is not ready.	\$36.40
(c) Additional inspection required because submitter has provided the wrong address or incomplete, improper or illegible directions for the site of the inspection.	\$36.40
(d) More than one additional inspection required to inspect corrections; or for repeated neglect, carelessness, or improperly installed electrical work.	\$36.40
(e) Each trip necessary to remove a noncompliance notice.	\$36.40
(f) Corrections that have not been made in the prescribed time, unless an exception has been requested and granted.	\$36.40
(g) Installations that are covered or concealed before inspection.	\$36.40

(8) Progress inspections.

Note:

The fees calculated in subsections (1) through (6) of this section will apply to all electrical work. This section will be applied to a permit where the permit holder has requested additional inspections beyond the number supported by the permit fee calculated at the rate in subsections (1) through (6) of this section.

On partial or progress inspections, each 1/2 hour.	\$36.40
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(9) Plan review.

Fee is thirty-five percent of the electrical work permit fee as determined by WAC ((296-46B-905)) 296-46B-906, plus a plan review submission and shipping/handling fee of:	\$61.30
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(a) Supplemental submissions of plans per hour or fraction of an hour of review time.	\$73.00
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(b) Plan review shipping and handling fee.	\$17.30
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(10) Out-of-state inspections.

(a) Permit fees will be charged according to the fees listed in this section.

(b) Travel expenses:

All travel expenses and per diem for out-of-state inspections are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in subsection (11) of this section.

(11) Other inspections.

Inspections not covered by above inspection fees must be charged portal-to-portal per hour:	\$73.00
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~~**(12) Refund processing fee.**~~

All requests for permit fee refunds will be assessed a processing fee. (Refund processing fees will not be charged for electrical contractors, using the contractor deposit system, who request less than twenty-four refunds during a rolling calendar year.)	\$11.40
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~~**(13) Variance request processing fee.**~~

Variance request processing fee. This fee is nonrefundable once the transaction has been validated.	\$73.00
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~~**(14) Marking of industrial utilization equipment.**~~

(a) Standard(s) letter review (per hour of review time).	\$73.00
(b) Equipment marking - charged portal-to-portal per hour:	\$73.00

(c) All travel expenses and per diem for in/out-of-state review and/or equipment marking are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in (b) of this subsection.

~~**(15) Class B basic electrical work labels.**~~

(a) Block of twenty Class B basic electrical work labels (not refundable).	\$200.00
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(b) Reinspection of Class B basic electrical work to assure that corrections have been made (per 1/2 hour timed from leaving the previous inspection until the reinspection is completed). See WAC ((296-46B-110(8))) 296-46B-908(5).	\$36.40
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(c) Reinspection of Class B basic electrical work because of a failed inspection of another Class B label (per 1/2 hour from previous inspection until the reinspection is completed). See WAC ((296-46B-110(8))) 296-46B-908(5).	\$36.40
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~~**(16) Provisional electrical work permit labels.**~~

Block of twenty provisional electrical work permit labels.	\$200.00
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PART D - PROVISIONAL PERMITSNEW SECTION**WAC 296-46B-907 Provisional permits.****Provisional electrical work permit - use/duration/refunds.**

(1) Only licensed electrical or telecommunications contractors can use provisional electrical work permits.

(2) If a provisional electrical work permit label is used, the following requirements must be met:

(a) Prior to beginning the work, the certified electrician or telecommunications worker performing the installation must affix the provisional electrical work permit label on the cover of the panelboard, overcurrent device, or telecommunications equipment supplying the circuit or equipment.

(b) The job site portion of the label must include the following:

- (i) Date the work is begun;
- (ii) Contractor's name;
- (iii) Contractor's license number; and
- (iv) Short description of the work.

(c) The contractor portion of the label must include the following:

- (i) Date the work is begun;
- (ii) Contractor's license number;
- (iii) Job site address;
- (iv) Owner's name; and
- (v) Short description of the work.

(d) The label must be filled in using sunlight and weather resistant ink.

(e) The contractor must return the contractor's portion of the label to the department of labor and industries, electrical section office having jurisdiction for the inspection, within two working days after the job site portion of the label is affixed. Either receipt by department of labor and industries or postmark to a valid department of labor and industries electrical address is acceptable for meeting this requirement.

(f) The contractor must return the contractor's portion of the label to the department of labor and industries, chief electrical inspector, within five working days after destroying or voiding any label.

(g) The contractor is responsible for safekeeping of all purchased labels.

(3) Refunds are not available for provisional electrical work permit labels.

(4) Provisional electrical work permit labels will be sold in blocks of twenty.

(5) Any contractor purchasing a provisional electrical work permit label may be audited for compliance with the provisions for purchasing, inspection, reporting of installations, and any other requirement of usage.

PART E - CLASS B PERMITSNEW SECTION**WAC 296-46B-908 Class B permits.****Class B electrical work permit - use.**

(1) The electrical contractor must return the contractor's portion of the Class B label to the department of labor and industries, chief electrical inspector, within five working days after destroying or voiding any label.

(2) The electrical contractor is responsible for safekeeping of all purchased Class B labels.

(3) Only licensed electrical/telecommunication contractors can use the Class B basic electrical inspection random inspection process. Health care, large commercial or industrial facilities using an employee who is a certified electrician(s) can use the Class B random electrical inspection process after permission from the chief electrical inspector.

(4) If the Class B random electrical inspection process is used, the following requirements must be met:

(a) The certified electrician/telecommunications worker performing the installation must affix a Class B installation label on the cover of the panelboard or overcurrent device supplying power to the circuit or equipment prior to beginning the work.

(b) The job site portion of the label must include the following:

- (i) Date of the work;
- (ii) Electrical/telecommunication contractor's name;
- (iii) Electrical/telecommunication contractor's license number;
- (iv) Installing electrician's certificate number, except for telecommunication work.

For thermostat installations described in WAC 296-46B-965(15), the installing trainee may enter their training certificate number; and

- (v) Short description of the work.

(c) The contractor portion of the label must include the following:

- (i) Date of the work;
- (ii) Electrical/telecommunication contractor's license number;
- (iii) Installing electrician's certificate number, except for telecommunication work;

- (iv) Job site address;
- (v) Contact telephone number for the job site (to be used to arrange inspection); and

- (vi) Short description of the work.

(d) The label must be filled in using sunlight and weather resistant ink.

(e) The electrical/telecommunication contractor must return the contractor's portion of the label to the Department of Labor and Industries, Electrical Section, Chief Electrical Inspector, P.O. Box 44460, Olympia, WA 98504-4460 within fifteen working days after the job site portion of the Class B installation label is affixed.

(5) Class B basic installation labels will be sold in blocks. Installations where a Class B basic installation label is used will be inspected on a random basis as determined by the department.

(a) If any such random inspection fails, a subsequent label in the block must be inspected.

(b) If any such subsequent installation fails inspection, another label in the block must be inspected until a label is approved without a correction(s).

(c) A fee is required for any inspection required when a correction(s) is issued as a result of the inspection of any

Class B label or if an inspection is required because of (a) or (b) of this subsection. See Part C of this chapter for fees.

(6) Any electrical/telecommunication contractor or other entity using the Class B basic electrical inspection random inspection process may be audited for compliance with the provisions for purchasing, inspection, reporting of installations, and any other requirement of usage.

(7) Class B basic electrical work means work other than Class A basic electrical work. See WAC 296-46B-901(8) for Class A definition.

(a) Class B basic electrical work includes the following:

(i) Extension of not more than one branch electrical circuit limited to 120 volts and 20 amps each where:

(A) No cover inspection is necessary. For the purposes of this section, cover inspection does not include work covered by any surface that may be removed for inspection without damaging the surface; and

(B) The extension does not supply more than two devices or outlets as defined by the NEC. A device allowed in an extended circuit includes: General use snap switches/receptacles, luminaires, thermostats, speakers, etc., but does not include wiring/cabling systems, isolating switches, magnetic contactors, motor controllers, etc.

(ii) Like-in-kind replacement of:

(A) A single luminaire not exceeding 277 volts and 20 amps; or

(B) A motor larger than 10 horsepower; or

(C) The internal wiring of a furnace, air conditioner, refrigeration unit or household appliance; or

(D) An electric/gas/oil furnace not exceeding 240 volts and 100 amps when the furnace is connected to an existing branch circuit. For the purposes of this section, a boiler is not a furnace; or

(E) An individually controlled electric room heater (e.g., baseboard, wall, fan forced air, etc.), air conditioning unit or refrigeration unit not exceeding 240 volts, 30 minimum circuit amps when the unit is connected to an existing branch circuit; or

(F) Circuit modification required to install not more than five residential load control devices in a residence where installed as part of an energy conservation program sponsored by an electrical utility and where the circuit does not exceed 240 volts and 30 amps.

(iii) The following low voltage systems:

(A) Repair and replacement of devices not exceeding 100 volt-amperes in Class 2, Class 3, or power limited low voltage systems in one- and two-family dwellings; or

(B) Repair and replacement of devices not exceeding 100 volt-amperes in Class 2, Class 3, or power limited low voltage systems in other buildings, provided the equipment is not for fire alarm or nurse call systems and is not located in an area classified as hazardous by the NEC; or

(C) The installation of Class 2 or 3 device(s) or wiring for thermostat, audio, security, burglar alarm, intercom, amplified sound, public address, or access control systems. This does not include fire alarm, nurse call, lighting control, industrial automation/control or energy management systems; or

(D) Telecommunications cabling and equipment requiring inspection in RCW 19.28.470;

(iv) The replacement of not more than ten standard receptacles with GFCI receptacles;

(v) The conversion of not more than ten snap switches to dimmers for the use of controlling a luminaire(s) conversion.

(b) Class B basic electrical work does not include any work in:

(i) Areas classified as Class I, Class II, Class III, or Zone locations per NEC 500; or

(ii) Areas regulated by NEC 517 or 680; or

(iii) Any work where electrical plan review is required; or

(iv) Fire alarm, nurse call, lighting control, industrial automation/control or energy management systems.

(8) An entity using a Class B basic inspection label is restricted to using no more than two labels per week per job site.

PART F - ADMINISTRATIVE

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-909 Electrical/telecommunications contractor's license, administrator certificate and examination, electrician certificate and examination, temporary electrician permit, copy, and miscellaneous fees.

- Notes:**
- (1) The department will deny renewal of a license, certificate, or permit if an individual owes money as a result of an outstanding final judgment(s) to the department or is in revoked status. The department will deny application of a license, certificate, or permit if an individual is in suspended status or owes money as a result of an outstanding final judgment(s) to the electrical program.
 - (2) Certificates may be prorated for shorter renewal periods in one-year increments. Each year or part of a year will be calculated to be one year.
 - (3) The amount of the fee due is calculated based on the fee effective at the date payment is made.

(1) General or specialty contractor's license <u>per twenty-four month period.</u> (Nonrefundable after license has been issued.)	
(a) (Per twenty-four month period)	\$232.90
(b)) <u>Initial application or renewal made in person, by mail, or by fax</u>	
(b) <u>Renewal fully completed using the on-line web process</u>	\$221.00
(c) Reinstatement of a general or specialty contractor's license after a suspension	\$47.30
(2) Master electrician/administrator/electrician/trainee certificate.	
(a) Examination application (nonrefundable)	
Administrator certificate examination application. (Required only for department administered examinations.) (Not required when testing with the department's contractor.)	\$29.30
(b) Examination fees (nonrefundable)	
Note:	
Normal examination administration is performed by a state authorized contractor. The fees for such examinations are set by contract with the department. For written examinations administered by the department, use the following fee schedule.	
(i) Master electrician or administrator first-time examination fee (when administered by the department)	\$70.50

(ii) Master electrician or administrator retest examination fee (when administered by the department)	\$82.50	(vii) Trainee update of hours outside of renewal period (i.e., submission of affidavit of experience outside of the timeline in WAC 296-46B-965 (7)(d))	\$44.90
(iii) Journeyman or specialty electrician examination fee (first test or retest when administered by the department)	\$53.00	((viii)) (viii) Trainee certificate renewal (or update of hours (i.e., submission of affidavit of experience))	\$44.90
(iv) Certification examination review fee	\$109.20	(A) Renewal made in person, by mail, or by fax	\$44.90
(c) Original certificates (nonrefundable after certificate has been issued)		(B) Renewal fully completed using the on-line web process when the affidavit of experience is submitted per WAC 296-46B-965 (7)(d)	\$43.00
(i) Electrical administrator original certificate (except 09 telecommunication)	\$105.40	(ix) Late trainee certificate renewal	
(ii) Telecommunications administrator original certificate (for 09 telecommunications)	\$70.20	(A) Renewal made in person, by mail, or by fax	\$63.00
(iii) Master electrician exam application (includes original certificate and application processing fee) (\$29.30 is nonrefundable after application is submitted)	\$134.70	(B) Renewal fully completed using the on-line web process	\$60.00
(iv) Journeyman or specialty electrician application (includes original certificate and application processing fee) (\$29.30 is nonrefundable after application is submitted)	\$75.60	(e) Reciprocal certificate (nonrefundable after certificate has been issued)	
(v) Training certificate	(\$37.10)	(i) Master electrician reciprocal certificate (includes original certificate and application processing fee) (\$29.30 is nonrefundable after application is submitted)	\$(132.20) 133.30
(A) Initial application made in person, by mail, or by fax	\$37.10	(ii) Journeyman or specialty electrician reciprocal certificate (includes original certificate and application processing fee) (\$29.30 is nonrefundable after application is submitted)	\$75.60
(B) Initial application fully completed on-line using the on-line web process	\$35.00	(f) Certificate - reinstatement (nonrefundable)	
(C) 0% supervision modified training certificate. Includes trainee update of hours (i.e., submission of affidavit of experience) (\$44.90 is nonrefundable after application is submitted)	\$67.40	(i) Reinstatement of a suspended master electrician or administrator's certificate (in addition to normal renewal fee)	\$47.30
((B)) (D) 75% supervision modified training certificate.	\$44.90	(ii) Reinstatement of suspended journeyman, or specialty electrician certificate (in addition to normal renewal fee)	\$22.40
((C)) (E) Unsupervised training certificate as allowed by RCW 19.28.161 (4)(b).	\$22.40	(g) Assignment/unassignment of master electrician/administrator designation (nonrefundable)	\$35.00
(vi) Temporary electrician permit (valid as allowed and described in WAC 296-46B-940(27))	\$23.40	(3) Certificate/license.	
(d) Certificate renewal (nonrefundable)		(a) Replacement for lost or damaged certificate/license. (Nonrefundable.)	\$15.40
(i) Master electrician or administrator certificate renewal	(\$133.20)	(b) Optional display quality General Master Electrician certificate.	\$25.00
(A) Renewal made in person, by mail, or by fax	\$133.20	(4) Continuing education courses or instructors. (Nonrefundable.)	
(B) Renewal fully completed using the on-line web process	\$127.00	(a) If the course or instructor review is performed by the electrical board or the department	
(ii) Telecommunications (09) administrator certificate renewal	(\$88.80)	The course or instructor review	\$45.00
(A) Renewal made in person, by mail, or by fax	\$88.80	(b) If the course or instructor review is contracted out by the electrical board or the department	
(B) Renewal fully completed using the on-line web process	\$84.00	(i) Continuing education course or instructor submittal and approval (per course or instructor)	As set in contract
(iii) Late renewal of master electrician or administrator certificate	(\$266.40)	(ii) Applicant's request for review, by the chief electrical inspector, of the contractor's denial	\$109.50
(A) Renewal made in person, by mail, or by fax	\$266.40	(5) Copy fees. (Nonrefundable.)	
(B) Renewal fully completed using the on-line web process	\$254.00	(a) Certified copy of each document (maximum charge per file):	
(iv) Late renewal of telecommunications (09) administrator certificate	(\$177.60)	(i) First page:	\$22.40
(A) Renewal made in person, by mail, or by fax	\$177.60	(ii) Each additional page:	\$2.00
(B) Renewal fully completed using the on-line web process	\$168.00	(b) Replacement RCW/WAC printed document:	\$5.00
(v) Journeyman or specialty electrician certificate renewal	(\$70.20)	(6) ((Refund processing fee. (Nonrefundable.))	\$11.40
(A) Renewal made in person, by mail, or by fax	\$70.20	(7)) Training school program review fees. Initial training school program review fee. (Nonrefundable.)	
(B) Renewal fully completed using the on-line web process	\$67.00	(a) Initial training school program review fee submitted for approval. Valid for three years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)).	\$516.00
(vi) Late renewal of journeyman or specialty electrician certificate	(\$140.50)		
(A) Renewal made in person, by mail, or by fax	\$140.40		
(B) Renewal fully completed using the on-line web process	\$134.00		

(b) Renewal of training school program review fee submitted for renewal. Valid for 3 years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)). \$258.00

AMENDATORY SECTION (Amending WSR 06-05-028, filed 2/7/06, effective 5/1/06)

WAC 296-46B-915 Civil penalty schedule. Each day that a violation occurs will be a separate offense.

Once a violation of chapter 19.28 RCW or chapter 296-46B WAC becomes a final judgment, any additional violation within three years becomes a "second" or "additional" offense subject to an increased penalty as set forth in the following tables.

In case of continued, repeated or gross violation of the provisions of chapter 19.28 RCW or this chapter, or if property damage or bodily injury occurs as a result of the failure of a person, firm, partnership, corporation, or other entity to comply with chapter 19.28 RCW or this chapter the department may double the penalty amounts shown in subsections (1) through (13) of this section.

Continued or repeated violation may occur if the person, firm, partnership, corporation or other entity who violates a provision of chapter 19.28 RCW, chapter 296-46B WAC has received one or more written warnings of a similar violation within a one-year period.

A person, firm, partnership, corporation or other entity who violates a provision of chapter 19.28 RCW or chapter 296-46B WAC is liable for a civil penalty based upon the following schedule.

(1) Offering to perform, submitting a bid for, advertising, installing or maintaining cables, conductors or equipment:

(a) That convey or utilize electrical current without having a valid electrical contractor's license.

(b) Used for information generation, processing, or transporting of signals optically or electronically in telecommunications systems without having a valid telecommunications contractor's license.

First offense: \$500
 Second offense: \$1,500
 Third offense: \$3,000
 Each offense thereafter: \$6,000

(2) Employing an individual for the purposes of chapter 19.28 RCW who does not possess a valid certificate of competency or training certificate to do electrical work.

First offense: \$250
 Each offense thereafter: \$500

(3) Performing electrical work without having a valid certificate of competency or electrical training certificate.

First offense: \$250
 Each offense thereafter: \$500

(4) Employing electricians and electrical trainees for the purposes of chapter 19.28 RCW in an improper ratio. Contractors found to have violated this section three times in a three-year period must be the subject of an electrical audit in accordance with WAC 296-46B-975.

First offense: \$250
 Each offense thereafter: \$500

(5) Failing to provide proper supervision to an electrical trainee as required by chapter 19.28 RCW. Contractors found to have violated this section three times in a three-year period must be the subject of an electrical audit in accordance with WAC 296-46B-975.

First offense: \$250
 Each offense thereafter: \$500

(6) Working as an electrical trainee without proper supervision as required by chapter 19.28 RCW.

First offense: \$50
 Second offense: \$250
 Each offense thereafter: \$500

(7) Offering, bidding, advertising, or performing electrical or telecommunications installations, alterations or maintenance outside the scope of the firm's specialty electrical or telecommunications contractors license.

First offense: \$500
 Second offense: \$1,500
 Third offense: \$3,000
 Each offense thereafter: \$6,000

(8) Selling or exchanging electrical equipment associated with spas, hot tubs, swimming pools or hydromassage bathtubs which are not listed by an approved laboratory.

First offense: \$500
 Second offense: \$1,000
 Each offense thereafter: \$2,000

Definition:

The sale or exchange of electrical equipment associated with hot tubs, spas, swimming pools or hydromassage bathtubs includes to: "Sell, offer for sale, advertise, display for sale, dispose of by way of gift, loan, rental, lease, premium, barter or exchange."

(9) Covering or concealing installations prior to inspection.

First offense: \$250
 Second offense: \$1,000
 Each offense thereafter: \$2,000

(10) Failing to make corrections within fifteen days of notification by the department.

Exception:

Where an extension has been requested and granted, this penalty applies to corrections not completed within the extended time period.

First offense: \$250
 Second offense: \$1,000
 Each offense thereafter: \$2,000

(11) Failing to obtain or post an electrical/telecommunications work permit or provisional electrical work permit label prior to beginning the electrical/telecommunications installation or alteration.

Exception:

In cases of emergency repairs, for owners, to existing electrical/telecommunications systems, this penalty will not be charged if the permit is obtained and posted no later than the business day following beginning work on the emergency repair.

First offense: \$250
 Second offense: \$1,000
 Each offense thereafter: \$2,000

(12) Violating chapter 19.28 RCW duties of the electrical/telecommunications administrator or master electrician.

(a) Failing to be a member of the firm or a supervisory employee and shall be available during working hours to carry out the duties of an administrator or master electrician.

First offense: \$1,000
 Second offense: \$1,500
 Each offense thereafter: \$3,000

(b) Failing to ensure that all electrical work complies with the electrical installation laws and rules of the state.

First offense: \$100
 Second offense: \$250

Third offense:	\$1,000
Each offense thereafter:	\$3,000
(c) Failing to ensure that the proper electrical safety procedures are used.	
First offense:	\$500
Second offense:	\$1,500
Each offense thereafter:	\$3,000
(d) Failing to ensure that all electrical labels, permits, and certificates required to perform electrical work are used.	
First offense:	\$250
Each offense thereafter:	\$500
(e) Failing to ensure that all electrical licenses, required to perform electrical work are used (i.e., work performed must be in the allowed scope of work for the contractor).	
First offense:	\$500
Second offense:	\$1,500
Third offense:	\$3,000
Each offense thereafter:	\$6,000
(f) Failing to see that corrective notices issued by an inspecting authority are complied with within fifteen days.	
Exception: Where an extension has been requested and granted, this penalty applies to corrections not completed within the extended time period.	
First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000
(g) Failing to notify the department in writing within ten days if the master electrician or administrator terminates the relationship with the electrical contractor.	
First offense:	\$500
Second offense:	\$1,000
Each offense thereafter:	\$3,000
(13) Violating any of the provisions of chapter 19.28 RCW or chapter 296-46B WAC which are not identified in subsections (1) through (12) of this section.	
RCW 19.28.161 through 19.28.271 and the rules developed pursuant to them.	
First offense:	\$250
Each offense thereafter:	\$500
All other chapter 19.28 RCW provisions and the rules developed pursuant to them.	
First offense:	\$250
Second offense:	\$750
Each offense thereafter:	\$2,000

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-920 Electrical/telecommunications license/certificate types and scope of work. (1) General electrical (01): A general electrical license and/or certificate encompasses all phases and all types of electrical and telecommunications installations and minor plumbing under RCW 18.106.150. For the purposes of RCW 18.106.150, the like-in-kind replacement includes the appliance or any component part of the appliance (e.g., such as, but not limited to, the thermostat in a water heater).

(2) All specialties listed in this subsection may perform the electrical work described within their specific specialty as allowed by the occupancy and location described within the specialty's scope of work. Except for residential (02), the scope of work for these specialties does not include plumbing

work regulated under chapter 18.106 RCW. See RCW 18.106.150 for plumbing exceptions for the residential (02) specialty. For the purposes of RCW 18.106.150, the like-in-kind replacement includes the appliance or any component part of the appliance (e.g., such as, but not limited to, the thermostat in a water heater). **Specialty** (limited) electrical licenses and/or certificates are as follows:

(a) **Residential (02):** Limited to the telecommunications, low voltage, and line voltage wiring of one- and two-family dwellings, or multifamily dwellings not exceeding three stories above grade. All wiring is limited to nonmetallic sheathed cable, except for services and/or feeders, exposed installations where physical protection is required, and for wiring buried below grade.

(i) This specialty also includes the wiring for ancillary structures such as, but not limited to: Appliances, equipment, swimming pools, septic pumping systems, domestic water systems, limited energy systems (e.g., doorbells, intercoms, fire alarm, burglar alarm, energy control, HVAC/refrigeration, etc.), multifamily complex offices/garages, site lighting when supplied from the residence or ancillary structure, and other structures directly associated with the functionality of the residential units.

(ii) This specialty does not include wiring occupancies defined in WAC ((~~296-46B-901(13))~~) 296-46B-900(1), or commercial occupancies such as: Motels, hotels, offices, assisted living facilities, or stores.

(iii) See RCW 18.106.150 for plumbing exceptions for the residential (02) specialty.

(b) **Pump and irrigation (03):** Limited to the electrical connection of circuits, feeders, controls, low voltage, related telecommunications, and services to supply: Domestic water systems and public water systems include but are not limited to pumps, pressurization, filtration, treatment, or other equipment and controls, and irrigation water pumps, circular irrigating system's pumps and pump houses.

This specialty may also perform the work defined in (c) of this subsection.

Also see RCW 18.106.010 (10)(c).

(c) **Domestic pump (03A):** Limited to the extension of a branch circuit, which is supplied and installed by others, to signaling circuits, motor control circuits, motor control devices, and pumps which do not exceed 7 1/2 horsepower at 250 volts AC single phase input power, regardless of motor controller output or motor voltage/phase, used in residential potable water or residential sewage disposal systems. Domestic water systems and public water systems include but are not limited to pumps, pressurization, filtration, treatment, or other equipment and controls.

Also see RCW 18.106.010 (10)(c).

(d) **Signs (04):** Limited to placement and connection of signs and outline lighting, the electrical supply, related telecommunications, controls and associated circuit extensions thereto; and the installation of a maximum 60 ampere, 120/240 volt single phase service to supply power to a remote sign only. This specialty may service, maintain, or repair exterior luminaires that are mounted on a pole or other structure with like-in-kind components.

(i) Electrical licensing/certification is not required to:

(A) Clean the nonelectrical parts of an electric sign;

(B) To form or pour a concrete pole base used to support a sign;

(C) To operate machinery used to assist an electrician in mounting an electric sign or sign supporting pole; or

(D) To assemble the structural parts of a billboard.

(ii) Electrical licensing/certification is required to: Install, modify, or maintain a sign, sign supporting pole, sign face, sign ballast, lamp socket, lamp holder, disconnect switch, or any other part of a listed electric sign.

(e) **Limited energy system (06):** Limited to the installation of signaling and power limited circuits and related equipment. This specialty is restricted to low-voltage circuits. This specialty includes the installation of telecommunications, HVAC/refrigeration low-voltage wiring, fire protection signaling systems, intrusion alarms, energy management and control systems, industrial and automation control systems, lighting control systems, commercial and residential amplified sound, public address systems, and such similar low-energy circuits and equipment in all occupancies and locations.

(i) For the purposes of this section, when a line voltage connection is removed and reconnected to a replacement component located inside the control cabinet, the replacement must be like-in-kind or replaced using the equipment manufacturer's authorized replacement component. The line voltage circuit is limited to 120 volts 20 amps maximum and must have a means of disconnect.

(ii) The limited energy systems (06) specialty may repair or replace line voltage connections terminated inside the cabinet to power supplies internal to the low voltage equipment provided there are no modifications to the characteristics of the branch circuit/feeder load being supplied by the circuit.

(iii) The limited energy systems (06) specialty may not replace or modify the line voltage circuit or cabling or alter the means of connection of the line voltage circuit to the power supply or to the control cabinet.

Limited energy electrical contractors may perform all telecommunications work under their specialty (06) electrical license and administrator's certificate.

(f) HVAC/refrigeration systems:

(i) See WAC 296-46B-100 for specific HVAC/refrigeration definitions.

(ii) For the purposes of this section when a component is replaced, the replacement must be like-in-kind or made using the equipment manufacturer's authorized replacement component.

(iii) The HVAC/refrigeration specialties described in (f)(v) and (vi) of this subsection may:

(A) Install HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in all residential occupancies;

(B) Install, repair, replace, and maintain line voltage components within HVAC/refrigeration equipment. Such line voltage components include product illumination luminaires installed within and powered from the HVAC/refrigeration system (e.g., reach-in beverage coolers, frozen food cases, produce cases, etc.) and new or replaced factory authorized accessories such as internally mounted outlets;

(C) Repair, replace, or maintain the internal components of the HVAC/refrigeration equipment disconnecting means

or controller so long as the disconnecting means or controller is not located within a motor control center or panelboard (see Figure 920-1 and Figure 920-2);

(D) Install, repair, replace, and maintain short sections of raceway to provide physical protection for low-voltage cables. For the purposes of this section a short section cannot mechanically interconnect two devices, junction boxes, or other equipment or components; and

(E) Repair, replace, or maintain line voltage flexible supply whips not over six feet in length, provided there are no modifications to the characteristics of the branch circuit/feeder load being supplied by the whip. There is no limitation on the whip raceway method (e.g., metallic replaced by nonmetallic).

(iv) The HVAC/refrigeration specialties described in (f)(v) and (vi) of this subsection may not:

(A) Install line voltage controllers or disconnect switches external to HVAC/refrigeration equipment;

(B) Install, repair, replace, or maintain:

- Integrated building control systems, other than HVAC/refrigeration systems;

- Single stand-alone line voltage equipment or components (e.g., heat cable, wall heaters, radiant panel heaters, baseboard heaters, contactors, motor starters, and similar equipment) unless the equipment or component:

Is exclusively controlled by the HVAC/refrigeration system and requires the additional external connection to a mechanical system(s) (e.g., connection to water piping, gas piping, refrigerant system, ducting for the HVAC/refrigeration system, gas fireplace flume, ventilating systems, etc. (i.e., as in the ducting connection to a bathroom fan)). The external connection of the equipment/component to the mechanical system must be required as an integral component allowing the operation of the HVAC/refrigeration system; or

Contains a HVAC/refrigeration mechanical system(s) (e.g., water piping, gas piping, refrigerant system, etc.) within the equipment (e.g., "through-the-wall" air conditioning units, self-contained refrigeration equipment, etc.);

- Luminaires that serve as a building or structure lighting source, even if mechanically connected to a HVAC/refrigeration system (e.g., troffer luminaire used as a return air device, lighting within a walk-in cooler/freezer used for personnel illumination);

- Raceway/conduit systems;

- Line voltage: Service, feeder, or branch circuit conductors. However, if a structure's feeder/branch circuit supplies HVAC/refrigeration equipment containing a supplementary overcurrent protection device(s), this specialty may install the conductors from the supplementary overcurrent device(s) to the supplemental HVAC/refrigeration equipment if the supplementary overcurrent device and the HVAC/refrigeration equipment being supplied are located within sight of each other (see Figure 920-2); or

- Panelboards, switchboards, or motor control centers external to HVAC/refrigeration system.

(v) **HVAC/refrigeration (06A):**

(A) This specialty is not limited by voltage, phase, or amperage.

(B) No unsupervised electrical trainee can install, repair, replace, or maintain any part of a HVAC/refrigeration system that contains any circuit rated over 600 volts whether the circuit is energized or deenergized.

(C) This specialty may:

- Install HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in other than residential occupancies:

That have no more than three stories on/above grade; or
Regardless of the number of stories above grade if the installation:

- Does not pass between stories;
- Is made in a previously occupied and wired space; and
- Is restricted to the HVAC/refrigeration system;
- Repair, replace, and maintain HVAC/refrigeration:

Telecommunications, Class 2 low-voltage control circuit wiring/components in all occupancies regardless of the number of stories on/above grade.

- Install a bonding conductor for metal gas piping to an existing accessible grounding electrode conductor or grounding electrode only when terminations can be made external to electrical panelboards, switchboards, or other distribution equipment.

(D) This specialty may not install, repair, replace, or maintain: Any electrical wiring governed under article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations) located outside the HVAC/refrigeration equipment.

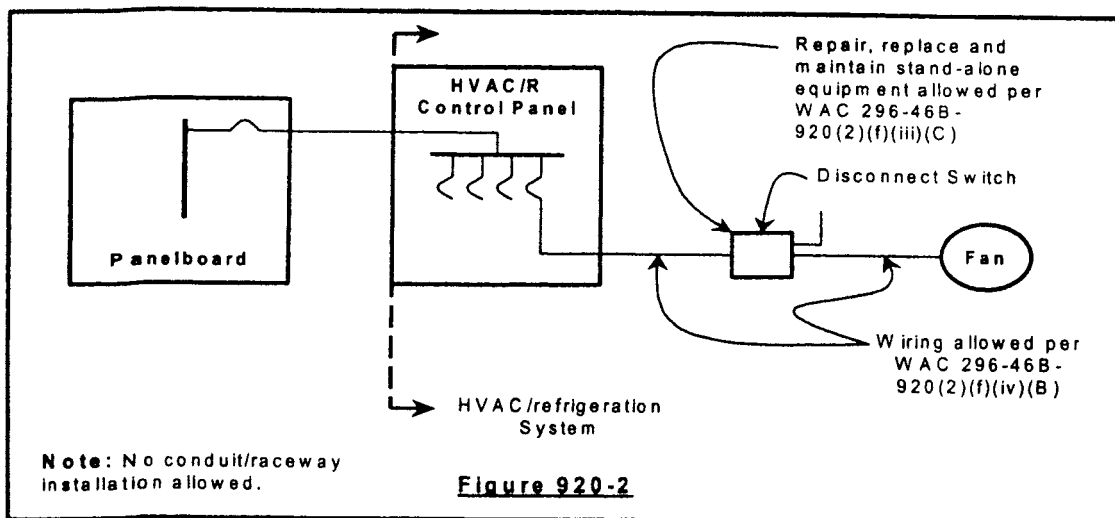
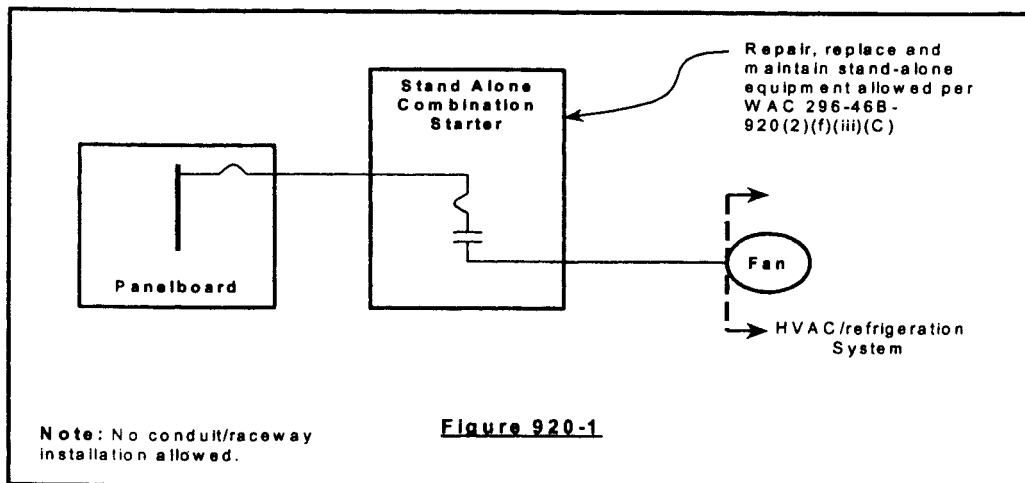
(vi) HVAC/refrigeration - restricted **(06B)**:

(A) This specialty may not perform any electrical work where the primary electrical power connection to the HVAC/refrigeration system exceeds: 250 volts, single phase, or 120 amps.

(B) This specialty may install, repair, replace, or maintain HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in other than residential occupancies that have no more than three stories on/above grade.

(C) This specialty may not install, repair, replace, or maintain:

- The allowed telecommunications/low-voltage HVAC/refrigeration wiring in a conduit/raceway system; or
- Any electrical work governed under article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations).



(g) **Nonresidential maintenance (07):** Limited to maintenance, repair and replacement of like-in-kind existing electrical equipment and conductors. This specialty does not include maintenance activities in residential dwellings defined in (a) of this subsection for the purposes of accumulating training experience toward qualification for the residential (02) specialty electrician examination.

This specialty may perform the work defined in (h), (i), (j), (k), and (l) of this subsection.

(h) **Nonresidential lighting maintenance and lighting retrofit (07A):** Limited to working within the housing of existing nonresidential luminaires for work related to repair, service, maintenance of luminaires and installation of energy efficiency lighting retrofit upgrades. This specialty includes replacement of lamps, ballasts, sockets and the installation of listed lighting retrofit reflectors and kits. All work is limited to the luminaire body, except remote located ballasts may be replaced or retrofitted with approved products. This specialty does not include installing new luminaires or branch circuits; moving or relocating existing luminaires; or altering existing branch circuits.

(i) **Residential maintenance (07B):** This specialty is limited to residential dwellings as defined in WAC 296-46B-920 (2)(a), multistory dwelling structures with no commercial facilities, and the interior of dwelling units in multistory structures with commercial facilities. This specialty may maintain, repair, or replace (like-in-kind) existing electrical utilization equipment, and all permit exempted work as defined in WAC ((~~296-46B-900~~)) 296-46B-901.

This specialty is limited to equipment and circuits to a maximum of 250 volts, 60 amperes, and single phase maximum.

This specialty may disconnect and reconnect low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit or whip.

For the purpose of this specialty, "electrical equipment" does not include electrical conductors, raceway or conduit systems external to the equipment or whip. This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(j) **Restricted nonresidential maintenance (07C):** This specialty may maintain, repair, or replace (like-in-kind) existing electrical utilization equipment, and all permit exempted work as defined in WAC ((~~296-46B-900~~)) 296-46B-901 except for the replacement or repair of circuit breakers.

This specialty is limited to equipment and circuits to a maximum of 277 volts and 20 amperes for lighting branch circuits only and/or maximum 250 volts and 60 amperes for other circuits.

The replacement of luminaires is limited to in-place replacement required by failure of the luminaire to operate. Luminaires installed in suspended lay-in tile ceilings may be relocated providing: The original field installed luminaire supply whip is not extended or relocated to a new supply point; or if a manufactured wiring assembly supplies luminaire power, a luminaire may be relocated no more than eight feet providing the manufactured wiring assembly circuiting is not changed.

This specialty may disconnect and reconnect low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit. For the purpose of this specialty, "electrical equipment" does not include electrical conductors, raceway or conduit systems external to the equipment or whip.

This specialty may perform the work defined in (h) and (i) of this subsection.

This specialty cannot perform any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations). This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(k) **Appliance repair (07D):** Servicing, maintaining, repairing, or replacing household appliances, small commercial/industrial appliances, and other small electrical utilization equipment.

(i) For the purposes of this subsection:

(A) The appliance or electrical utilization equipment must be self-contained and built to standardized sizes or types. The appliance/equipment must be connected as a single unit to a single source of electrical power limited to a maximum of 250 volts, 60 amperes, single phase.

(B) Appliances and electrical utilization equipment include, but are not limited to: Ovens, office equipment, vehicle repair equipment, commercial kitchen equipment, self-contained hot tubs and spas, grinders, and scales.

(C) Appliances and utilization equipment do not include systems and equipment such as: Alarm/energy management/similar systems, luminaires, furnaces/heaters/air conditioners/heat pumps, sewage disposal equipment, door/gate/similar equipment, or individual components installed so as to create a system (e.g., pumps, switches, controllers, etc.).

(ii) This specialty includes:

(A) The in-place like-in-kind replacement of the appliance or equipment if the same unmodified electrical circuit is used to supply the equipment being replaced. This specialty also includes the like-in-kind replacement of electrical components within the appliance or equipment;

(B) The disconnection and reconnection of low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit; and

(C) The installation of an outlet box and outlet at an existing appliance or equipment location when converting the appliance from a permanent electrical connection to a plug and cord connection. Other than the installation of the outlet box and outlet, there can be no modification to the existing branch circuit supplying the appliance or equipment.

(iii) This specialty does not include:

(A) The installation, repair, or modification of branch circuits conductors, services, feeders, panelboards, disconnect switches, or raceway/conductor systems interconnecting multiple appliances, equipment, or other electrical components.

(B) Any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations).

(C) Any plumbing work regulated under chapter 18.106 RCW.

(l) **Equipment repair (07E):** Servicing, maintaining, repairing, or replacing utilization equipment.

See RCW 19.28.095 for the equipment repair scope of work and definitions. This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(m) **Telecommunications (09):** Limited to the installation, maintenance, and testing of telecommunications systems, equipment, and associated hardware, pathway systems, and cable management systems.

(i) This specialty includes:

(A) Installation of open wiring systems of telecommunications cables.

(B) Surface nonmetallic raceways designated and used exclusively for telecommunications.

(C) Optical fiber innerduct raceway.

(D) Underground raceways designated and used exclusively for telecommunications and installed for additions or extensions to existing telecommunications systems not to exceed fifty feet inside the building.

(E) Incidental short sections of circular or surface metal raceway, not to exceed ten feet, for access or protection of telecommunications cabling and installation of cable trays and ladder racks in telecommunications service entrance rooms, spaces, or closets.

(F) Audio or paging systems where the amplification is integrated into the telephone system equipment.

(G) Audio or paging systems where the amplification is provided by equipment listed as an accessory to the telephone system equipment and requires the telephone system for the audio or paging system to function.

(H) Closed circuit video monitoring systems if there is no integration of line or low-voltage controls for cameras and equipment. Remote controlled cameras and equipment are considered (intrusion) security systems and must be installed by appropriately licensed electrical contractors and certified electricians.

(I) Customer satellite and conventional antenna systems receiving a telecommunications service provider's signal. All receiving equipment is on the customer side of the telecommunications network demarcation point.

(ii) This specialty does not include horizontal cabling used for fire protection signaling systems, intrusion alarms, access control systems, patient monitoring systems, energy management control systems, industrial and automation control systems, HVAC/refrigeration control systems, lighting control systems, and stand-alone amplified sound or public address systems. Telecommunications systems may interface with other building signal systems including security, alarms, and energy management at cross-connection junctions within telecommunications closets or at extended points of demarcation. Telecommunications systems do not include the installation or termination of premises line voltage service, feeder, or branch circuit conductors or equipment. Horizontal cabling for a telecommunications outlet, necessary to interface with any of these systems outside of a telecommunications closet, is the work of the telecommunications contractor.

(n) **Door, gate, and similar systems (10):** This specialty may install, service, maintain, repair, or replace door/gate/similar systems electrical operator wiring and equipment.

(i) For the purposes of this subsection, door/gate/similar systems electrical operator systems include electric gates, doors, windows, awnings, movable partitions, curtains and similar systems. These systems include, but are not limited to: Electric gate/door/similar systems operators, control push buttons, key switches, key pads, pull cords, air and electric treadle, air and electric sensing edges, coil cords, take-up reels, clocks, photo electric cells, loop detectors, motion detectors, remote radio and receivers, antenna, timers, lock-out switches, stand-alone release device with smoke detection, strobe light, annunciator, control panels, wiring and termination of conductors.

(ii) This specialty includes:

(A) Low-voltage, NEC Class 2, door/gate/similar systems electrical operator systems where the door/gate/similar systems electrical operator system is not connected to other systems.

(B) Branch circuits originating in a listed door/gate/similar systems electric operator control panel that supplies only door/gate/similar systems system components providing: The branch circuit does not exceed 600 volts, 20 amperes and the component is within sight of the listed door/gate/similar systems electric operator control panel.

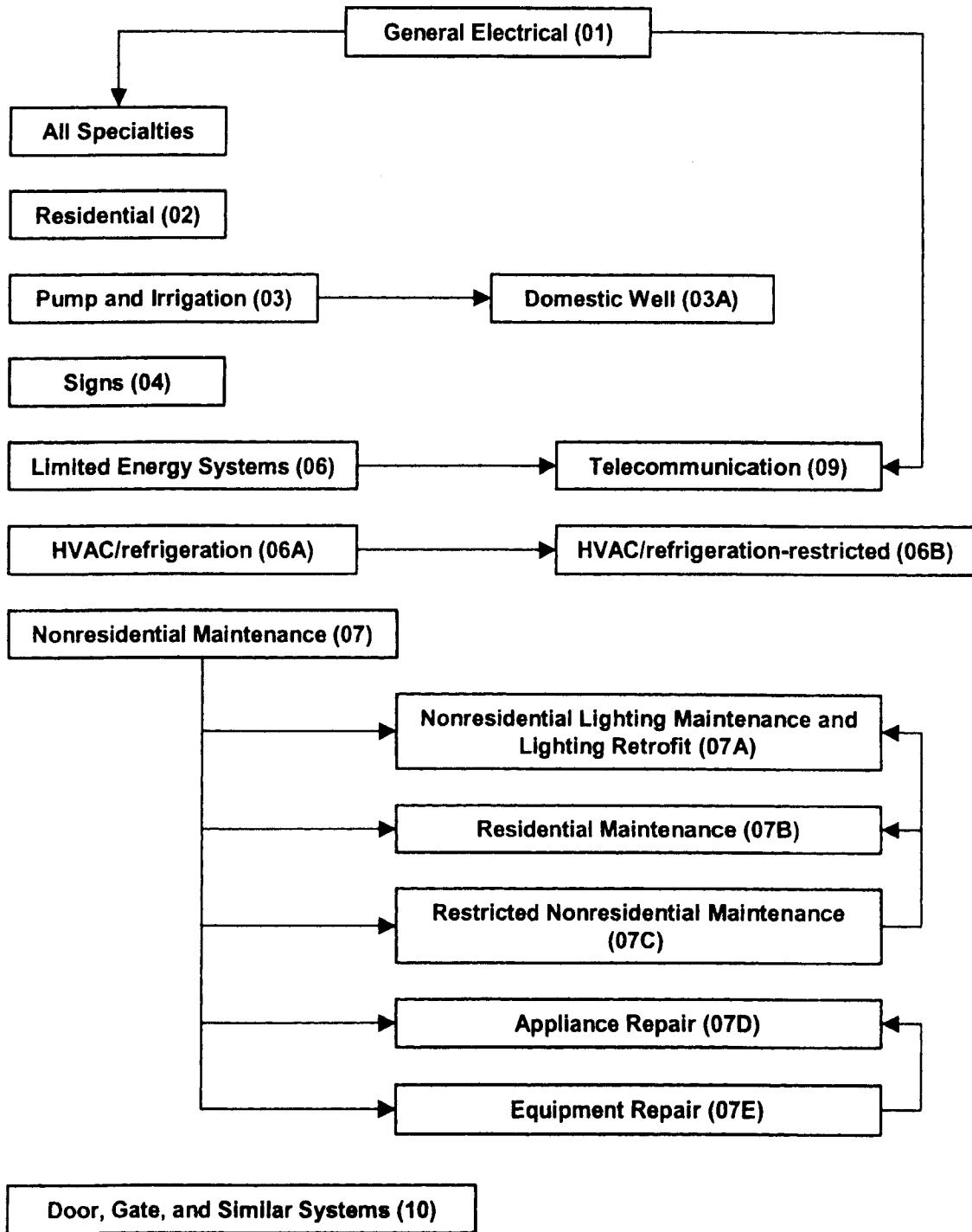
(C) Reconnection of line voltage power to a listed door/gate/similar systems electric operator control panel is permitted provided:

- There are no modifications to the characteristics of the branch circuit/feeder;
- The circuit/feeder does not exceed 600 volts, 20 amperes; and
- The conductor or conduit extending from the branch circuit/feeder disconnecting means or junction box does not exceed six feet in length.

(iii) This specialty does not include any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations). This specialty may not install, repair, or replace branch circuit (line voltage) conductors, services, feeders, panelboards, or disconnect switches supplying the door/gate/similar systems electric operator control panel.

(3) A specialty electrical contractor, other than the (06) limited energy specialty electrical contractor, may only perform telecommunications work within the equipment or occupancy limitations of their specialty electrical contractor's license. Any other telecommunications work requires a telecommunications contractor's license.

Table 920-1 Allowed Scope of Work Crossover



AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-925 Electrical/telecommunications contractor's license. General.

(1) The department will issue an electrical/telecommunications contractor's license that will expire twenty-four months following the date of issue to a person, firm, partnership, corporation or other entity that complies with require-

ments for such license in chapter 19.28 RCW. An electrical/telecommunications contractor's license will not be issued to or renewed for a person, firm, or partnership unless the Social Security number, date of birth, and legal address of the individual legal owner(s) are submitted with the application. The department may issue an electrical/telecommunications contractor's license for a period greater or less than twenty-four months for the purpose of equalizing the number

of electrical contractor's licenses that expire each month. The department may prorate the electrical/telecommunications contractor's license fee according to the license period.

(2) Combination specialty contractor's license. The department may issue a combination specialty contractor's license to a firm that qualifies for more than one specialty electrical contractor's license. The assigned administrator must be certified in all specialties applicable to the combination specialty contractor's license. The license will plainly indicate the specialty licenses' codes included in the combination license. An administrator assigned to a telecommunications contractor must be certified as a telecommunications administrator. A combination license will not be issued for telecommunications **(09)**.

(3) See RCW 19.28.041(1) for a contractor doing domestic pumping work as defined in RCW 18.106.010 (10)(c).

(4) The department may deny application or renewal of an electrical/telecommunications contractor's license if a firm, an owner, partner, member, or corporate officer owes money as a result of an outstanding final judgment(s) to the department.

Electrical/telecommunications contractor bond, cash or securities deposit.

(5) Bond, cash, or securities deposit.

(a) The electrical/telecommunications contractor may furnish the department with a cash or security deposit to meet the bond requirements in lieu of posting a bond. A cash or security deposit assigned to the department for bond requirements will be held in place for one year after the contractor's license is expired, revoked, or the owner notifies the department in writing that the company is no longer doing business in the state of Washington as an electrical/telecommunications contractor. Upon written request, the cash or security deposit will then be released by the department providing there is no pending legal action against the contractor under chapter 19.28 RCW of which the department has been notified.

(b) See RCW 19.28.041(7) for a contractor doing domestic pumping work as defined in RCW 18.106.010 (10)(c).

Telecommunications contractor insurance.

(6) To obtain a telecommunications contractor's license, the applicant must provide the department with an original certificate of insurance naming the department of labor and industries, electrical section as the certificate holder. Insurance coverage must be no less than twenty thousand dollars for injury or damages to property, fifty thousand dollars for injury or damage including death to any one person, and one hundred thousand dollars for injury or damage including death to more than one person. The insurance will be considered a continuing obligation unless canceled by the insurance company. The insurance company must notify the department in writing ten days prior to the effective date of said cancellation or failure to renew.

(7) The telecommunications contractor may furnish the department with an assigned account to meet the insurance requirements in lieu of a certificate of insurance. An account assigned to the department for insurance requirements will be held in place for three years after the contractor's license is

expired, revoked, or the owner notifies the department in writing that the company is no longer doing business in the state of Washington as a telecommunications contractor. Upon written request, the account then will be released by the department providing there is no pending legal action against the contractor under chapter 19.28 RCW of which the department has been notified.

Electrical/telecommunications contractor exemptions.

(8) The following types of systems and circuits are considered exempt from the requirements for licensing and permitting described in chapter 19.28 RCW. The electrical failure of these systems does not inherently or functionally compromise safety to life or property.

Low-voltage thermocouple derived circuits and low-voltage circuits for:

- (a) Built-in residential vacuum systems;
- (b) Underground landscape sprinkler systems;
- (c) Underground landscape lighting; and
- (d) Residential garage doors.

For these types of systems and circuits to be considered exempt, the following conditions must be met:

(e) The power supplying the installation must be derived from a listed Class 2 power supply;

(f) The installation and termination of line voltage equipment and conductors supplying these systems is performed by appropriately licensed and certified electrical contractors and electricians;

(g) The conductors of these systems do not pass through fire-rated walls, fire-rated ceilings or fire-rated floors in other than residential units; and

(h) Conductors or luminaires are not installed in installations covered by the scope of Article 680 NEC (swimming pools, fountains, and similar installations).

(9) Firms who clean and/or replace lamps in luminaires are not included in the requirements for licensing in chapter 19.28 RCW. This exemption does not apply to electric signs as defined in the NEC.

(10) Firms who install listed plug and cord connected utilization equipment are not included in the requirements for licensing in chapter 19.28 RCW. The plug and cord must be a single listed unit consisting of a molded plug and cord and not exceeding 250 volt 60 ampere single phase. The plug and cord can be field installed per the manufacturer's instructions and the product listing requirements. The utilization equipment must be a single manufactured unit that does not require any electrical field assembly except for the installation of the plug and cord.

(11) Firms regulated by the Federal Communications Commission or the utilities and transportation commission, supplying telecommunications service to an end-user's property, are not required to be licensed as a telecommunications contractor under chapter 19.28 RCW for telecommunications installations made ahead of the telecommunications network demarcation point.

(12) Unregulated firms, supplying telecommunications service to an end-user's property, are not required to be licensed as a telecommunications contractor under chapter 19.28 RCW for telecommunications installations made ahead of the telecommunications network demarcation point.

(13) Leaseholders. For electrical installations, maintenance, or alterations to existing buildings only, any person, firm, partnership, corporation, or other entity holding a valid, signed lease from the property owner authorizing the leaseholder to perform electrical work, on the property the leaseholder occupies, will be allowed to purchase an electrical permit(s) and do electrical work on or within the property described in the lease. The lessee and/or his or her regularly employed employees must perform the electrical installation, maintenance and alteration.

The lessee who performs the electrical maintenance or installation work must be the sole occupant of the property or space. Property owners or leaseholders cannot perform electrical work on new buildings for rent, sale, or lease, without the proper electrical licensing and certification. Refer to RCW 19.28.261 for exemptions from licensing and certification.

(14) Assisting a householder. A friend, neighbor, relative, or other person (including a certified electrician) may assist a householder, at his/her residence in the performance of electrical work on the condition that the householder is present when the work is performed and the person assisting the householder does not accept money or other forms of compensation for the volunteer work. For the purposes of this subsection, a residence is a single-family residence.

(15) Volunteering to do electrical work. There are no exceptions from the electrical contractor's license or electrician certification requirements to allow persons to perform volunteer electrical work for anyone other than a householder or a nonprofit organization as allowed by RCW 19.28.091(7). For the purpose of this section, volunteer means that there is no remuneration or receiving of goods or services in return for electrical installations performed.

(16) Farms or place of business. See RCW 19.28.261 for licensing/certification exemptions allowed for the owner(s) of a farm or other place of business and for the employees of the owner.

Exemptions - electrical utility and electrical utility's contractor.

(17) Electrical utility (~~(system)~~) exemptions.

(a) Utility system exemption - RCW 19.28.010(1) and 19.28.091(1).

(i) Neither a serving electrical utility nor a contractor or subcontractor employed by the serving electrical utility is required to have an electrical contractor's license for work on the "utility system" or on service connections or on meters (~~(and)~~ or other apparatus (~~(or appliances)~~) used to measure the consumption of electricity.

~~((a))~~ (ii) Exemption from inspection. The work of a serving electrical utility and its contractor(s) on the work exempted by NEC 90.2 (b)(5), 1981 edition, is not subject to inspection.

(b) Street/area lighting exemption - RCW 19.28.091 (2) (a)(A). ((A))

(i) On:

(A) Publicly owned streets, parks, athletic/play fields, beaches, and similar areas where the public has general, clear, and unrestricted access; or

(B) Outside area lighting installed on a utility owned pole(s) that is used to support the utility's electric distribution wiring or equipment that supplies a private property owner's property, the serving electrical utility is considered to be an owner and is not required to have an electrical contractor's license or electrical permit to install or work on ((electrical) wiring or equipment, owned by the utility and used in the lighting of ((streets, alleys, ways, or public areas or squares)) those streets/areas.

~~((Utilities are allowed to install outside area lighting on privately owned property where the lighting fixture(s) is installed on a utility owned pole(s) used to support utility owned electric distribution wiring or equipment designed to supply electrical power to a customer's property.~~

~~Utilities are allowed to install area lighting outside and not attached to a building or other customer owned structure when the areas are outside publicly owned buildings such as: Publicly owned/operated parking lots, parks, schools, play fields, beaches, and similar areas; or the areas are privately owned where the public has general, clear and unrestricted access such as: Church parking lots, and commercial property public parking areas and similar areas.~~

~~Utilities are not allowed to install area lighting when the area is privately owned and the public does not have general, clear, and unrestricted access such as industrial property, residential property and controlled commercial property where the public's access is otherwise restricted.~~

~~Utilities are not allowed to install area lighting where the lighting is supplied from a source of power derived from a customer owned electrical system.~~

~~(b))~~ (ii) On other privately or publicly owned property (e.g., private streets, parking lots, businesses, schools, etc.), the serving utility is not required to have an electrical contractor's license or electrical permit to install or work on outside street/area lighting where the light(s) is supplied directly from the utility system and installed according to the NESC or NEC.

This work is considered to be utility type work.

An electric utility is not allowed to install or work on street/area lighting:

(A) When the area is privately or publicly owned and the public does not have general, clear, and otherwise unrestricted access such as: Industrial property, residential property, or other property where the public's access is restricted in any manner.

(B) Where the lighting is supplied from a source of power derived from a customer-owned electrical system.

(C) Where the lighting or wiring is attached to a building or other customer-owned structure.

(D) If the utility does not directly perform the installation or work, it may only contract the work to an appropriately licensed electrical contractor(s). See RCW 19.28.091(3).

(c) Customer-owned equipment exemption - RCW 19.28.091 (2)(b). A serving electrical utility is not required to have an electrical contractor's license to work on electrical equipment owned by a commercial, industrial, or public institution customer if:

(i) The utility has not solicited such work; and

(ii) Such equipment:

(A) Is located outside a building or structure; and

(B) The work performed is ~~((on the primary))~~ ahead of the secondary side of the customer's transformer(s) which supplies power at the customer's utilization voltage.

~~((e) Exempted equipment and installations. No person, firm, partnership, corporation, or other entity is required to have an electrical contractor's license for work on electrical equipment and installations thereof that are exempted by RCW 19.28.091.~~

~~(d) Exemption from inspection.~~

~~(i) The work of a serving electrical utility and its contractors on the utility system is not subject to inspection. The utility is responsible for inspection and approval for the installation.~~

~~(ii) Work exempted by NEC 90.2 (B)(5), 1981 edition, is not subject to inspection.)~~ If the utility does not directly perform the installation or work, it may only contract the work to an appropriately licensed electrical contractor(s). See RCW 19.28.091(3).

This work is considered to be utility type work.

The owner will provide the electrical work permit and be responsible for requesting inspections and for ensuring the work is installed per chapter 19.28 RCW and this chapter.

Exemptions - electrical utility telecommunications transition equipment installations, maintenance and repair.

(18) No license, inspection or other permit will be required by the department of any electric utility or, of any person, firm, partnership or corporation or other entity employed or retained by an electric utility or its contractor, because of work in connection with the installation, maintenance, or repair of telecommunications transition equipment located ahead of the utility's telecommunications network demarcation point on the outside of a building or other structure when the work is performed by a qualified person consistent with the requirements of the National Electric Code (NEC) except as provided in (a) and (b) of this subsection:

(a) The following exceptions to the NEC shall be permitted:

(i) An additional service disconnect supplying power to the transition equipment can be connected on the supply side of the main service disconnect supplying general power to the building;

(ii) Service entrance disconnects may be separated when clearly labeled;

(iii) The service disconnect used for supplying power to the transition equipment must be connected to the grounding electrode system using:

(A) # 8 AWG copper or larger grounding electrode conductor if protected from physical damage; or

(B) # 6 AWG copper or larger grounding electrode conductor if not protected from physical damage;

(iv) Use of equipment or materials that have been listed/field evaluated by a recognized independent testing laboratory or the department;

(v) Low-voltage circuits do not require a separate disconnecting means and may be grounded to the transition equipment grounding system;

(vi) Any other variance to the NEC must be approved by the department.

(b) A variance recommended by a joint utility standards group composed of representatives of both public and private utilities or certified by a professional engineer will be approved by the department unless the recommendation is inconsistent with meeting equivalent objectives for public safety.

(c) For the purposes of this section, a qualified worker is employed by a utility or its contractor and is familiar with the construction or operation of such lines and/or equipment that concerns his/her position and who is proficient with respect to the safety hazards connected therewith, or, one who has passed a journey status examination for the particular branch of the electrical trades with which he/she may be connected or is in a recognized training or apprenticeship course and is supervised by a journey level person.

(d) Although the utility is responsible for inspection and approval of the installation, including the selection of material and equipment, the department reserves the right to audit worker qualifications and inspect such installations semi-annually for conformance with the requirements of (a), (b) and (c) of this subsection but shall not collect a permit fee for such inspection or audit.

(e) If a utility fails to meet the requirements of this section, the department may require the utility to develop and submit a remedial action plan and schedule to attain compliance with this section which may be enforced by the department.

(f) This exemption shall be in addition to any other exemption provided in chapter 19.28 RCW, this chapter or other applicable law.

Exemptions - independent electrical power production equipment exemption.

(19) An independent electrical power production entity is not required to have an electrical contractor's license to work on electrical equipment used to produce or transmit electrical power if:

(a) The entity is:

(i) The owner or operator of the generating facility is regulated by the Federal Energy Regulatory Commission (FERC);

(ii) A municipal utility, or other form of governmental electric utility, or by an electrical cooperative or mutual corporation; or

(iii) The owner or operator of the generating facility is an independent electrical power producer and the facility generates electrical power only for sale to one or more:

(A) Electrical utilities regulated by FERC, municipal utility, or other form of governmental utility, or to an electric cooperative or mutual corporation; and

(B) The electrical power generated by the facility is not used for self-generation or any other on- or off-site function other than sale to one or more utilities regulated by FERC or by one or more state public utilities commissions, or to a PUD, municipal utility, or other form of governmental electric utility, or to an electric cooperative or mutual corporation.

(b) The entity must supply the chief electrical inspector a valid master business license issued by the department of

licensing, state of Washington so that the entity's status as a revenue generating business can be confirmed.

(c) The entity has entered into an agreement to sell electricity to a utility or to a third party; and

(d) The electrical equipment is used to transmit electricity from the terminals of an electrical generating unit located on premises to the point of interconnection with a utility system.

(e) The electrical power production facility's generation capacity exceeds 115 KVA.

(f) Notwithstanding that a generating facility may be granted an exemption pursuant to this section, the facility will be subject to all the requirements of chapter 19.28 RCW if the facility at any time in the future ceases to comply with the requirements for exemption. All site facilities not exclusively and directly required to generate and/or distribute the electrical power generated on the site are subject to all the licensing and inspection requirements of chapter 19.28 RCW. All facility services, feeders, and circuits not exclusively and directly required to generate and/or distribute the electrical power (e.g., lights, outlets, etc.) must comply with all requirements of chapter 19.28 RCW for licensing and inspection. Facility circuits supplied to equipment required for the function of generation equipment (e.g., block heaters, power supplies, etc.) must comply with all requirements of chapter 19.28 RCW for licensing and inspection up to and including the equipment termination point.

Exemptions - telegraph and telephone utility and telegraph and telephone utility's contractor.

(20) Telegraph and telephone utility exempted equipment and installations. No person, firm, partnership, corporation, or other entity is required to have an electrical contractor's license for work on electrical equipment and installations thereof that are exempted by RCW 19.28.151. For the purposes of this exemption, "building or buildings used exclusively for that purpose" may mean any separate building or space of a building where the space is separated from the remainder of the building by a two-hour fire wall. The telecommunications or telegraph equipment within such a space must supply telephone or telegraph service to other customer's buildings (i.e., telecommunications or telegraph equipment cannot solely supply the building containing the telephone/telegraph space).

Exemptions - manufacturers of electrical/telecommunications products.

(21) Manufacturers of electrical/telecommunications systems products will be allowed to utilize a manufacturer's authorized factory-trained technician to perform initial calibration, testing, adjustment, modification incidental to the startup and checkout of the equipment, or replacement of components within the confines of the specific product, without permit or required licensing:

(a) Provided the product:

(i) Has not been previously energized;

(ii) Has been recalled by the Consumer Product Safety Commission;

(iii) Is within the manufacturer's written warranty period;

or

(iv) The manufacturer is working under the written request and supervision of an appropriately licensed electrical contractor.

(b) Modifications to the equipment, as designated above, must not include any changes to the original intended configuration nor changes or contact with external or field-connected components or wiring.

(c) The manufacturer will be responsible for obtaining any required reapproval/recertification from the original listing or field evaluation laboratory.

(d) The manufacturer must notify the department if any modifications have been made or reapproval/recertification is required.

Premanufactured electric power generation equipment assemblies and control gear.

(22) Premanufactured electric power generation equipment assemblies and control gear.

(a) Manufacturers of premanufactured electric power generation equipment assemblies and control gear will be allowed to utilize a manufacturer's authorized factory-trained technician to perform initial calibration, testing, adjustment, modification incidental to the startup and checkout of the equipment, or replacement of components within the confines of the specific product, without permit or required licensing, provided:

(i) For transfer equipment, the product has not been previously energized or is within the manufacturer's written warranty period;

(ii) Modifications to the equipment, as designated above, must not include any changes to the original intended configuration nor changes or contact with external or field-connected components or wiring;

(iii) The manufacturer will be responsible for obtaining any required reapproval/recertification from the original listing or field evaluation laboratory; or

(iv) The manufacturer must notify the department if any modifications have been made or reapproval/recertification is required.

(b) Premanufactured electric power generation equipment assemblies are made up of reciprocating internal combustion engines and the associated control gear equipment. Control gear equipment includes control logic, metering, and annunciation for the operation and the quality of power being generated by the reciprocating internal combustion engine and does not have the function of distribution of power.

(c) Modifications of a transfer switch must not include changes to the original intended configuration or changes or contact with externally field-connected components.

(d) For the purposes of this subsection, the following work on premanufactured electric power generation equipment assemblies is not exempt from the requirements of chapter 19.28 RCW:

(i) Installation or connection of conduit or wiring between the power generation unit, transfer switch, control gear;

(ii) Installation of the transfer switch;

(iii) Connections between the power generation unit, transfer switch, control gear, and utility's transmission or distribution systems;

(iv) Connections between the power generation unit, transfer switch, control gear, and any building or structure; or

(v) Test connections with any part of:

(A) The utility's transmission or distribution system; or

(B) The building or structure.

(23) The installation, maintenance, or repair of a medical device deemed in compliance with chapter 19.28 RCW is exempt from licensing requirements under RCW 19.28.091, certification requirements under RCW 19.28.161, and inspection and permitting requirements under RCW 19.28.101. This exemption does not include work providing electrical feeds into the power distribution unit or installation of conduits and raceways. This exemption covers only those factory engineers or third-party service companies with equivalent training who are qualified to perform such service.

(24) Coincidental electrical/plumbing work. See RCW 19.28.091(8) for the plumber exemption.

(25) Nothing in this section will alter or amend any other exemptions from or requirement for licensure or inspection, chapter 19.28 RCW or this chapter.

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-935 Administrator certificate. General.

(1) The department will deny application or renewal of a certificate if an individual owes money as a result of an outstanding final judgment(s) to the department.

(2) For special accommodation see WAC 296-46B-960.

(3) An applicant will not be issued a specialty administrator certificate that is a subspecialty of a certificate the applicant currently holds (i.e., the applicant is not eligible to take the domestic well administrator examination if the applicant currently possesses a pump and irrigation administrator certificate).

Qualifying for examination.

(4) There are no qualification requirements for taking an administrator certificate examination. Applicants should contact the testing agency directly.

Original - administrator certificates.

(5) The scope of work for electrical administrators is described in WAC 296-46B-920. The department will issue an original administrator certificate to a general administrator, or specialty administrator who:

(a) Successfully completes the appropriate administrator examination; and

(b) Submits the appropriate examination passing report from the testing agency with the applicant's: Date of birth, mailing address, and Social Security number; and

(c) Pays all appropriate fees as listed in WAC ((~~296-46B-910~~) 296-46B-909).

For an examination report to be considered, all the above must be submitted within ninety days after the completion of the examination. After ninety days, the applicant will be required to successfully retake the complete examination. An individual's original administrator certificate will expire on

their birth date at least one year, and not more than three years, from the date of original issue.

Combination - specialty administrator certificate.

(6) The department may issue a combination specialty administrator certificate to an individual who qualifies for more than one specialty administrators' certificate. The combination specialty administrators' certificate will plainly indicate the specialty administrator's certificate(s) the holder has qualified for. Telecommunications cannot be issued a combination because the renewal requirements are different from those required for electrical administrators. Temporary administrator certificates will not be issued as a part of a combination certificate.

Renewal - administrator certificate.

(7) An individual must apply for renewal of their administrator certificate on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for three years, with the exception of telecommunications administrators, who will be renewed for two years.

(8) An individual may renew their administrator certificate within ninety days after the expiration date without reexamination if the individual pays the late renewal fee listed in WAC ((~~296-46B-910~~) 296-46B-909).

(9) All renewals received more than ninety days after the expiration date of the certificate will be denied. The administrator will be required to pass the appropriate administrator examination before being recertified.

(10) All applicants for certificate renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees as listed in WAC ((~~296-46B-910~~) 296-46B-909); and

(c) Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in WAC 296-46B-970. If an individual files inaccurate or false evidence of continuing education information when renewing a certificate, the individual's certificate may be suspended or revoked.

Telecommunications administrators are not required to provide continuing education information.

Continuing education for pump and irrigation (**03**) and domestic pump (**03A**) administrators may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(11) An individual who has not completed the required hours of continuing education can renew an administrator's certificate if the individual applies for renewal on or before the certificate expires and pays the appropriate renewal fee. However, the certificate will be placed in an inactive status.

When the certificate is placed in inactive status, an assigned administrator will be automatically unassigned from the electrical contractor. The electrical contractor will be notified of the unassignment and has ninety days to replace the administrator. An assignment fee will then be required per WAC ((~~296-46B-910~~) 296-46B-909).

The inactive certificate will be returned to current status upon validation, by the department, of the required continuing education requirements. If the certificate renewal date occurs during the inactive period, the certificate must be

renewed on or before the renewal date to allow the return to current status.

(12) An individual may renew a suspended administrator's certificate by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period.

(13) An individual may not renew a revoked or temporary administrator's certificate.

Temporary specialty administrator certificate.

(14) See WAC 296-46B-930 for additional information.

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-940 Electrician/training/temporary certificate of competency or permit required.

Electrician - general.

(1) The department will deny application or renewal of a certificate or permit if an individual owes money as a result of an outstanding final judgment(s) to the department.

Electrician - scope of work.

(2) The scope of work for electricians and trainees is described in WAC 296-46B-920.

Electrician - certificate of competency required.

(3) To work in the electrical construction trade, an individual must possess a current valid:

(a) Master journeyman electrician certificate of competency issued by the department;

(b) Journeyman electrician certificate of competency issued by the department;

(c) Master specialty electrician certificate of competency issued by the department;

(d) Specialty electrician certificate of competency issued by the department;

(e) Temporary electrician permit. Unless continually supervised by an appropriately certified electrician, no temporary electrician can install, repair, replace, or maintain any electrical wiring or equipment where the system voltage is more than 600 volts, whether the system is energized or deenergized; or

(f) Electrical training certificate, learning the trade in the proper ratio, per RCW 19.28.161, under the supervision of a certified master journeyman electrician, journeyman electrician, master specialty electrician working in their specialty, or specialty electrician working in their specialty.

(4) The department issues master electrician and electrician certificates of competency in the following areas of electrical work:

(a) General journeyman **(01)**;

(b) Specialties:

(i) Residential **(02)**;

(ii) Pump and irrigation **(03)**;

(iii) Domestic pump **(03A)**;

(iv) Signs **(04)**;

(v) Limited energy system **(06)**;

(vi) HVAC/refrigeration **(06A)**;

(vii) HVAC/refrigeration - restricted **(06B)**;

(viii) Nonresidential maintenance **(07)**;

(ix) Nonresidential lighting maintenance and lighting retrofit **(07A)**;

(x) Residential maintenance **(07B)**;

(xi) Restricted nonresidential maintenance **(07C)**;

(xii) Appliance repair **(07D)**;

(xiii) Equipment repair **(07E)**; and

(xiv) Door, gate, and similar systems **(10)**.

Exemptions - linemen.

~~(5) ((Definition: See general definitions WAC 296-46B-100 for the definition of a lineman.~~

~~(6) Electrical linemen employed by a:~~

~~(a) Serving electrical utility or the serving utility's contractor, or a subcontractor to their subcontractor, while performing work described in WAC 296-46B-925 do not need certificates of competency.~~

~~(b) Licensed general electrical contractors do not need certificates of competency if the electrical equipment:~~

~~(i) Is on commercial or industrial property;~~

~~(ii) Is located outside a building or structure; and~~

~~(iii) The work performed is on the primary side of the customer's transformer(s) supplying power at the customer's building or structure utilization voltage.)) When performing the work described and allowed in WAC 296-46B-925 (17)(a) or (b)(i), when employed by the serving utility or its contractor or subcontractor(s), a lineman is exempt from the requirements of chapter 19.28 RCW.~~

(6) When performing the work described and allowed in WAC 296-46B-925 (17)(b)(ii) or (c), when employed by the serving utility or its licensed electrical contractor or subcontractor(s), a lineman must meet the requirements of RCW 19.28.261 (5)(b) or be an appropriately certified electrician. See the definition of a lineman in WAC 296-46B-100.

Exemptions - plumbers.

(7) Coincidental electrical/plumbing work. See RCW 19.28.091(8) for the plumber exemption.

Original - master electrician, journeyman, and specialty electrician certificates of competency.

(8) The department will issue an original certificate of competency to master, journeyman, or specialty electricians who meet the eligibility requirements listed in:

(a) RCW 19.28.191 (1)(a) or (b); and

(i) Submit an application for an original master electrician certificate including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC ~~((296-46B-940))~~ 296-46B-909;

(b) RCW 19.28.191 (1)(d) through (e);

(i) Submit an original master electrician certification examination application including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC ~~((296-46B-940))~~ 296-46B-909; or

(c) RCW 19.28.191 (1)(f) through (g);

(i) Submit an original electrician certification examination application including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC (~~(296-46B-910)~~) 296-46B-909.

(9) An individual's original electrician certificate of competency will expire on their birth date at least two years, and not more than three years, from the date of original issue.

Renewal - master electrician, journeyman, and specialty electrician certificates of competency.

(10) An individual must apply for renewal of their electrician certificate of competency on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for three years.

(11) An individual may renew their certificate of competency within ninety days after the expiration date without reexamination if the individual pays the late renewal fee listed in WAC (~~(296-46B-910)~~) 296-46B-909.

(12) All applications for renewal received more than ninety days after the expiration date of the certificate of competency require that the electrician pass the appropriate competency examination before being recertified.

(13) All applicants for certificate of competency renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees; and

(c) Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in WAC 296-46B-970. Continuing education classes are only valid when all the requirements of WAC 296-46B-970 are completed. If an individual files inaccurate or false evidence of continuing education information when renewing a certificate of competency, the individual's certificate of competency may be suspended or revoked.

Continuing education for pump and irrigation **(03)** and domestic pump **(03A)** electricians may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(14) An individual who has not completed the required hours of continuing education can renew a certificate of competency if the individual applies for renewal before the certificate of competency expires and pays the appropriate renewal fee. However, the certificate of competency will be placed in an inactive status. The inactive certificate of competency will be returned to current status upon validation, by the department, of the required continuing education. If the certificate renewal date occurs during the inactive period, the certificate must be renewed on or before the renewal date to allow the return to current status.

(15) An individual may renew a suspended certificate of competency by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period.

(16) An individual may not renew a revoked or temporary certificate of competency.

Reciprocal agreements between Washington and other states.

(17) The department negotiates reciprocal agreements with states that have equivalent requirements for certification of master electricians, journeymen, or specialty electricians. These agreements allow electricians from those reciprocal states to become certified in the state of Washington without examination and allow Washington certified electricians to become certified in the other states without taking competency examinations. An individual may only apply for reciprocity from another state(s) one time in Washington.

(18) An individual coming into the state of Washington from a reciprocal state will be issued a reciprocal electrician certificate of competency if all the following conditions are met:

(a) The department has a valid reciprocal agreement with the other state in the master electrician category requested, journeyman, or specialty category requested;

(b) The individual makes a complete application for the reciprocity certificate on the form provided by the department. A complete application includes:

(i) Application for reciprocal certificate of competency;

(ii) Evidence that the individual meets the eligibility requirements listed in RCW 19.28.191, by presenting a valid journeyman or specialty electrician certificate or certified letter from the issuing state; and

(iii) All appropriate fees as listed in WAC (~~(296-46B-910)~~) 296-46B-909.

(c) The individual obtained the reciprocal state's certificate of competency as a master electrician, journeyman, or specialty electrician by examination and the individual held the reciprocal state's certificate for a period of at least one year;

(19) An individual is not eligible for a reciprocal electrician certificate of competency if the individual:

(a) Has failed to renew a similar Washington master electrician or electrician certificate of competency as required in RCW 19.28.211;

(b) Has a similar Washington master electrician or electrician certificate of competency in suspended, revoked, or inactive status under this chapter; (~~(or)~~)

(c) Has ever taken and failed a Washington exam; or

(d) Was a resident of the state of Washington at the time the examination was taken in the other state.

Military/shipyard experience.

(20) An individual who has worked in the electrical construction trade performing work described in WAC 296-46B-920 while serving in the armed forces of the United States may be eligible to take the examination for the certificate of competency as a journeyman or specialty electrician. Credit may be allowed for hours worked or training received.

If an individual has military experience in a specialized electrical field (e.g., rating) that is similar to a specialty electrician category listed in WAC 296-46B-920, credit may be allowed toward the appropriate specialty certificate. Nuclear, marine, shipyard, shipboard, radar, weapons, aeronautical experience, or similar experience may be acceptable for no more than fifty percent of the minimum required work experience for qualifying for electrician examination.

The department will evaluate and determine whether the submitted experience is related specifically to the electrical construction/maintenance trade regulated by chapter 19.28 RCW.

Experience in another country.

(21) If an individual has a journeyman electrician certificate from a country outside the United States that requires that at least four years of electrical construction training and certification is obtained by examination, the individual may be eligible for four thousand hours of the specialty credit allowed towards the qualification to take the Washington journeyman electrician examination.

No more than two years of the required training to become a Washington journeyman electrician may be for work described for specialty electricians or technicians in WAC 296-46B-920. In addition to the maximum of four thousand hours credit that may be allowed by this subsection, an additional four thousand hours of new commercial/industrial experience must be obtained using a training certificate in the state while under the supervision of a master journeyman electrician or journeyman electrician.

Documentation substantiating the individual's out-of-country experience must be submitted in English.

(22) Out-of-country experience credit is not allowed toward a specialty electrician certificate.

Training school credit.

(23) No more than fifty percent of the minimum work experience needed to qualify for specialty electrician certification is allowed for any training school program (e.g., a specialty requiring two thousand hours of minimum required work experience may receive no more than one thousand hours credit from an electrical construction training program).

(24) See RCW 19.28.191 (1)(h) for training school credit allowed for journeyman applicants.

(25) See WAC 296-46B-971 for additional information on training schools.

Temporary electrician permit.

(26) Temporary permits are not allowed for master electricians.

(27) Temporary electrician permit when coming from out-of-state. An individual coming from out-of-state must either obtain a reciprocal electrician certificate, valid training certificate, or make application and receive approval for a temporary electrician permit to perform electrical work in the state, or otherwise obtain an electrician certificate of competency.

(a) Initial temporary electrician permit when coming from out-of-state.

(i) If an individual can show evidence of work experience in another state similar to RCW 19.28.191, the department may issue the individual one initial temporary journeyman or specialty electrician permit. The individual must present appropriate evidence at the time of application showing work experience equivalent to that required by RCW 19.28.191.

The initial temporary electrician permit allows the individual to work as an electrician between the date of filing a completed application for the certification examination and the notification of the results of the examination. This initial permit will be issued for one twenty-day period and will become invalid on the expiration date listed on the temporary electrician permit or the date the individual is notified they have failed the examination, whichever is earlier.

(ii) To qualify for an initial temporary electrician permit, an individual must:

(A) Meet the eligibility requirements of RCW 19.28.191; and

(B) Submit a complete application for an initial temporary electrician permit and original certification including:

- Date of birth, mailing address, Social Security number; and

- All appropriate fees as listed in WAC ((~~296-46B-910~~) 296-46B-909).

(iii) The individual must not have ever possessed a Washington master electrician, journeyman electrician, specialty electrician, or temporary electrician certificate of competency in the specialty requested.

(iv) If the initial temporary electrician permit becomes invalid, it will not be extended or renewed. To continue to work in the electrical trade, the individual must apply for and receive a:

(A) Second temporary electrician permit; or

(B) Training certificate and work in the proper ratio, per RCW 19.28.161, under the direct supervision of either a certified master journeyman electrician, journeyman electrician, master specialty electrician working in the appropriate specialty, or a specialty electrician working in the appropriate specialty.

(b) Second temporary electrician permit.

(i) If the individual fails the certification examination during the initial temporary electrician period and provides verification of enrollment in an approved journeyman refresher course or approved appropriate specialty electrician refresher course, as prescribed in RCW 19.28.231, application may be made for a second temporary electrician permit.

A complete second application must include proof of enrollment in the refresher course and all appropriate fees as listed in WAC ((~~296-46B-910~~) 296-46B-909).

(ii) The second temporary electrician permit will be issued for one ninety-day period and will become invalid: Upon withdrawal from the electrician refresher course, on the expiration date listed on the temporary electrician permit, or the date the individual is notified they have failed the examination, whichever is earlier;

(iii) After successfully completing the electrician refresher course, the individual must provide appropriate course completion documentation to the department and will be eligible to retake the appropriate competency exam.

(iv) If the second temporary electrician permit becomes invalid, it will not be extended or renewed. To continue to work in the electrical trade, the individual must apply for and receive a training certificate and work in the proper ratio, per RCW 19.28.161, under the direct supervision of either a certified master journeyman electrician, journeyman electrician, master specialty electrician working in the appropriate spe-

cialty, or a specialty electrician working in the appropriate specialty.

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-945 Qualifying for master, journeyman, specialty electrician examinations. Qualifying for master, journeyman, specialty electrician examinations.

(1) All applicants must be at least sixteen years of age.

Qualifying for the master electrician examination.

(2) An individual may take the master electrician's certificate of competency examination if the individual meets the requirements described in RCW 19.28.191 (1)(d) or (e).

Qualifying for the master electrician examination from out-of-state.

(3) No credit may be applied from out-of-state toward qualifying for a master electrician certificate of competency examination.

Qualifying for the journeyman electrician competency examination.

(4) An individual may take the journeyman electrician's certificate of competency examination if the individual held a current electrical training certificate and has worked for an employer who employs at least one certified master electrician, journeyman, or specialty electrician on staff and the individual:

(a) Has been employed, in the electrical construction trade, under the direct supervision of a master electrician, journeyman electrician or specialty electrician working in the appropriate specialty in the proper ratio, per RCW 19.28.161, for four years (eight thousand hours). Of the eight thousand hours:

(i) At least two years (four thousand hours) must be in new industrial and/or new commercial electrical installation (excluding all work described for specialty electricians or technicians) under the direct supervision of a master journeyman electrician or journeyman electrician while working for a general electrical contractor; and

(ii) Not more than a total of two years (four thousand hours) may be for work described as an electrical specialty in WAC 296-46B-920(2).

(b) Has completed a four-year apprenticeship program in the electrical construction trade that is registered with the state apprenticeship council while working under the direct supervision of a master journeyman or journeyman electrician in the proper ratio, per RCW 19.28.161; or

(c) Has completed a two-year electrical construction training program as described in RCW 19.28.191 for journeyman electricians, and two years (four thousand hours) of work experience in new industrial and/or new commercial electrical installations (excluding work described for specialty electricians or electrical technicians) under the direct supervision of a journeyman electrician while working for a general electrical contractor in the proper ratio, per RCW 19.28.161. See WAC 296-46B-971 for additional training school information.

Electrical construction training hours gained in specialties requiring less than two years (i.e., four thousand hours) will not be credited towards qualification for journeyman electrician.

The trainee and their employer and/or apprenticeship training director must attest to the accuracy of all information contained on affidavits of experience used to verify eligibility for the examination.

Qualifying for the journeyman/specialty electrician competency examination when work was performed in a state requiring electrician certification.

(5) An individual may take the journeyman/specialty electrician's competency examination when the appropriate state having authority certifies to the department that:

(a) The work was legally performed under the other state's licensing and certification requirements;

(i) For journeyman applicants who meet the minimum hour requirements described in WAC 296-46B-945(4).

(ii) For specialty applicants who meet the minimum hour requirements described in WAC 296-46B-945(9).

(b) The other state's certificate of competency was obtained by examination.

Electrical construction training hours gained in specialties requiring less than two years (i.e., four thousand hours) may not be credited towards qualification for journeyman electrician.

Qualifying for the journeyman/specialty electrician competency examination when work was performed in a state that does not require electrician certification.

(6) If the other state requires electrical contractor licensing:

(a) An individual may take the journeyman/specialty electrician's competency examination when an appropriately licensed electrical contractor(s), registered apprenticeship training director, or nationally recognized contractor or labor organization files a notarized letter of experience with the department accompanied by payroll documentation which certifies and shows that:

(i) For journeyman applicants: The individual meets the minimum hour requirements described in WAC 296-46B-945(4).

(ii) For specialty applicants: The individual meets the minimum hour requirements described in WAC 296-46B-945(9).

(b) An individual may take the journeyman/specialty electrician's competency examination when an employer(s), acting under a property owner exemption, files a notarized letter of experience from the property owner with the department accompanied by payroll documentation which certifies and shows that:

(i) For journeyman applicants: The individual meets the minimum hour requirements described in WAC 296-46B-945(4).

(ii) For specialty applicants: The individual meets the minimum hour requirements described in WAC 296-46B-945(9).

(7) If the other state does not require electrical contractor licensing or registration: An individual may take the jour-

neyman/specialty electrician's competency examination when the individual's employer(s), registered apprenticeship training director, or nationally recognized contractor or labor organization files a notarized letter(s) of experience with the department accompanied by payroll documentation which certifies and shows that:

(a) For journeyman applicants: The individual meets the minimum work requirements described in WAC 296-46B-945(4).

(b) For specialty applicants: The individual meets the minimum work requirements described in WAC 296-46B-945(9).

(8) The letter of experience described in subsections (6) and (7) of this section should include a complete list of the individual's usual duties with percentages attributed to each.

Qualifying for a specialty electrician certificate of competence or examination.

(9) An individual may qualify for a specialty electrician's examination and certificate of competency if the individual held a current electrical training certificate, and has worked for an employer who employs at least one certified master journeyman electrician, journeyman electrician, appropriate master specialty electrician, or appropriate specialty electrician on staff and the individual:

(a) Has been employed, in the electrical construction trade, under the direct supervision of an appropriate electrician in the appropriate specialty as follows:

Table 945-1 Experience Hours

Specialty	Minimum Hours of Work Experience Required to be Eligible for Examination ⁽⁴⁾⁽⁵⁾	Minimum Hours of Work Experience Required for Certification
Residential certificate (02)	4,000 ⁽³⁾	4,000
Pump and irrigation certificate (03)	4,000 ⁽³⁾⁽⁽⁸⁾⁾	4,000 ⁽⁽⁸⁾⁾
Domestic pump certificate (03A)	720 ⁽¹⁾⁽²⁾⁽⁽⁸⁾⁾	2,000 ⁽⁶⁾⁽⁽⁸⁾⁾
Signs certificate (04)	4,000 ⁽³⁾	4,000
Limited energy system certificate (06)	4,000 ⁽³⁾	4,000
HVAC/refrigeration system certificate (06A)	4,000 ⁽³⁾	4,000 ⁽⁷⁾
HVAC/refrigeration - restricted (06B)	1,000 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Nonresidential maintenance certificate (07)	4,000 ⁽³⁾	4,000
Nonresidential lighting maintenance and lighting retrofit certificate (07A)	720 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Residential maintenance certificate (07B)	720 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Restricted nonresidential maintenance certificate (07C)	1,000 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾

Table 945-1 Experience Hours

Specialty	Minimum Hours of Work Experience Required to be Eligible for Examination ⁽⁴⁾⁽⁵⁾	Minimum Hours of Work Experience Required for Certification
Appliance repair certificate (07D)	720 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Equipment repair certificate (07E)	1,000 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Door, gate, and similar systems certificate (10)	720 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾

Notes: ⁽¹⁾Until the examination is successfully completed, the trainee must work under one hundred percent supervision. Once the appropriate examination is successfully completed, the modified supervision trainee may work under zero percent supervision.

⁽²⁾The trainee may have only one zero percent supervision certificate in a specialty (valid for no more than two years). If the trainee has not gained the required work experience by the time the zero percent supervision certificate has expired, the trainee must get a seventy-five percent supervision certificate and work under supervision until all required work experience hours are gained and credited towards the minimum work experience requirement.

⁽³⁾This specialty is not eligible for ~~((modified))~~ unsupervised trainee status as allowed in chapter 19.28 RCW.

⁽⁴⁾The trainee and their employer and/or apprenticeship training director must attest to the accuracy of all information contained on affidavits of experience used to verify eligibility for the examination.

⁽⁵⁾Neither previous work experience credit nor training school credit is allowed as a substitute for the initial hours of minimum work experience required to be eligible for examination unless the trainee's work experience hours under direct supervision are provided as required in RCW 19.28.191 (1)(g)(ii).

⁽⁶⁾Electrical construction training hours gained in specialties requiring less than two years for certification may not be credited towards qualification for journeyman electrician.

⁽⁷⁾The 2,000 minimum hours of work experience required for certification as a HVAC/refrigeration-restricted (06B) specialty electrician may be credited as 2,000 hours towards the 4,000 minimum hours of work experience required for certification as a HVAC/refrigeration (06A) specialty electrician. Hours of work experience credited from the HVAC/refrigeration-restricted (06B) specialty cannot be credited towards qualification for taking the general electrician (01) examination or minimum work experience requirements.

⁽⁸⁾Experience hours may be coincidentally credited towards qualifying for electrician and plumber certifications. See RCW 19.28.191 (1)(g)(v).

(b) Or has completed an appropriate two-year apprenticeship program in the electrical construction trade that is registered with the state apprenticeship council while working under the direct supervision of an electrician in the appropriate specialty in the proper ratio, per RCW 19.28.161.

Qualifying for a certificate of competency when the Washington electrical work experience is exempt from certification requirements in RCW 19.28.261.

(10) To receive credit for electrical work experience that is exempted in RCW 19.28.261, an individual must provide the department with verification from the employer or owner according to WAC 296-46B-965 (i.e., affidavit(s) of experi-

ence). For the purposes of this section, exempt work does not include work performed on property owned by the individual seeking credit.

(11) All exempt individuals learning the electrical trade must obtain an electrical training certificate from the department and renew it biannually in order to receive credit for hours worked in the trade according to WAC 296-46B-965.

(12) The department may require verification of supervision in the proper ratio from the certified supervising electrician(s).

(13) Telecommunications work experience:

(a) Credit may be verified only by employers exempted by RCW 19.28.261, general electrical (01) contractors, and limited energy system (06) electrical contractors for limited energy experience for telecommunications work done:

(i) Under the supervision of a certified journeyman or limited energy electrician; and

(ii) In compliance with RCW 19.28.191.

(b) Individuals who want to obtain credit for hours of experience toward electrician certification for work experience doing telecommunications installations must:

(i) Obtain an electrical training certificate;

(ii) Renew the training certificate biannually in order to receive credit for hours worked in the trade according to WAC 296-46B-965.

(c) Telecommunications contractors may not verify telecommunications work experience toward electrician certification.

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-960 Administrator and electrician certificate of competency examinations. General.

(1) The minimum passing score on any examination or examination section is seventy percent. If examination is requested to be administered by the department, an application is required and the examination must be successfully completed within one year of application or the individual must submit a new application for exam including all appropriate fees.

(2) All examinations are open book.

(a) Candidates may use:

(i) Any original copyrighted material;

(ii) A silent, nonprinting, nonprogrammable calculator that is not designed for preprogrammed electrical calculations;

(iii) Copies of chapter 19.28 RCW and this chapter; or

(iv) A foreign language dictionary that does not contain definitions.

(b) Candidates may not use:

(i) Copies of copyrighted material;

(ii) Copies of internet publications, except for RCWs or WACs;

(iii) Personal notes; or

(iv) A personal computing device of any type other than the calculator in (a)(ii) of this subsection.

(3) Administrator, master electrician, and electrician examinations may consist of multiple sections. All sections must be successfully completed within a one-year examina-

tion period after beginning the examination. Within the one-year examination period, the candidate does not have to retake any sections successfully completed within the examination period. If all sections are not successfully completed within the one-year period, the candidate must begin a new examination period and retake all sections.

Special accommodations for examination.

(4) An applicant for an examination who, due to a specific physical, mental, or sensory impairment, requires special accommodation in examination procedures, may submit a written request to the chief electrical inspector for the specific accommodation needed.

(a) The applicant must also submit to the department a signed and notarized release, authorizing the specifically identified physician or other specialist to discuss the matter with the department representative. The applicant must also submit an individualized written opinion from a physician or other appropriate specialist:

(i) Verifying the existence of a specific physical, mental, or sensory impairment;

(ii) Stating whether special accommodation is needed for a specific examination;

(iii) Stating what special accommodation is necessary; and

(iv) Stating if extra time for an examination is necessary and if so, how much time is required. The maximum allowance for extra time is double the normal time allowed.

(b) The written request for special accommodation and individualized written opinion must be submitted to the department at least six weeks in advance of the examination date and must be accompanied by a completed application and fees as described in WAC ((296-46B-910)) 296-46B-909.

(c) Only readers and interpreters provided from the administrative office of the courts and/or approved by the department may be used for reading or interpreting the examination. The applicant will be required to bear all costs associated with providing any reading or interpretive services used for an examination.

(d) Applicants who pass the examination with the assistance of a reader or interpreter will be issued a certificate with the following printed restriction: "Requires reading supervision for product usage." A competent reader or interpreter must be present on any job site where a person with this restriction is performing electrical work as described in chapter 19.28 RCW.

Applicants who pass the examination with the assistance of a mechanical device (e.g., magnifier, etc.) will be issued a certificate with the following printed restriction: "Requires mechanical reading assistance for product usage." Appropriate mechanical reading assistance must be present on any job site where a person with this restriction is performing electrical work as described in chapter 19.28 RCW.

If a candidate successfully retakes the examination without the assistance of a reader or translator, a new certificate will be issued without the restriction.

(5) Applicants who wish to use a foreign language dictionary during an examination must obtain approval at the

examination site prior to the examination. Only dictionaries without definitions will be approved for use.

Failed examination appeal procedures.

(6) Any candidate who takes an examination and does not pass the examination may request a review of the examination.

(a) The department will not modify examination results unless the candidate presents clear and convincing evidence of error in the grading of the examination.

(b) The department will not consider any challenge to examination grading unless the total of the potentially revised score would result in a passing score.

(7) The procedure for requesting an informal review of examination results is as follows:

(a) The request must be made in writing to the chief electrical inspector and must be received within twenty days of the date of the examination and must request a rescore of the examination. The written request must include the appropriate fees for examination review described in WAC ((~~296-46B-910~~) 296-46B-909).

(b) The following procedures apply to a review of the results of the examination:

(i) The candidate will be allowed one hour to review their examination.

(ii) The candidate must identify the challenged questions of the examination and must state the specific reason(s) why the results should be modified with multiple published reference material supporting the candidate's position.

(iii) Within fifteen days of the candidate's review, the department will review the examination and candidate's justification and notify the candidate in writing of the department's decision.

Subjects included in administrator certificate, or master electrician, journeyman, or specialty electrician competency examinations.

(8) The following subjects are among those that may be included in the examination for an administrator certificate or electrician certificate of competency. The list is not exclusive. The examination may also contain subjects not on the list.

(a) For general administrators, master journeyman, and journeyman electricians:

AC - Generator; 3-phase; meters; characteristics of; power in AC circuits (power factor); mathematics of AC circuits.

Administration - Chapter 19.28 RCW and this chapter.

Air conditioning - Basic.

Blueprints - Surveys and plot plans; floor plans; service and feeders; electrical symbols; elevation views; plan views.

Building wire.

Cable trays.

Calculations.

Capacitive reactance.

Capacitor - Types; in series and parallel.

Circuits - Series; parallel; combination; basic; branch; outside branch circuits; calculations.

Conductor - Voltage drop (line loss); grounded.

Conduit - Wiring methods.

DC - Generator; motors; construction of motors; meters.

Definitions - Electrical.

Electrical units.

Electron theory.

Fastening devices.

Fire alarms - Introduction to; initiating circuits.

Fuses.

Generation - Electrical principles of.

Grounding.

Incandescent lights.

Inductance - Introduction to; reactance.

Insulation - Of wire.

Mathematics - Square root; vectors; figuring percentages.

Motors/controls - Motors vs. generators/CEMF; single phase; capacitor; repulsion; shaded pole; basic principles of AC motors.

Ohm's Law.

Power.

Power factor - AC circuits; correction of; problems.

Rectifiers.

Resistance - Of wire.

Rigging.

Safety - Electrical shock.

Services.

3-wire system.

Tools.

Transformers - Principles of; types; single-phase; 3-phase connections.

Voltage polarity across a load.

Wiring methods - Conduit; general.

Wiring systems - Less than 600 volts; 480/277 volts; single-and 3-phase delta or wye; distribution systems over 600 volts.

Note: The general administrator, master journeyman, and journeyman electrician examinations may also include the subjects listed below for specialty electrician examinations.

(b) For specialty administrators, master specialty and specialty electricians, the following subjects are among those that may be included in the examination. Examination subjects are restricted to those subjects related to the scope of work of the specialty described in WAC 296-46B-920. The list is not exclusive. The examination may also contain subjects not on the list.

AC - Meters.

Administration - Chapter 19.28 RCW and this chapter.

Appliance circuits or controls.

Blueprints - Floor plans; service and feeders.

Cables - Wiring methods.

Calculations.

Circuits - Series; parallel; combination; basic; outside branch.

Conductor - Voltage drop (line loss); grounded; aluminum or copper.

Conduit - Wiring methods.

Electrical signs, circuits, controls, or services.

Electrical units.

First aid.

Fuses.

General lighting.

Grounding of conductors.
 Insulation of wire.
 Limited energy circuits or systems.
 Maintenance of electrical systems.
 Mathematics - Figuring percentage.
 Motor circuits, controls, feeders, or services.
 Ohm's Law.
 Overcurrent protection.
 Resistance of wire.
 Safety - Electrical shock.
 Services.
 Sizes of building wire.
 3-wire system.
 Tools.
 Transformer - Ratios; single-phase/3-phase connections.

Failing an administrator certificate exam or electrician certificate of competency examination.

(9) Anyone failing an administrator or electrician competency examination may retake the examination by making arrangements with the testing agency and paying the retesting fee.

(10) If the individual makes a score of less than sixty percent, the individual must wait two weeks before being eligible to retest.

(11) If the individual makes a score of sixty to sixty-nine percent, the individual must wait one day before being eligible to retest.

(12) If the individual fails an electrician examination or a part of an administrator or master electrician examination three times within a one-year period, the individual must wait three months to retake the failed portion of the examination.

(13) Anyone failing an electrician competency examination may continue to work in the electrical trade if they have a valid electrical training certificate and work under the direct supervision of a certified journeyman or specialty electrician in the proper ratio, per RCW 19.28.161.

Cheating on an examination.

(14) Anyone found cheating on an examination, attempting to bribe a proctor or other agent involved in administering an examination, or using inappropriate materials/equipment during an examination will be required to wait at least eleven months before being allowed to reexamine. All such reexaminations will be administered by the department in Tumwater, Washington and the candidate will be required to apply and schedule for the examination with the chief electrical inspector.

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-965 Training certificate required. General.

(1) A training certificate is required to work in the electrical construction trade if an individual does not:

(a) Possess a current journeyman certificate of competency issued by the department;

(b) Possess a current specialty electrician certificate of competency issued by the department while working in that specialty's scope of work;

(c) Possess a valid temporary electrician permit;

(d) Possess a valid temporary specialty electrician permit while working in that specialty's scope of work; or

(e) Is not working in exempt status as allowed by chapter 19.28 RCW.

(2) Trainees who have had their training certificates revoked or suspended (during the duration of the revocation or suspension) will not be issued a training certificate.

Original training certificates.

(3) The department will issue an original training certificate when the trainee applicant submits a complete training certificate application including:

(a) Date of birth, mailing address, Social Security number; and

(b) All appropriate fees as listed in WAC ((~~296-46B-940~~) 296-46B-909).

All applicants for an electrical training certificate must be at least sixteen years of age. The original training certificate will be valid for two years.

(c) If an individual has previously held an electrical training certificate, then that individual is not eligible for a subsequent original training certificate.

Specialty specific - zero percent and seventy-five percent supervision modified training certificates.

(4) For specialties as allowed in Table 945-1 (i.e., specialties with seven hundred twenty minimum hours of work experience required to be eligible for examination):

(a) The department will approve the trainee to take the appropriate specialty competency examination necessary to qualify for a zero percent supervision modified training certificate. To qualify, the trainee applicant must submit a complete zero percent supervision modified training certificate application including:

(i) Date of birth, mailing address, Social Security number;

(ii) Affidavit of experience fulfilling the minimum work experience hours required to qualify for the specialty examination described in Table 945-1; and

(iii) All appropriate fees as listed in WAC ((~~296-46B-940~~) 296-46B-909).

Upon successful completion of the appropriate examination, the trainee will be issued a nonrenewable zero percent supervision modified training certificate for the appropriate specialty. The zero percent supervision modified training certificate will be restricted in duration to the time allowed in Table 945-1, note 2.

(b) Prior to the expiration of the zero percent supervision modified training certificate or temporary specialty electrician permit obtained as described in WAC 296-46B-940(28), the individual must submit a complete application for a seventy-five percent supervision modified training certificate for the appropriate specialty including:

(i) Seventy-five percent supervision training certificate application including: Date of birth, mailing address, Social Security number; and

(ii) All appropriate fees as listed in WAC ((~~296-46B-910~~) 296-46B-909).

(c) A trainee may possess multiple (i.e., in different specialties) modified supervision training certificates for specialties where reduced supervision is allowed in Table 945-1. Combination training certificates will not be issued.

Renewal of training certificates.

(5) An individual must apply for renewal of their training certificate on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for two years.

(6) An individual may renew their training certificate after the expiration date if the individual pays the late renewal fee listed in WAC ((~~296-46B-910~~) 296-46B-909).

(7) All applicants for training certificate renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees; and

(c) Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in WAC 296-46B-970. Continuing education classes are only valid when all the requirements of WAC 296-46B-970 are completed. If an individual files inaccurate or false evidence of continuing education information when renewing a training certificate, the individual's training certificate may be suspended.

Continuing education for trainees seeking pump and irrigation (03) and domestic pump (03A) experience credit may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(d) Within thirty days after renewing an electrical training certificate, the individual, if not enrolled in a department approved apprenticeship program, must submit a completed, signed, and notarized affidavit(s) of experience for all hours of experience gained since the individual's last training certificate was effective.

Employers are required to provide the necessary documentation and signed affidavit of experience to the trainee within twenty days after the trainee requests the affidavit. See WAC 296-46B-965(6). See WAC 296-46B-985(4) for the penalty for providing a false or inaccurate affidavit of experience. If the individual is enrolled in a department approved apprenticeship program, the program may submit the required affidavit(s) of experience upon the individual's completion of the required experience hours without cost to the individual. The affidavit of experience must accurately attest to:

(i) The electrical installation work performed for each employer the individual worked for in the electrical trade during the previous period;

(ii) The correct electrical category the individual worked in; and

(iii) The actual number of hours worked in each category worked under the proper supervision of a Washington certified, master journeyman electrician, journeyman electrician or appropriate master specialty electrician or specialty electrician under that specific training certificate. If a trainee possesses multiple training certificates, an affidavit must be sub-

mitted for each training certificate for the hours worked under that specific training certificate.

If the individual is enrolled in a department approved apprenticeship program, the program may submit the required affidavit(s) of experience upon the individual's completion of the required experience hours without cost to the individual.

(8) An individual who has not completed the required hours of continuing education can renew a training certificate if the individual applies for renewal before the training certificate expires and pays the appropriate renewal fee. However, the training certificate will be placed in an inactive status. The inactive training certificate will be returned to current status upon validation, by the department, of the required continuing education.

(9) An individual may renew a suspended training certificate by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period.

(10) An individual will not be issued a renewed or reinstated training certificate if the individual owes the department money as a result of an outstanding final judgment.

(11) The individual should ask each employer and/or apprenticeship training director for an accurately completed, signed, and notarized affidavit of experience for the previous certification period. The employer(s) or apprenticeship training director(s) must provide the previous period's affidavit of experience to the individual within twenty days of the request. If an individual is enrolled in an approved electrical construction trade apprenticeship program under chapter 49.04 RCW when the individual renews an electrical training certificate, the individual and their apprenticeship training director and/or each employer must give the department an accurately completed, signed, and notarized affidavit of experience accurately attesting to:

(a) The electrical installation work the individual performed in the electrical trade during the previous certification period;

(b) The correct electrical category the individual worked in; and

(c) The actual number of hours worked in each category under the proper supervision of a Washington certified master journeyman electrician, journeyman electrician or appropriate master specialty or specialty electrician for each employer. For apprentices enrolled in a registered apprenticeship program, the applicant and the training director are the only authorized signatures the department will accept on affidavits of experience.

(12) The individual and their employer(s) and/or apprenticeship training director(s) must sign and have notarized the affidavit of experience attesting to the accuracy of all information contained in the affidavit.

Trainees without supervision present on the job site.

(13) When the supervising electrician is found to not be present on the job site, the trainee will be given a form by the inspector that must be returned or postmarked within twenty-four hours to the inspector. If the supervising electrician fails or refuses to assist the trainee in completing the form, the

trainee must return the form with a signed and dated statement stating the supervising electrician's name and saying that the supervising electrician refused to assist. The form will require the following information:

- (a) Date and time the form was given to the trainee;
 - (b) Job site address;
 - (c) Contractor's name and contractor's license number;
 - (d) Electrical work permit number;
 - (e) The times the supervising electrician left and returned to the job site;
 - (f) The trainee's beginning and ending times for that day for each job;
 - (g) The trainee's name, training certificate number, and signature;
 - (h) The supervising electrician's name, electrician certificate number, and signature.
- (14) The trainee, supervising electrician, contractor, and assigned administrator or master electrician are responsible for ensuring compliance with subsection (13) of this section. See WAC 296-46B-985 (3)(c) and (f) for information about failing to submit or submitting false/fraudulent documents. Falsifying documents may be considered perjury and might result in criminal prosecution, civil penalty, or certificate revocation or suspension.

Trainees seeking a journeyman electrician certificate - working with no supervision.

~~((13))~~ (15) Trainee seeking a general (01) journeyman electrician certificate of competency. After review by the department, a trainee may be issued a six-month, nonrenewable unsupervised electrical training certificate that will allow the individual to work without supervision if the trainee:

- (a) Has submitted a complete application for an unsupervised electrical training certificate;
- (b) Has worked over seven thousand hours properly supervised not to include more than four thousand of specialty experience;
- (c) Has successfully completed or is currently enrolled in an approved apprenticeship program or an electrical construction trade program in a school approved by the board of community and technical colleges;
- (d) Has paid all appropriate training certificate fees listed in WAC ~~((296-46B-910))~~ 296-46B-909; and
- (e) Is currently working for and continues to work for a licensed electrical contractor that employs at least one certified journeyman or specialty electrician in the appropriate specialty.

Trainees seeking certain specialty electrician certificates - working with reduced or no supervision.

~~((14))~~ (16) After review by the department, a trainee may be issued a nonrenewable zero percent supervision training certificate that will allow the individual to work without supervision if the trainee meets the requirements in subsection (4) of this section.

~~((15))~~ (17) Electrical trainees may work unsupervised when installing HVAC/R thermostat cable when the HVAC/R system consists of a single thermostat in one- and two-fam-

ily dwelling units where line voltage power has not been connected to the dwelling's electrical system.

AMENDATORY SECTION (Amending WSR 08-08-084, filed 4/1/08, effective 5/2/08)

WAC 296-46B-970 Continuing education. General requirements - continuing education classes requirements for administrator, master electrician, and electrician renewal.

- (1) DEFINITIONS - for purposes of this section.
 - (a) "Applicant" means the entity submitting an application for review.
 - (b) "Application" means a submittal made by an applicant seeking instructor or class approval.
 - (c) "Calendar day" means each day of the week, including weekends and holidays.
 - (d) "Class" means continuing education class or course.
 - (e) "Contractor" means the entity who has contracted with the department to review and approve/deny continuing education classes and instructors.
 - (f) "Date of notification" means the date of a request for additional information from the contractor or the approval/denial letter sent to the applicant by the contractor.
 - (g) "Individual" means an administrator or electrician seeking credit for continuing education.
 - (h) "Instructor" means an individual who is authorized to instruct an approved continuing education class.
 - (i) "Working day" means Monday through Friday, excluding state of Washington holidays.

(2) GENERAL.

(a) The department and the electrical board have the right to monitor all approved classes without notice and at no charge.

If the department or electrical board determines that the class or instructor does not meet or exceed the minimum requirements for approval or course length or instructor qualifications, the department may revoke the class or instructor approval and reduce the number of credited hours for the class.

(b) Department-offered classes and the instructors used for those classes are automatically approved and do not need to be sent to the contractor for review.

(c) Instructors who meet the minimum requirements using subsection (5)(b)(i)(D) of this section may only instruct classes sponsored by the manufacturer(s) who verified the instructors' qualifications under subsection (5)(b)(i)(D) of this section.

(d) An individual will not be given credit for the same approved continuing education class taken more than once. No credit will be granted for any class not approved per this section.

(e) Telecommunications administrators do not require continuing educations.

(f) Other administrators, master electricians, and electricians:

(i) To be eligible for renewal of an administrator certificate, master electrician or electrician certificate of competency, the individual must have completed at least eight hours of approved continuing education for each year of the prior

certification period. The individual is not required to take the classes in separate years.

(A) At least eight hours of the total required continuing education must be on the changes in the 2008 National Electrical Code ~~((or if the renewal is before December 31, 2008, the 2005 National Electrical Code may be substituted. Beginning January 1, 2005,))~~. For certificate renewal, "currently adopted" means a valid course approved as code update by the department and taken by the applicant since their last renewal date.

(B) Four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and its related WAC(s).

(ii) An individual changing an electrical administrator and an electrician certificate of competency into a master electrician's certificate of competency as allowed in RCW 19.28.191 (1)(a) or (b) must have completed at least eight hours of approved continuing education for each year of the prior electrician certificate period. The individual is not required to take the classes in separate years.

(A) Eight hours of the required continuing education must be on the changes in the ~~((2008))~~ currently adopted National Electrical Code ~~((or if the renewal is before December 31, 2008, the 2005 National Electrical Code may be substituted. Beginning January 1, 2005,))~~. For certificate renewal, "currently adopted" means a valid course approved as code update by the department and taken by the applicant since their last renewal date.

(B) Four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and its related WAC(s).

(iii) Any portion of a year of a prior administrator or electrician certificate period is equal to one year for the purposes of the required continuing educations.

(iv) An individual who has both an electrician certificate and an administrator certification may use the same class to fulfill the requirements for continuing education.

(g) Training certificates:

(i) ~~((Effective July 1, 2007,))~~ To be eligible for renewal of a training certificate, the individual must have completed:

(A) At least sixteen hours of approved basic classroom electrical training classes; or

(B) Equivalent electrical training courses taken as a part of an approved:

- Apprenticeship program under chapter 49.04 RCW; or
- Electrical training program under RCW 19.28.191

(1)(h).

Note that only trainees seeking experience credit in the pump and irrigation **(03)** or domestic pumping **(03A)** specialties ~~((must))~~ may take pumping industry basic classroom training classes;

In addition, trainees working in the pump and irrigation **(03)** or domestic pump **(03A)** specialties may be credited for courses approved as a part of the requirements for plumber trainees required in RCW 18.106.070(5).

(h) A continuing education class attended or completed by an individual before the class's effective date cannot be used to meet the certificate renewal requirements.

(i) If neither the electrical board nor the department has a contract in effect as described in this section, the department

may, at its option, elect to act as the contractor. If a contractor is not in place and the department elects not to act as the contractor, the electrical board will act as the contractor. If either the electrical board or the department acts as the contractor, the following will apply:

(i) The fee for class or instructor submittal is as set in WAC ~~((296-46B-910(4)))~~ 296-46B-909.

(ii) The electrical board or the department will:

(A) Review the application for completeness within fifteen working days after receipt.

(B) If the application is incomplete, notify the applicant within seven working days of the status of the review and what additional information is required.

(C) Complete the review and approval/denial process within fifteen working days upon receipt of a complete application or additional requested information.

(iii) An appeal of a denial by the department will be heard by the full electrical board in accordance with WAC 296-46B-995.

(3) CLASS AND INSTRUCTOR - GENERAL APPROVAL PROCESS.

(a) The contractor will review submitted class and instructor applications to determine whether the application meets the minimum requirements for approval.

(b) The contractor will deny approval of applications that do not meet the minimum requirements.

(c) All applications will be considered to be new applications (i.e., Classes and instructors may not be renewed. All applications must include all information necessary to show conformance with the minimum requirements).

(d) Minimum requirements:

(i) Application review fees:

(A) The contractor may charge a fee for review of an application. Such fees, paid by the applicant, are nonrefundable.

(B) The fee will be as set by contractor between the department and the contractor.

(C) The fee will be set for a minimum of one year.

(D) Upon mutual agreement between the department and the contractor, the fee may be raised or lowered.

(ii) Application:

(A) The applicant must submit a complete application to the contractor at least thirty calendar days prior to offering or instructing a class.

(B) The contractor will only consider material included with the application when reviewing an application.

(C) All applications will consist of:

- One copy of all material;

- Applicant's name, address, contact name, and telephone number;

- All required fees;

- Any other information the applicant wants to consider during the review; and

- Class applications will include:

- Sponsor's name, address, contact name, and telephone number;

- Class title;

- Number of continuing education hours requested for the class;

- Category of class for which approval is sought (i.e., code update, RCW/WAC update, industry related, basic classroom electrical training, pumping industry, or pumping industry basic classroom training);
- Any required examinations;
- Statement of whether the class is open to the public;
- Class syllabus (e.g., general description of the training, specific NEC articles referenced, time allowed for various subject matter, etc.). Note that for all pumping industry classes, curriculum must include fifty percent electrical and fifty percent plumbing instruction;
- List of resources (e.g., texts, references, etc.);
- Copies of all visual aids;
- Sample of the completion certificate.

• Instructor application will include:

- Instructor's name, address, telephone number;
- Copies of credentials or other information showing conformance with the instructor minimum qualifications.

(e) Contractor's review process:

(i) When the application is received, the contractor must:

(A) Date stamp the application;

(B) Review the application for completeness within seven working days after receipt.

(ii) If the application is incomplete, the contractor must within two working days notify the applicant of the status of the review and what additional information is required.

(A) The applicant must provide any additional information requested by the contractor within five working days after the date of notification.

(B) The contractor will deny the application if the additional required information is not received within the five working days after the date of notification.

(iii) When the contractor has received a complete application, the contractor must review and evaluate the application for compliance with the minimum requirements.

The contractor must complete the review and approval/denial process within seven working days upon receipt of a complete application or additional requested information and within two working days notify:

- The applicant in writing; and
- The chief electrical inspector in writing and electronically. The contractor's electronic notification to the chief electrical inspector must be made in a format approved by the chief electrical inspector.

(iv) A notification of denial must include:

(A) Applicant's name and telephone number;

(B) Date of denial;

(C) Sponsor's name and class title if applicable;

(D) Instructor's name if applicable; and

(E) The reason for denial.

(v) A notification of approval:

(A) For classes must include:

- Applicant's name and telephone number;
- Sponsor's name and telephone number;
- Class title;
- Class number;
- Number of hours approved for the class. Note that the contractor may reduce the hours requested in the application if the review shows that the requested number of hours is excessive;

- Effective date for this class;
- Expiration date of class;
- Category for which the class is approved (i.e., code update, RCW/WAC update, industry related, basic classroom electrical training, pumping industry, or pumping industry basic classroom training);
- Sample of written class roster and attendance sheet;
- Type of class (i.e., classroom, correspondence, internet); and

- Whether the class is open to the public.

(B) For instructors must include:

- Applicant's name and telephone number;

- Instructor's name and telephone number;

- Effective date for the approval; and

- Expiration date of the approval.

(vi) Applicant's request for review of the contractor's decision:

The applicant's may request a review of the contractor's decision to deny or modify an application:

- All requests for review must be:

- Made in writing;

- Received by the chief electrical inspector within twenty calendar days of the contractor's denial; and

- Accompanied by a review fee of \$109.50. The review fee is nonrefundable.

(4) CLASS APPROVAL PROCESS.

(a) Class approval will be valid for three years except:

(i) If the class is "code update" and a new NEC is adopted by the department within the class approval period, the class approval will be considered automatically revoked; or

(ii) If the class is modified after the application is approved, the class approval will be considered automatically revoked (i.e., change in syllabus, hours, examination, etc.).

(b) Minimum requirements:

(i) Class content:

(A) Industry-related classes must be based on:

- Codes or rules included in the NEC chapters 19.28 RCW or 296-46B WAC;

- Electrical theory based on currently published documents that are readily available for retail purchase; and/or

- Materials and methods that pertain to electrical construction, building management systems, electrical maintenance, or workplace health and safety.

(B) Code update classes must be based on the latest adopted version of the NEC and must specify the NEC articles to be addressed in the class presentation.

(C) RCW/WAC update classes must be based on the latest adopted versions of chapter 19.28 RCW and/or chapter 296-46B WAC.

(D) All basic classroom electrical training classes and pumping industry basic classroom training classes must be classroom instruction only. Correspondence and internet classes are not allowed. All basic classroom electrical training classes must include an appropriate written examination to ensure the participant understands the basic concepts of the class. To successfully complete the class, the participant must score at least seventy percent on the examination.

(E) In addition, for pumping industry classes, curriculum must include fifty percent electrical and fifty percent plumbing instruction.

(ii) Class length:

(A) The minimum allowed length of a class is two hours; however, the minimum length for a basic classroom electrical trainee classroom training or pumping industry basic classroom trainee classroom training is eight hours that can be delivered in multiple classroom sessions of not less than two hours each.

(B) The maximum allowed credit for a class is twenty-four hours.

(C) Class length must be based on two-hour increments (e.g., 2, 4, 6, 8, etc.).

(D) Class length must be based on the following:

- Classroom instruction will be based on the total hours the individual is in the classroom. A class may be divided into multiple sections so long as each section is not less than two hours in length and all sections are taken within a one month period.

- Correspondence instruction will be based on:

- A written examination (i.e., twenty-five questions will equal one hour of classroom instruction). Individuals must be responsible to determine the correct answer without the assistance of the sponsor.

- Internet instruction will be based on:

- A written examination (i.e., twenty-five questions will equal one hour of classroom instruction).

- Examinations must not direct or point the individual to a correct answer or reference. Individuals must be responsible to determine the correct answer without the assistance of the sponsor.

- To successfully complete a correspondence or internet class, a participant must score at least 70% on the examination required for the class.

(iii) Class material must include:

Supplementary written instruction material appropriate to the type and length of the class.

(iv) Class material may include:

- Supplementary internet material;
- Supplementary texts;
- Other material as appropriate.

(v) Certificates of completion:

(A) The sponsor must award a completion certificate to each individual successfully completing the approved class. To successfully complete a correspondence or internet class, a participant must score at least 70% on the examination required for the class.

(B) The completion certificate must include the:

- Name of participant;
- Participant's Washington certificate number;
- Name of sponsor;
- Name of class;
- Date of class;
- Name of instructor;
- Location of the class:
 - If a classroom-type class, the city and state in which the class was given;
 - If a correspondence class, state the class is a correspondence class;

- If an internet class, state the class is an internet class;

- Class approval number;
- Number of continuing units; and
- Type of continuing education units.

(vi) Instructors:

(A) For classroom instruction, all instructors must be approved per this section; and

(B) For correspondence and internet instruction, the applicant must show that the sponsor regularly employs at least one staff member who meets the requirements for instructors in this section.

(5) INSTRUCTOR APPROVAL PROCESS:

(a) Instructor approval will be valid for three years except:

(i) If the instructor's credentials are invalidated (e.g., suspension or revocation by the issuing entity) for any reason, approval will be automatically revoked.

(ii) When the instructor approval expires or is revoked, a new application must be submitted to regain approved instructor status.

(b) Minimum requirements:

(i) The application must show that the instructor meets one of the following:

(A) Has a valid Washington administrator, master electrician, or electrician's certificate and has appropriate knowledge of and experience working as an electrical/electronic trainer; or

(B) Is an instructor in a two-year program in the electrical construction trade licensed by the Washington work force training and education coordinating board. The instructor's normal duties must include providing electrical/electronic education; or

(C) Is a high school vocational teacher, community college, college, qualified instructor with a state of Washington approved electrical apprenticeship program, or university instructor. The instructor's normal duties must include providing electrical/electronic education; or

(D) Works for and is approved by a manufacturer of electrical products to teach electrical continuing education.

(ii) Any other information the applicant wants to be considered during the review.

(6) FORMS:

(a) The contractor will:

Develop an appropriate form(s) for the applicant's use when submitting for instructor or class approval;

(b) Applicants must use the contractor's form when submitting an application for review.

(7) PUBLICATIONS:

The contractor will provide the department with appropriate material for use by the department on the electrical program web site and may post the application process, review, and approval requirements on the contractor's web site.

(8) CLASS ATTENDANCE:

(a) The contractor is not responsible for monitoring any individual's attendance or class completion.

(b) The department is not responsible for providing verification of an individual's continuing education history with the class sponsor;

(c) Electrical approved classes offered in Washington:

(i) The sponsor must provide the department with an accurate and typed course attendance/completion roster for each class given. Class attendance will only be verified based on the attendance/completion roster provided by the sponsor. Completion certificates are not an acceptable method of verifying attendance at a class approved in Washington under this chapter.

(A) The typed attendance/completion roster must be provided within thirty days of class completion.

(B) In addition, within seven days, the course sponsor must provide the attendance/completion roster in an internet format provided by the department.

(C) The attendance/completion roster must show each individual's name, Washington certificate number, class number, location of class, date of completion, and instructor's name. The typed roster must contain the signature of the class sponsor's authorized representative.

(ii) The sponsor must provide the individual a certificate of completion within fifteen days after successful class completion. See subsection (4) of this section.

(iii) Individuals will not be granted credit for continuing education classes unless the sponsor's attendance/completion roster shows the individual successfully completed the class.

(iv) The department will keep submitted class rosters on file for four years.

(d) Classes approved under chapter 18.106 RCW for the pumping industry will be verified through the normal roster reporting method for those classes.

(e) Classes offered in other states:

(i) For individuals to apply continuing education units earned from out-of-state classes, one of the following conditions must be met:

(A) The individual must request that the class sponsor submit a complete continuing education class application and gain approval for the class as described in this section for classes and instructors. Application for class or instructor approval will not be considered more than three years after the date the class was offered; or

(B) The department must have entered into a reciprocal agreement with the state providing class approval.

(ii) The individual must provide a copy of an accurate and completed award or certificate from the class sponsor identifying the class location, date of completion, individual's names, and Washington certificate number. The department will only accept a copy of the sponsor's certificate or form as evidence that the individual attended and completed the class. The department must verify all out-of-state sponsor's certificates or forms with the issuing state prior to accepting them as evidence of class completion.

(9) Contractor requirements:

(a) The contractor cannot be a sponsor or instructor.

(b) The contractor cannot be an employee of the department.

(c) The contractor must:

(i) Be an independent entity with no organizational, managerial, financial, design, or promotional affiliation with any sponsor or instructor covered under the contractor's review and approval/denial process;

(ii) Employ at least one staff member having a valid 01-General Administrator or 01-General Master Electrician Certificate. This staff member:

(A) Is responsible for reviewing and determining an application's approval or denial; and

(B) Must sign the written notification provided to applicants for all approvals and denials:

(iii) Receive, review, and process all applications as required in this section;

(iv) Allow the department access to the contractor's facilities during normal working hours to audit the contractor's ability to conform to the contract requirements;

(v) Treat all applications as proprietary information;

(vi) Respond to and attempt to resolve complaints contesting the review or approval/denial process performed by the applicant;

(vii) Notify the department within ten working days of any change in business status or ability to conform to this section;

(viii) Maintain one copy, original or electronic, of all applications and associated materials for a period of three years from the date of receipt.

AMENDATORY SECTION (Amending WSR 08-08-084, filed 4/1/08, effective 4/1/08)

WAC 296-46B-995 Electrical board—Appeal rights and hearings. General.

(1) Chapter 19.28 RCW provides the authority for the duties and responsibilities of the electrical board. Except as provided in chapter 19.28 RCW and this chapter, all proceedings will be conducted according to chapter 34.05 RCW the Administrative Procedure Act and chapter 10-08 WAC, Model rules of procedure. See chapter 34.05 RCW the Administrative Procedure Act for specific definitions not described in this chapter.

(2) See RCW 19.28.311 for the composition of the electrical board.

(3) The board adopts the current edition of the "*Roberts' Rules of Order, Newly Revised*."

(4) The board will hold regular meetings on the last Thursday of January, April, July, and October of each year per RCW 19.28.311.

(5) The director or the chairperson of the board may call a special meeting at any time.

(6) Each board member must be notified in writing of the agenda, date, time, and place of each regular and special meeting. "Writing" includes by electronic mail, also known as "e-mail," if the member has provided an e-mail address for such notice.

(7) The board or department may elect to have an appeal heard by the office of administrative hearings either tape recorded or transcribed by a court reporter; and the board may so elect regarding hearings or board reviews heard by the board as a whole.

(8) A majority of the board constitutes a quorum for purposes of rendering any decision.

(a) If a majority does not attend a hearing or board review on an appeal, the board may either continue the hear-

ing or board review to a date certain or may hear the testimony and arguments.

(b) If the board hears the testimony and arguments, the members of the board who are absent may make their decisions after hearing the tape recording or reading the transcript, of the hearing or board review.

(c) If the board selects the method in subsection (8)(b) of this section, at the time of the hearing, the board shall set a date certain for the absent members to complete review of the record and for the board as a whole to vote on the decision. The vote in subsection (8)(b) and (c) of this section may occur by U.S. mail, facsimile or by electronic mail and shall be determined by the board at the hearing; the members' votes shall be public record.

(9) All filings and documents for any matter before the board must be submitted to the chief electrical inspector, as secretary to the board, 7273 Linderson Way, P.O. Box 44460, Olympia, WA 98504-4460. ~~((The))~~ Twenty copies of filings ~~((may))~~ and documents must be submitted by ordinary mail, certified or registered mail, or by personal delivery. Filings and documents must be received no later than forty-five days prior to the scheduled meeting. When filings or documents are received after the deadlines, the filings and documents will be presented to the board at the second regularly scheduled board meeting.

(10) All hearings before the board as a whole shall be held on regularly scheduled meeting dates, as listed in subsection (4) of this section, unless the board determines that an alternate date is necessary. All notices of appeal, with a certified check payable to the department in the sum of two hundred dollars if required, must be received in the office of the chief electrical inspector, as secretary to the board, at least ~~((thirty))~~ forty-five days before the regularly scheduled board meeting at which the hearing would occur. For original appeals to the board, the appellant must submit twenty copies of any written argument, briefs testimony or documents for the board's consideration at least ~~((twenty))~~ forty-five days prior to the scheduled hearing. When appeals, written argument, briefs, testimony, or documents are received after the deadlines, the appeals, written argument, briefs, testimony, or documents will be presented to the board at the second regularly scheduled board meeting.

Appeals

(11) Appeals of penalties issued by the department.

(a) A party may appeal a penalty issued by the department, pursuant to chapter 19.28 RCW and this chapter, to the board. The appeal shall be assigned to the office of administrative hearings.

(b) The appeal must be filed within twenty days after the notice of the decision or penalty is given to the assessed party either by personal service or by certified mail, return receipt requested, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board. The request for an appeal must be accompanied with a certified check payable to the department in the sum of two hundred dollars.

(12) Appeals of proposed decisions issued by the office of administrative hearings.

(a) A party may appeal a proposed decision issued by the office of administrative hearings pursuant to chapter 19.28 RCW to the board. The appeal must be filed within twenty days after service of the decision and must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board.

(b) The notice of appeal of a proposed decision must be received in the office of the chief electrical inspector, as secretary to the board, at least thirty days before a regularly scheduled board meeting. All parties must submit any written argument, briefs testimony or documents for the board's consideration at least twenty days prior to the scheduled hearing.

(13) Appeals of suspension, revocation, or nonrenewal.

(a) An appeal of the suspension or revocation of a license or certificate of competency under RCW 19.28.241 and 19.28.341 or of nonrenewal of a license or certificate of competency under this chapter will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars for appeals of a revocation or suspension of a contractor's or administrator's license, must be filed within twenty days after the notice of suspension or revocation is served on the subject of said action, either by personal service or by certified mail, return receipt requested, sent to the last known address of the subject and shall be filed by written notice of appeal with the chief electrical inspector, as secretary to the board.

(14) Appeals of decisions on installation.

(a) A party may seek board review for disputes relating to the interpretation and application of electrical/telecommunications installation or maintenance standards under RCW 19.28.111, 19.28.480, and 19.28.531. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars, must be received in the office of the chief electrical inspector, as secretary to the board, at least thirty days before a regularly scheduled board meeting. All parties must submit any written argument, briefs testimony or documents for the board's consideration at least twenty days prior to the scheduled hearing.

(15) Appeals of a continuing education class or instructor for denials or revocations.

A party may appeal a decision issued by the department, pursuant to WAC 296-46B-970 (3)(e)(vi), if the department acts as the contractor pursuant to WAC 296-46B-970 (2)(i) to the superior court per RCW 34.05.542(3).

(16) Appeals pertaining to engineer approval or electrical testing laboratory recognition and accreditation.

(a) A party may appeal a decision issued by the department pursuant to WAC 296-46B-997 or 296-46B-999. The appeal will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars for appeals pertaining to engineer approval or recognition and accreditation of an electrical testing laboratory, must be filed within twenty days after the notice of the department's decision is served on the subject of said action, either by personal service or by certified mail, return receipt requested, sent to the last known address of the subject and shall be filed by written notice of appeal with the chief electrical inspector, as secretary to the board.

(17) Judicial review of final decisions of the board.

A party may seek judicial review of a final order of the board within thirty days after service of the decision. Appeals of final decisions and orders must be done in accordance with chapter 34.05 RCW.

(18) If appeal(s) according to subsections (11), (12), (13), and (15) of this section are not filed or the appeal is not filed timely, the proposed decision or action becomes final with no further action on the part of the department or the board.

(19) Appeals - general requirements.

(a) Appeals according to subsections (11), (12), or (15) of this section must specify the contentions of the appellant, and must for subsection (12) of this section specify to which conclusions of law and findings of fact the party takes exception. The appeal will be based on the record of the hearing. The board shall not grant a hearing de novo.

(b) In appeals under subsections (12), (13), (14), and (15) of this section, the issues to be adjudicated must be made as precise as possible, in order that the board may proceed promptly to conduct the hearing on relevant and material matter only.

(c) In all appeals of chapter 19.28 RCW and this chapter heard before the office of administrative hearings or directly by the board, the department has the burden of proof by a preponderance of the evidence.

(d) In all appeals of a decision by the office of administrative hearings to the board, the party aggrieved by the decision of the office of administrative hearings has the burden of proof by a preponderance of the evidence.

Appearance and practice before board.

(20) No party may appear as a representative in proceedings other than the following:

(a) Attorneys at law qualified to practice before the supreme court of the state of Washington;

(b) Attorneys at law qualified to practice before the highest court of record of another state, if the attorneys at law of the state of Washington are permitted to appear as representatives before administrative agencies of the other state, and if not otherwise prohibited by Washington law; or

(c) An owner, officer, partner, or full-time employee of a firm, association, organization, partnership, corporation, or other entity who appears for the firm, association, organization, partnership, corporation or other entity.

(21) All persons appearing in proceedings as a representative must conform to the standards of ethical conduct required of attorneys before the courts of Washington. If a person does not conform to these standards, the board may

decline to permit the person to appear as a representative in any proceeding before the board.

AMENDATORY SECTION (Amending WSR 06-05-028, filed 2/7/06, effective 5/1/06)

WAC 296-46B-997 Engineer approval. (1) This section describes the methods required to obtain recognition and accreditation of professional engineers registered under chapter 18.43 RCW to approve industrial utilization equipment. This section provides assurance to the general consuming public that electrical products have been tested for safety and identified for their intended use.

(2) Industrial utilization equipment is considered to be safe when it is certified by an engineer accredited by the department.

(a) The department may declare industrial utilization equipment unsafe if:

(i) The equipment is not being manufactured or produced in accordance with all standards of design and construction and all terms and conditions set out in the certification report for the equipment referred to in this chapter;

(ii) The equipment has been shown by field experience to be unduly hazardous to persons or property;

(iii) An examination of the equipment or of the certification report for the equipment shows that the equipment does not comply with all applicable standards; or

(iv) An examination of the certification report or the equipment shows that the equipment cannot be installed in accordance with this chapter.

(b) When the department declares industrial utilization equipment unsafe, the department will notify the product owner and the certifying engineer in writing.

Accreditation - general.

(3) The department's chief electrical inspector's office reviews requests for accreditation. Applicants must submit supporting data to document and verify the requirements of this section have been met.

(4) The accreditation of an engineer will be valid for the period of three years.

(5) On-site inspection of an engineer's facilities.

(a) On-site inspection of the facility(ies) may be required during the initial application process or the renewal process. Representative(s) of the department will evaluate for compliance with accreditation criteria.

(b) The applicant must pay all costs associated with the on-site inspection.

(6) For purposes of chapter 19.28 RCW, all engineers who certify industrial utilization equipment offered for sale in the state of Washington must be accredited by the department.

(7) Fees are payable as required in WAC 296-46B-911.

(8) The engineer must apply for renewal of accreditation at least thirty days prior to the accreditation expiration date. The department will renew accreditation for the period of three years or notify the renewing engineer of the department's reason(s) of refusal following receipt of the completed form and renewal fee.

(9) The department accepts or denies engineer accreditation for engineers seeking to evaluate industrial utilization

equipment within the state. Accreditation is determined when an engineer provides evidence to the department that all the requirements of this chapter are met. Accreditation is determined by the department and prior to making a determination, the department may require information and documentation to be provided by the engineer.

(a) Accreditation is subject to review when deemed necessary by the department. The engineer must pay all costs associated with on-site review.

(b) Every accredited engineer must continue to satisfy all the conditions specified in this chapter during the period of the accreditation. An engineer must furnish the department an annual report detailing the extent of its activities for the year. The report must include, but not be limited to:

- (i) The number of industrial utilization equipment items approved;
 - (ii) Organizational structure of the engineer's company;
 - (iii) Statement of ownership of the engineer's company;
- and
- (iv) Reports of litigation, which in any way were the result of or may affect any accreditation or testing of products covered by this chapter.

(c) The department will notify the applicant of the accreditation results. A letter of accreditation from the department is proof of the accreditation of the engineer.

(10) The engineer will be approved to certify industrial utilization equipment.

Suspension or revocation.

(11) The department may suspend, revoke, or refuse to renew the department's accreditation of any engineer found to be in noncompliance with requirements of this chapter, the laws of the state of Washington, or submitting false information.

(12) The department will serve written notice of intent prior to suspension, revocation, or refusal to renew the accreditation of an engineer.

(13) An engineer, whose accreditation has been suspended, may not reapply for accreditation during the period of such suspension. An engineer, whose accreditation has been revoked, may reapply for accreditation no sooner than two years after the date of revocation of accreditation.

Business structure, practices, and personnel.

(14) The engineer must be an independent, third-party organization with no organizational, managerial, financial, design, or promotional affiliation with owners, manufacturers, suppliers, installers, or vendors of products covered under the engineer's certification or evaluation programs.

The engineer must have an adequate diversity of clients or activity so that the loss or award of a specific contract regarding certification or evaluation would not be a deciding factor in the financial well-being of the engineer.

(15) The engineer must adequately meet the following business practices:

- (a) Perform the examinations, tests, evaluations, and inspections required under the certifications programs in accordance with the designated standards and procedures;
- (b) Assure that reported values accurately reflect measured and observed data;

- (c) Limit work to that for which competence and capacity is available;

- (d) Treat test data, records, and reports as proprietary information;

- (e) Respond to and attempt to resolve complaints contesting certifications and evaluation results;

- (f) Maintain an independent relationship between its clients, affiliates, and other organizations so the engineer's capacity to give certifications and evaluations objectively and without bias is not adversely affected; and

- (g) Notify the department within thirty calendar days should it become unable to conform to any of the requirements of this chapter.

(16) Engineers accredited under this chapter must notify the department within thirty calendar days of any of the following:

- (a) Change in company name and/or address;
- (b) Changes in major test equipment which affect the ability to perform work for which accredited; or
- (c) Change in independent status.

(17) The engineer must develop and maintain a certification or evaluation program plan that includes, but is not limited to:

- (a) The procedures and authority to ensure the product complies with the standard(s) established by the program;
- (b) A quality control system;
- (c) Verification and maintenance of facilities and/or equipment; or
- (d) Sample selection as applicable for product certifications, and for component testing as necessary for evaluations.

The plan must demonstrate that the engineer has adequate facilities, and equipment to perform all certifications and testing for which it is accredited by the state of Washington. These elements must be contained in the engineer's operations control manual.

(18) The engineer must develop and maintain a quality control system adequate to assure the accuracy and technical integrity of its work as follows:

- (a) The engineer's quality control system must include a quality control or engineer's operations control manual;
- (b) The quality control or engineer's operations control manual must be adequate to guide a testing technician or inspector in conducting the inspection, evaluation, and/or test in accordance with the test methods and procedures required for the engineer's certification and/or evaluation program(s); and

- (c) The engineer must have a current copy of the quality control or engineer operations control manual available for the engineer's use.

(19) The engineer must have training, technical knowledge, and experience adequate to perform the tests, examinations, and evaluations for the certification and/or evaluation activities for which recognition is sought.

(20) The engineer must:

- (a) Provide adequate safeguards protecting the engineer's status from the influence or control of manufacturers, vendors, owners, or installers of electrical products certified or tested by the engineer; and

(b) Develop and maintain an adequate training program assuring that the engineer will be able to perform tasks properly and uniformly.

Recordkeeping and reporting - general.

(21) The engineer must develop and maintain records and reports of those testing, inspection, certification, and evaluation activities associated with each piece of industrial utilization equipment. The engineer must retain these records for a minimum of three years.

(22) The engineer must make available to the department, upon request, all records required by the department to verify compliance with this chapter.

(23) Before beginning the work, the engineer must notify the department of the intent to evaluate using forms provided by the department. See WAC 296-46B-905 for fee information. The engineer's evaluation report must include:

- (a) Name and address of the engineer;
- (b) Name of client;
- (c) Address where the evaluated product is or will be installed;
- (d) Designation of standards used to certify or test the product including edition and latest revision (e.g., UL 508, 16th Edition, Feb. 1993, Revision Oct. 9, 1997);
- (e) Description of the overall product evaluated to include full nameplate data and equipment type;
- (f) A statement as to whether or not the results comply with the requirements of the standard;
- (g) Pertinent test evaluation data and identification of tests or inspections including anomalies;
- (h) The engineer's stamp; and
- (i) Any condition of acceptability or restrictions on use/relocation.

(24) Within ((thirty)) ten calendar days after affixing the evaluation mark, the engineer must submit a copy of the evaluation report to:

- (a) The department's chief electrical inspector submitted electronically in a format approved by the department;
- (b) Local electrical inspection office submitted electronically in a format approved by the department; and
- (c) Client submitted in any format acceptable to the client and engineer.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 296-46B-905 Temporary fees—Inspection fees.
- WAC 296-46B-910 Temporary fees—Electrical/telecommunications contractor's license, administrator certificate and examination, master electrician certificate and examination, temporary, electrician certificate and examination, temporary electrician permit, copy, and miscellaneous fees.

WAC 296-46B-998 Standards.

WSR 08-17-081
PROPOSED RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)

[Order 08-03—Filed August 19, 2008, 1:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-09-066.

Title of Rule and Other Identifying Information: PEBB rules related to enrollment in chapter 182-08 WAC; eligibility in chapter 182-12 WAC; and appeals in chapter 182-16 WAC.

Hearing Location(s): Health Care Authority, 676 Woodland Square Loop S.E., The Sue Crystal Center, Olympia, WA, on September 23, 2008, at 1:00 p.m.

Date of Intended Adoption: September 30, 2008.

Submit Written Comments to: Matthew Albright, 676 Woodland Square Loop S.E., P.O. Box 42684, Olympia, WA 98504-2684, e-mail bsc0107@hca.wa.gov, fax (360) 923-2602, by September 23, 2008.

Assistance for Persons with Disabilities: Contact Nikki Johnson by September 16, 2008, TTY (888) 923-5622 or (360) 923-2805.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The main purpose of the rule making is to amend existing PEBB rules in Title 182 WAC and adopt new rules to:

- Implement legislation extending participation in the PEBB program to tribal governments.
- Implement legislation to expand eligible dependents to include unmarried adult children up to age twenty five.
- Amend and clarify rules regarding participation, withdrawal, and appeals by certain employing entities.
- Clarify rules regarding retiree enrollment and eligibility.
- Amend rules affected by a recent amendment to the Family Medical Leave Act.
- Add the dependent care assistance program as a benefit for state agencies and higher education.
- Amend rules regarding PEBB member appeals.

In addition to these specific subject areas, the health care authority is proposing amendments that will clarify eligibility for student dependents and dependents with disabilities.

Statutory Authority for Adoption: Chapter 41.05 RCW. Statute Being Implemented: RCW 41.05.095, 41.05.-295, 41.05.021.

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

Name of Agency Personnel Responsible for Drafting: Matthew Albright, 676 Woodland Square Loop, Lacey, WA, (360) 923-2629; Implementation: Barbara Scott, 676 Woodland Square Loop, Lacey, WA, (360) 923-2642; and Enforce-

ment: Mary Fliss, 676 Woodland Square Loop, Lacey, WA, (360) 923-2640.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement, and there will be no costs to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the health care authority rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

August 19, 2008

Jason Siems
Rules Coordinator

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-08-015 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

"Administrator" means the administrator of the health care authority (HCA) or designee.

"Agency" means the health care authority.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer sponsored medical" includes insurance coverage continued by the employee or their dependent under COBRA.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB medical insurance by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer group" means those employee organizations representing state civil service employees, blind vendors, counties, municipalities, political subdivisions, and tribal governments participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-230.

"Employing agency" means a division, department, or separate agency of state government; a county, municipality, school district, educational service district, or other political subdivision; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Health plan" or "plan" means a medical or dental plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employer and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employer, life insurance offered to employees on an optional basis, and retiree life insurance.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Open enrollment" means a time period ((designated by the administrator)) when: Subscribers may apply to transfer their enrollment from one health plan to another((-enroll in medical if the subscriber had previously waived such insurance coverage, or add dependents)); a dependent may be enrolled; a dependent's enrollment may be waived; or an employee who previously waived medical may enroll in medical. Open enrollment is also the time when employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan. An "annual" open enrollment, designated by the administrator, is an open enrollment when all PEBB subscribers may make enrollment changes for the upcoming year. A "special" open enrollment is triggered by a specific life event. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, 182-12-262.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB benefits services program. The administrator has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverage or other employee benefit administered by the PEBB benefits services program within the HCA.

"PEBB benefits services program" means the program within the health care authority which administers insurance and other benefits ((to)) for eligible employees of the state (as defined in WAC 182-12-115), eligible retired and disabled employees of the state (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"Subscriber" or "insured" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt enrollment or postpone enrollment in a PEBB health plan by an employee (as defined in WAC 182-12-115) or a dependent who meets eligibility requirements in WAC 182-12-260.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-08-180 Premium payments and refunds. PEBB premium payments for retiree, COBRA or an extension of PEBB insurance coverage begin to accrue the first of the month of PEBB insurance coverage. ~~((The effective date of health plan enrollment will be retroactive to the loss of other coverage.))~~

Premium is due for the entire month of insurance coverage and will not be prorated during the month of death or loss of eligibility of the enrollee except when eligible for life insurance conversion.

PEBB premiums will be refunded using the following method:

(1) When a PEBB subscriber submits an enrollment change affecting eligibility, such as for example: Death, divorce, or when no longer a dependent as defined at WAC 182-12-260 no more than three months of accounting adjustments and any excess premium paid will be refunded to any individual or employing agency except as indicated in WAC 182-12-148(3).

(2) Notwithstanding subsection (1) of this section, the PEBB assistant administrator or ~~((designee))~~ the PEBB appeals committee may approve a refund which does not exceed twelve months of premium if both of the following occur:

(a) The PEBB subscriber or a dependent or beneficiary of a subscriber submits a written appeal to the ~~((HCA))~~ PEBB appeals committee; and

(b) Proof is provided that extraordinary circumstances beyond the control of the subscriber, dependent or beneficiary made it virtually impossible to submit the necessary information to accomplish an enrollment change within sixty days after the event that created a change of premium.

(3) Errors resulting in an underpayment to HCA must be reimbursed by the employer or subscriber to the HCA. Upon request of an employer, subscriber, or beneficiary, as appropriate, the HCA will develop a repayment plan designed not to create undue hardship on the employer or subscriber.

(4) HCA errors will be adjusted by returning the excess premium paid, if any, to the ~~((employer))~~ employing agency, subscriber, or beneficiary, as appropriate.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-08-190 The employer contribution is set by the HCA and paid to the HCA for all eligible employees. Every department, division, or agency of state government, and such county, municipal or other political subdivision, tribal government, or an agency or instrumentality of a tribal government, K-12 school district or educational service district that are covered under PEBB insurance coverage, must pay premium contributions to the HCA for insurance coverage for all eligible employees and their dependents.

(1) Employer contributions are set by the HCA and are subject to the approval of the governor.

(2) Employer contributions must include an amount determined by the HCA to pay administrative costs to administer insurance coverage for employees of these groups.

(3) Each eligible employee in pay status eight or more hours during a calendar month or each eligible employee on leave under the federal Family and Medical Leave Act (FMLA) is eligible for the employer contribution. The entire employer contribution is due and payable to HCA even if medical is waived.

(4) PEBB insurance coverage for any county, municipality or other political subdivision, tribal government, or an agency or instrumentality of a tribal government, or any K-12 school district or educational service district may be canceled by HCA if the premium contributions are delinquent more than ninety days.

(5) Washington state patrol officers disabled while performing their duties as determined by the chief of the Washington state patrol are eligible for the employer contribution for PEBB benefits as authorized in RCW 43.43.040. No other retiree or disabled employee is eligible for the employer contribution for PEBB benefits unless they are an eligible employee as defined in WAC 182-12-115.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-08-196 What happens if my health plan becomes unavailable? Employees and retirees for whom the chosen health plan becomes unavailable due to a change in contracting service area, or the retiree's entitlement to Medicare must select a new health plan within sixty days after notification by the PEBB benefits services program.

(1) Employees who fail to select a new medical or dental plan within the prescribed time period will be enrolled in a successor plan if one is available or will be enrolled in the Uniform Medical Plan Preferred Provider Organization or the Uniform Dental Plan with existing dependent enrollment.

(2) Retirees and survivors eligible under WAC 182-12-250 or 182-12-265 who fail to select a new health plan within the prescribed time period will be enrolled in a successor plan if one is available or will be enrolled in the Uniform Medical Plan Preferred Provider Organization and the Uniform Dental Plan. However, retirees enrolled in Medicare Parts A and B, and who enroll in Medicare Part D may be assigned to a PEBB Medicare plan that does not include a pharmacy benefit.

Any subscriber assigned to a health plan as described in this rule may not change health plans until the next open enrollment except as allowed in WAC 182-08-198.

(3) Enrollees continuing PEBB health plan enrollment under WAC 182-12-133, 182-12-148 or 182-12-270(2) (~~(or (3))~~) must select a new health plan no later than sixty days after notification by the PEBB benefits services program or their health plan enrollment will end as of the last day of the month in which the plan is no longer available.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-08-197 Employees must select ~~((insurance coverages))~~ PEBB benefits and complete enrollment forms within thirty-one days of the date they become eligible for PEBB benefits. (1) Employees who are newly eligible for PEBB benefits must complete ~~((an enrollment))~~ the appropriate forms indicating enrollment and their health plan choice ~~((and return it))~~, or their decision to waive medical under WAC 182-12-128. Employees must return the forms to their employing agency no later than thirty-one days after they become eligible for PEBB benefits, as stated in WAC 182-12-115. Newly eligible employees who do not return an enrollment form to their employing agency indicating their medical and dental choice within thirty-one days will be enrolled in a health plan as follows:

(a) Medical enrollment will be Uniform Medical Plan Preferred Provider Organization; and

(b) Dental enrollment (if the employing agency participates in PEBB dental) will be Uniform Dental Plan.

(2) Newly eligible employees may enroll in optional insurance coverage (except for employees of agencies that do not participate in life insurance or long-term disability insurance).

(a) To enroll in the amounts of optional life insurance available without health underwriting, employees must return a completed life insurance enrollment form to their employing agency no later than sixty days after becoming eligible for PEBB benefits.

(b) To enroll in optional long-term disability insurance without health underwriting, employees must return a completed long-term disability enrollment form to their employing agency no later than thirty-one days after becoming eligible for PEBB benefits.

(c) To enroll in long-term care insurance with limited health underwriting, employees must return a completed long-term care enrollment form to the contracted vendor no later than thirty-one days after becoming eligible for PEBB benefits.

(d) Employees may apply for optional life, long-term disability, and long-term care insurance at any time by providing evidence of insurability and receiving approval from the contracted vendor.

(3) Employees who are eligible to participate in the state's salary reduction plan (see WAC 182-12-116) will be automatically enrolled in the premium payment plan upon enrollment in medical so employee medical premiums are taken on a pretax basis. To opt out of the premium payment plan, new employees must complete the appropriate form and

return it to their employing agency no later than thirty-one days after they become eligible for PEBB benefits.

(4) Employees who are eligible to participate in the state's salary reduction plan may enroll in the state's medical FSA or DCAP or both. To enroll in these optional PEBB benefits, employees must return the appropriate enrollment forms to their employing agency or PEBB designee no later than thirty-one days after becoming eligible for PEBB benefits.

(5) When an employee's employment ends, insurance coverage ends (WAC 182-12-131). Employees who are later reemployed and become newly eligible for PEBB benefits enroll as described in subsections (1) and (2) of this section, with the following exceptions in which insurance coverage elections stay the same:

(a) When an employee transfers from one employing agency to another employing agency without a break in state service. This includes movement of employees between any agencies described as eligible groups in WAC 182-12-111 and participating in PEBB benefits.

(b) When employees have a break in state service that does not interrupt their employer contribution-based enrollment in PEBB insurance coverage.

(c) When employees continue insurance coverage under WAC 182-12-133 (1) or (2) and are reemployed into a benefits eligible position before the end of the maximum number of months allowed for continuing PEBB health plan enrollment. Employees who are eligible to continue optional life or optional long-term disability but discontinue that insurance coverage are subject to the insurance underwriting requirements if they apply for the insurance when they return to employment.

(6) When an employee's employment ends, participation in the state's salary reduction plan ends. If the employee is hired into a new position that is eligible for PEBB benefits in the same year, the employee may not resume participation in DCAP or medical FSA until the beginning of the next plan year, unless the time between employments is less than thirty days.

AMENDATORY SECTION (Amending Order 08-01, filed 4/8/08, effective 4/9/08)

WAC 182-08-198 When may a subscriber change health plans? (1) Subscribers may change health plans during the annual open enrollment. The subscriber must submit the appropriate enrollment form~~((s))~~(s) to change health plan no later than the end of the annual open enrollment. Enrollment in the new health plan will begin January of the following year.

(2) Subscribers may change health plans outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must ~~((be based on and related))~~ correspond to the ~~((change in status))~~ event that ~~((created))~~ creates the special open enrollment ~~((opportunity))~~ for either the subscriber ~~((and))~~ or the subscriber's dependents or both. To make a health plan change, the subscriber must submit the appropriate enrollment form~~((s))~~(s) (and a completed disenrollment form, if required) no later than sixty days after the event occurs.

Employees submit the enrollment form((~~the~~)(~~their~~)) to their employing agency. All other subscribers submit the enrollment form((~~the~~)(~~their~~)) to the PEBB benefits services program. Enrollment in the new health plan will begin the first day of the month following the event that created the special open enrollment; or in cases where the event occurs on the first day of the month, enrollment will begin on that date. If the special open enrollment is due to the birth or adoption of a child, enrollment will begin the month in which the event occurs. The following events create a special open enrollment:

(a) Subscriber acquires a new eligible dependent through marriage, domestic partnership, birth, adoption or placement for adoption, legal custody or legal guardianship;

(b) Subscriber's dependent child becomes eligible by fulfilling PEBB dependent eligibility criteria;

(c) Subscriber loses an eligible dependent or a dependent no longer meets PEBB eligibility criteria;

(d) Subscriber has a change in marital status, including legal separation documented by a court order;

(e) Subscriber or a dependent loses comprehensive group (~~insurance~~) health coverage;

(f) Subscriber or a dependent has a change in employment status that affects (~~whether enrollment in PEBB insurance coverage will benefit the subscriber or the subscriber's dependent(s). This includes beginning or end of employment, beginning or returning from an unpaid leave of absence, strike or lockout, change in worksite, becoming eligible for benefits or eligibility ending~~) the subscriber's or a dependent's eligibility, level of benefits, or cost of insurance coverage.

(g) Subscriber(~~'s~~) or (~~their~~) a dependent(~~'s~~) has a change in residence (~~changes affecting the~~) that affects health plan availability (~~or the~~), benefits, or (~~the~~) cost of (~~their~~) insurance coverage. If the subscriber moves and (~~their~~) the subscriber's current health plan is not available in (~~their~~) the new location but (~~they do~~) the subscriber does not select a new health plan, the PEBB benefits services program may enroll (~~them~~) the subscriber in the Uniform Medical Plan Preferred Provider Organization or Uniform Dental Plan.

(h) Subscriber receives a court order or medical support order requiring the subscriber, (~~their~~) the subscriber's spouse, or the subscriber's qualified domestic partner to provide insurance coverage for an eligible dependent.

(i) Subscriber receives formal notice that the department of social and health services has determined it is more cost-effective to enroll the eligible subscriber or eligible dependent in PEBB medical than a medical assistance program.

(j) Seasonal employees whose off-season occurs during the annual open enrollment. They may select a new health plan upon their return to work.

(k) Subscriber enrolls in PEBB retiree insurance coverage.

(l) Subscriber or an eligible dependent becomes entitled to Medicare, enrolls in or disenrolls from a Medicare Part D plan.

(m) Subscriber experiences a disruption that could function as a reduction in benefits for the subscriber or the subscriber's dependent(s) due to a specific condition or ongoing course of treatment. A subscriber may not change their health

plan if (~~their~~) the subscriber's or an enrolled dependent's physician stops participation with the subscriber's health plan unless the PEBB appeals manager determines that a continuity of care issue exists. The PEBB appeals manager will use criteria that include but are not limited to the following in determining if a continuity of care issue exists:

(i) Active cancer treatment; or

(ii) Recent transplant (within the last twelve months); or

(iii) Scheduled surgery within the next sixty days; or

(iv) Major surgery within the previous sixty days; or

(v) Third trimester of pregnancy; or

(vi) Language barrier.

If the employee is having premiums taken from payroll on a pretax basis, a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

NEW SECTION

WAC 182-08-199 When may an employee enroll in or change their election under the premium payment plan, medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP)? (1) An eligible employee may enroll in or change their election under the state's premium payment plan, medical FSA or DCAP during the annual open enrollment. Employees must submit the appropriate enrollment form, or complete the appropriate online enrollment process, to reenroll no later than the end of the annual open enrollment. The enrollment or new election will begin January of the following year.

(2) Employees may enroll or change their election under the state's premium payment plan, medical FSA or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in enrollment must be allowable under Internal Revenue Code (IRC) and correspond to the event that creates the special open enrollment. To make a change or enroll, the employee must submit the appropriate forms as instructed on the forms no later than sixty days after the event occurs. Enrollment will begin the first day of the month following approval by the plan administrator. For purposes of this section, an eligible dependent includes the employee's opposite sex spouse and any other person who qualifies as the employee's dependent under Section 152 of the IRC without regard to the income limitations of that section. It does not include a domestic partner who is the same sex as the subscriber unless the domestic partner otherwise qualifies as a dependent under Section 152 of the IRC. The following changes are events that create a special open enrollment for purposes of an eligible employee making a change:

(a) Employee acquires a new eligible dependent;

(b) Employee's dependent child becomes eligible by fulfilling PEBB dependent eligibility criteria;

(c) Employee loses an eligible dependent or a dependent no longer meets PEBB eligibility criteria;

(d) Employee has a change in marital status, including legal separation documented by a court order;

(e) Employee or a dependent has a change in employment status that affects the employee's or a dependent's eligibility, level of benefits, or cost of insurance coverage under a

plan provided by the employee's employer or the dependent's employer;

(f) Employee's or a dependent's residence changes that affects health plan availability, level of benefits, or cost of insurance coverage;

(g) Employee receives a court order or medical support order requiring the employee or the employee's spouse to provide insurance coverage for an eligible dependent;

(h) Employee receives formal notice that the department of social and health services has determined it is more cost-effective to enroll the eligible employee or eligible dependent in PEBB medical than in a medical assistance program;

(i) Seasonal employees whose off-season occurs during the annual open enrollment may enroll in the plan upon their return to work;

(j) Employee or an eligible dependent gains or loses eligibility for Medicare or Medicaid;

(k) Employees who change dependent care providers may make a change in their DCAP to reflect the cost of the new provider;

(l) If an employee's dependent care provider imposes a change in the cost of dependent care, the employee may make a change in the DCAP to reflect the new cost if the dependent care provider is not a relative as defined in Section 152 (a)(1) through (8), incorporating the rules of Section 152 (b)(1) and (2) of the IRC;

(m) The employee or the employee's spouse experiences a change in the number of qualifying individuals as defined in IRC Section 21 (b)(1).

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-08-230 Participation in PEBB benefits by employer groups, K-12 school districts and educational service districts. This section applies to all employer groups, K-12 school districts and educational service districts participating in PEBB insurance coverage.

(1) ~~((For purposes of this section, "employer group" means those employee organizations representing state civil service employees, blind vendors, county, municipality, and political subdivisions that meet the participation requirements of WAC 182-12-111 (2), (3) and (4) and that participate in PEBB insurance coverage.~~

~~(2))~~(a) Each employer group must determine an employee's eligibility for PEBB insurance coverage in accordance with the applicable sections of chapter 182-12 WAC, RCW 41.04.205, and chapter 41.05 RCW.

(b) Each employer group, K-12 school district and educational service district applying for participation in PEBB insurance coverage must submit required documentation and meet all participation requirements in the then-current *Introduction to PEBB Coverage K-12 and Employer Groups* booklet(s).

~~((3))~~(a) (2) Each employer group, K-12 school district or educational service district applying for participation in PEBB insurance coverage must sign an ~~((interlocal))~~ agreement with the HCA.

~~((b) Each interlocal agreement must be renewed no less frequently than once in every two-year period.~~

~~(4))~~ (3) At least twenty days before the premium due date, the HCA will cause each employer group, K-12 school district or educational service district to be sent a monthly billing statement. The statement of premium due will be based upon the enrollment information provided by the employer group, K-12 school district or educational service district.

(a) Changes in enrollment status must be submitted to the HCA before the twentieth day of the month when the change occurs. Changes submitted after the twentieth day of each month may not be reflected on the billing statement until the following month.

(b) Changes submitted more than one month late must be accompanied by a full explanation of the circumstances of the late notification.

~~((5))~~ (4) An employer group, K-12 school district or educational service district must remit the monthly premium as billed or as reconciled by it.

(a) If an employer group, K-12 school district or educational service district determines that the invoiced amount requires one or more changes, they may adjust the remittance only if an insurance eligibility adjustment form detailing the adjustment accompanies the remittance. The proper form for reporting adjustments will be attached to the ~~((interlocal))~~ agreement as Exhibit A.

(b) Each employer group, K-12 school district or educational service district is solely responsible for the accuracy of the amount remitted and the completeness and accuracy of the insurance eligibility adjustment form.

~~((6))~~ (5) Each employer group, K-12 school district or educational service district must remit the entire monthly premium due including the employee share, if any. The employer group, K-12 school district or educational service district is solely responsible for the collection of any employee share of the premium. The employer must not withhold portions of the monthly premium due because it has failed to collect the entire employee share.

~~((7))~~ (6) Nonpayment of the full premium when due will subject the employer group, K-12 school district or educational service district to disenrollment and termination of each employee of the group.

(a) Before termination for nonpayment of premium, the HCA will send a notice of overdue premium to the employer group, K-12 school district or educational service district which notice will provide a one-month grace period for payment of all overdue premium.

(b) An employer group, K-12 school district or educational service district that does not remit the entirety of its overdue premium no later than the last day of the grace period will be disenrolled effective the last day of the last month for which premium has been paid in full.

(c) Upon disenrollment, notification will be sent to both the employer group, K-12 school district or educational service district and each affected employee.

(d) Employer groups, K-12 school districts or educational service districts disenrolled due to nonpayment of premium have the right to a dispute resolution hearing in accordance with the terms of the ~~((interlocal))~~ agreement.

(e) Employees canceled due to the nonpayment of premium by the employer group, K-12 school district or educa-

tional service district are not eligible for continuation of group health plan coverage according to the terms of the Consolidated Omnibus Budget Reconciliation Act (COBRA). Employees whose coverage is canceled have conversion rights to an individual insurance policy as provided for by the employer group, K-12 school district or educational service district.

(f) Claims incurred by employees of a disenrolled group after the effective date of disenrollment will not be covered.

(g) The employer group, K-12 school district or educational service district is solely responsible for refunding any employee share paid by the employee to the employer group, K-12 school district or educational service district and not remitted to the HCA.

~~((8))~~ (7) A disenrolled employer group, K-12 school district or educational service district may apply for reinstatement in PEBB insurance coverage under the following conditions:

(a) Reinstatement must be requested and all delinquent premium paid in full no later than ninety days after the date the delinquent premium was first due, as well as a reinstatement fee of one thousand dollars.

(b) Reinstatement requested more than ninety days after the effective date of disenrollment will be denied.

(c) Employer groups, K-12 school districts or educational service districts may be reinstated only once in any two-year period and will be subject to immediate disenrollment if, after the effective date of any such reinstatement, subsequent premiums become more than thirty days delinquent.

~~((9))~~ (8) Upon written petition by the employer group, K-12 school district or educational service district disenrollment of an employer group, K-12 school district or educational service district or denial of reinstatement may be waived by the administrator upon a showing of good cause.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-109 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Administrator" means the administrator of the HCA or designee.

"Agency" means the health care authority.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer sponsored medical" includes insurance coverage continued by the employee or their dependent under COBRA.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB medical insurance by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employing agency" means a division, department, or separate agency of state government; a county, municipality, school district, educational service district, or other political subdivision; or a tribal government covered by chapter 41.05 RCW.

"Employer group" means those employee organizations representing state civil service employees, blind vendors, counties, municipalities, political subdivisions, and tribal governments participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-230.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Health plan" or "plan" means a medical or dental plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employer and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employer, life insurance offered to employees on an optional basis, and retiree life insurance.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Open enrollment" means a time period (~~designated by the administrator~~) when: Subscribers may (~~apply to~~) transfer their enrollment from one health plan to another (~~enroll in medical if the enrollee had previously waived such insurance coverage or add dependents~~); a dependent may be enrolled; a dependent's enrollment may be waived; or an employee who previously waived medical may enroll in medical. Open enrollment is also the time when employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan. An "annual" open enrollment, designated by the administrator, is an open enrollment when all PEBB subscribers may make enrollment changes for the upcoming year. A "special" open enrollment is triggered by a specific life event. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, 182-12-262.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB ben-

efits by the PEBB benefits services program. The administrator has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverage or other employee benefit administered by the PEBB benefits services program within HCA.

"PEBB benefits services program" means the program within the health care authority which administers insurance and other benefits ~~((to))~~ for eligible employees of the state (as defined in WAC 182-12-115), eligible retired and disabled employees ~~((of the state))~~ (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"Subscriber" or "insured" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and ~~((contractual))~~ contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt enrollment or postpone enrollment in a PEBB health plan by an employee (as defined in WAC 182-12-115) or a dependent who meets eligibility requirements in WAC 182-12-260.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-111 Eligible entities and individuals.

The following entities and individuals shall be eligible for PEBB insurance coverage subject to the terms and conditions set forth below:

(1) State agencies. Every department, division, or separate agency of state government, including all state higher education institutions, the higher education coordinating board, and the state board for community and technical colleges is required to participate in all PEBB benefits. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(a) Employees of technical colleges previously enrolled in a benefits trust may end PEBB benefits by January 1, 1996, or the expiration of the current collective bargaining agreements, whichever is later. Employees electing to end PEBB benefits have a one-time reenrollment option after a five year wait. Employees of a bargaining unit may end PEBB benefit participation only as an entire bargaining unit. All adminis-

trative or managerial employees may end PEBB participation only as an entire unit.

(b) Community and technical colleges with employees enrolled in a benefits trust shall remit to the HCA a retiree remittance as specified in the omnibus appropriations act, for each full-time employee equivalent. The remittance may be prorated for employees receiving a prorated portion of benefits.

(2) Employee organizations. Employee organizations representing state civil service employees and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for purchasing insurance benefits, may participate in PEBB insurance coverages at the option of each employee organization provided all of the following requirements are met:

(a) All eligible employees of the entity must transfer to PEBB insurance coverage as a unit ~~((If the group meets the minimum size standards established by HCA,))~~ with the following exceptions:

- Bargaining units may elect to participate separately from the whole group~~((;))~~; and ~~((the))~~

- Nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group.

(b) PEBB health plans must be the only employer sponsored health plans available to eligible employees.

(c) The legislative authority or the board of directors of the entity must submit to the HCA an application together with employee census data and, if available, prior claims experience of the entity. The application for PEBB insurance coverage is subject to the approval of the HCA.

(d) The legislative authority or the board of directors must maintain its PEBB insurance coverage participation at least one full year, and may end participation only at the end of a plan year.

(e) The terms and conditions for the payment of the insurance premiums must be in the provisions of ~~((the))~~ a bargaining agreement or terms of employment and shall comply with the employer contribution requirements specified in the appropriate governing statute. These provisions, including eligibility, shall be subject to review and approval by the HCA at the time of application for participation. Any substantive changes must be submitted to HCA.

(f) The eligibility requirements for dependents must be the same as the requirements for dependents of the state employees and retirees as in WAC 182-12-260.

(g) The legislative authority or the board of directors must give the HCA written notice of its intent to end PEBB insurance coverage participation at least ~~((thirty))~~ sixty days before the effective date of termination. If the employee organization ends PEBB insurance coverage, retired and disabled employees who began participating after September 15, 1991, are not eligible for PEBB insurance coverage beyond the mandatory extension requirements specified in WAC 182-12-146.

(h) Employees eligible for PEBB participation include only those employees whose services are substantially all in the performance of essential governmental functions but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions.

Employers shall determine eligibility in order to ensure PEBB's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended.

(3) Blind vendors means a "licensee" as defined in RCW 74.18.200: Vendors actively operating a business enterprise program facility in the state of Washington and deemed eligible by the department of services for the blind may voluntarily participate in PEBB insurance coverage.

(a) Vendors that do not enroll when first eligible may enroll only during the annual open enrollment period offered by the HCA or the first day of the month following loss of other insurance coverage.

(b) Department of services for the blind will notify eligible vendors of their eligibility in advance of the date that they are eligible to apply for enrollment in PEBB insurance coverage.

(c) The eligibility requirements for dependents of blind vendors shall be the same as the requirements for dependents of the state employees and retirees in WAC 182-12-260.

(4) Local governments: Employees of a county, municipality, or other political subdivision of the state may participate in PEBB insurance coverage provided all of the following requirements are met:

(a) All eligible employees of the entity must transfer to PEBB insurance coverage as a unit(~~(-If the group meets the minimum size standards established by HCA,)~~) with the following exception:

- Bargaining units may elect to participate separately from the whole group(~~(:);~~) and (~~(the)~~)

- Nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group.

(b) The PEBB health plans must be the only employer sponsored health plans available to eligible employees.

(c) The legislative authority or the board of directors of the entity must submit to the HCA an application together with employee census data and, if available, prior claims experience of the entity. The application for PEBB insurance coverage is subject to the approval of the HCA.

(d) The legislative authority or the board of directors must maintain its PEBB insurance coverage participation at least one full year, and may terminate participation only at the end of the plan year.

(e) The terms and conditions for the payment of the insurance premiums must be in the provisions of (~~(the)~~) a bargaining agreement or terms of employment and shall comply with the employer contribution requirements specified in the appropriate governing statute. These provisions, including eligibility, shall be subject to review and approval by the HCA at the time of application for participation. Any substantive changes must be submitted to HCA.

(f) The eligibility requirements for dependents of local government employees must be the same as the requirements for dependents of state employees and retirees in WAC 182-12-260.

(g) The legislative authority or the board of directors must give the HCA written notice of its intent to end PEBB insurance coverage participation at least (~~(thirty)~~) sixty days before the effective date of termination. If a county, municipi-

ality, or political subdivision ends (~~(coverage in)~~) PEBB insurance coverage, retired and disabled employees who began participating after September 15, 1991, are not eligible for PEBB insurance coverage beyond the mandatory extension requirements specified in WAC 182-12-146.

(h) Employees eligible for PEBB participation include only those employees whose services are substantially all in the performance of essential governmental functions but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions. Employers shall determine eligibility in order to ensure PEBB's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended.

(5) K-12 school districts and educational service districts: Employees of school districts or educational service districts may participate in PEBB insurance coverage provided all of the following requirements are met:

(a) All eligible employees of the (~~(entity)~~) K-12 school district or educational service district must transfer to PEBB insurance coverage as a unit(~~(-If the K-12 school district or educational service district meets the minimum size standards established by HCA,)~~) with the following exceptions:

- Bargaining units may elect to participate separately from the whole group(~~(-For enrolling by bargaining unit, aH);~~) and

- Nonrepresented employees (~~(will be considered a single bargaining unit)~~) may elect to participate separately from the whole group provided all nonrepresented employees join as a group.

(b) The school district or educational service district must submit an application together with (~~(employee census data and, if available, prior claims experience of the entity to the HCA)~~) an estimate of the number of employees and dependents to be enrolled. The application for the PEBB insurance coverage is subject to (~~(the approval of the HCA)~~) review for compliance with PEBB terms and conditions of participation.

(c) The school district or educational service district must agree to participate in all PEBB insurance coverage. The PEBB health plans must be the only employer sponsored health plans available to eligible employees.

(d) The school district or educational service district must maintain its PEBB insurance coverage participation at least one full year, and may end participation only at the end of the plan year.

(e) Beginning September 1, 2003, the HCA will collect an amount equal to the composite rate charged to state agencies plus an amount equal to the employee premium by health plan and family size as would be charged to state employees for each participating school district or educational service district. Each participating school district or educational service district must agree to collect an employee premium by health plan and family size that is not less than that paid by state employees. The eligibility requirements for employees will be the same as those for state employees as defined in WAC 182-12-115.

(f) The eligibility requirements for dependents of K-12 school district and educational service district employees

must be the same as the requirements for dependents of the state employees and retirees in WAC 182-12-260.

(g) The school district or educational service district must give the HCA written notice of its intent to end PEBB insurance coverage participation at least ~~((thirty))~~ sixty days before the effective date of termination, and may end participation only at the end of a plan year.

(h) Employees eligible for PEBB participation include only those employees whose services are substantially all in the performance of essential governmental functions but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions. Employers shall determine eligibility in order to ensure PEBB's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended.

(6) Tribal governments: Employees of a tribal government, or an agency or instrumentality of a tribal government, may participate in PEBB insurance coverage provided all of the following requirements are met:

(a) All eligible employees of the entity must transfer to PEBB insurance as a unit with the following exceptions:

- Bargaining units may elect to participate separately from the whole group; and
- Nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group.

(b) The PEBB health plans must be the only employer sponsored health plans available to eligible employees.

(c) The tribal council or the board of directors of the entity must submit to the HCA an application together with employee census data and, if available, prior claims experience of the entity. The application for PEBB insurance coverage is subject to the approval of the HCA.

(d) The tribal council or the board of directors must maintain its PEBB insurance coverage participation at least one full year, and may terminate participation only at the end of the plan year.

(e) The terms and conditions for the payment of the insurance premiums must be in the provisions of a bargaining agreement or terms of employment and shall comply with the employer contribution requirements specified in the appropriate governing statute. These provisions, including eligibility, shall be subject to review and approval by the HCA at the time of application for participation. Any substantive changes must be submitted to HCA.

(f) The eligibility requirements for dependents of tribal government employees must be the same as the requirements for dependents of state employees and retirees in WAC 182-12-260.

(g) The tribal council or the board of directors must give the HCA written notice of its intent to end PEBB insurance coverage participation at least sixty days before the effective date of termination. If a tribal government, or an agency or instrumentality of a tribal government, ends PEBB insurance coverage, retired and disabled employees are not eligible for PEBB insurance coverage beyond the mandatory extension requirements specified in WAC 182-12-146.

(h) Employees eligible for PEBB participation include only those employees whose services are substantially all in

the performance of essential governmental functions but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions. Employers shall determine eligibility in order to ensure PEBB's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended.

(7) Eligible nonemployees:

(a) Dislocated forest products workers enrolled in the employment and career orientation program pursuant to chapter 50.70 RCW shall be eligible for PEBB health plans while enrolled in that program.

(b) School board members or students eligible to participate under RCW 28A.400.350 may participate in PEBB insurance coverage as long as they remain eligible under that section.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-112 Insurance eligibility for higher education. For insurance eligibility, the HCA considers the higher education personnel board, the council for postsecondary education, and the state board for community and technical colleges to be higher education agencies.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-116 Who is eligible ~~((for the PEBB flexible spending account))~~ to participate in the state's salary reduction plan? ~~((Beginning January 1, 2006, all))~~ (1) The following employees are eligible to participate in the state's salary reduction plan provided they are eligible for PEBB benefits as defined in WAC 182-12-115 and they elect to participate within the time frames described in WAC 182-08-197 or 182-08-199.

(a) Employees of public four-year institutions of higher education((;)).

(b) Employees of the state community and technical colleges and of the state board for community and technical colleges ((who are eligible for PEBB benefits, as defined in WAC 182-12-115, are eligible for the PEBB medical flexible spending account plan. Beginning July 1, 2006, all)).

(c) Employees of state agencies ((who are eligible for PEBB benefits, are eligible for the PEBB medical flexible spending account plan.

If an employee terminates employment after becoming a plan participant and later on in the same plan year is hired into a new position that is eligible for PEBB benefits, the employee may not resume participation in the PEBB medical flexible spending account until the beginning of the next plan year)).

(2) Employees of employer groups, K-12 school districts and educational service districts are not eligible to participate in the state's salary reduction plan.

AMENDATORY SECTION (Amending Order 08-01, filed 4/8/08, effective 4/9/08)

WAC 182-12-128 May an employee waive health plan enrollment? (1) Employees must enroll in dental, life and long-term disability insurance (unless the employing agency does not participate in these PEBB insurance coverages). However, employees may waive PEBB medical if they have other comprehensive group medical coverage. Employees may waive enrollment in PEBB medical by submitting the appropriate enrollment form to their employing agency during the following times:

(a) Employees may waive medical when they become eligible for PEBB benefits. ~~((The))~~ Employees must indicate they are waiving medical on the appropriate enrollment form they submit to their employing agency no later than thirty-one days after the date they become eligible (see WAC 182-08-197). Medical will be waived as of the date the employee becomes eligible for PEBB benefits.

(b) Employees may waive medical during the annual open enrollment if they submit the appropriate enrollment form to their employing agency before the end of the annual open enrollment. Medical will be waived beginning January of the following year.

(c) Employees may waive medical during a special open enrollment as described in subsection (4) of this section.

(2) If an employee waives medical, medical is automatically waived for all eligible dependents, with the exception of adult dependents who may enroll in a health plan if the employee has waived medical coverage.

(3) Once medical is waived, enrollment is only allowed during the following times:

(a) The annual open enrollment period;

(b) A special open enrollment created by an event that allows for enrollment outside of the annual open enrollment as described in subsection (4) of this section. In addition to the appropriate ~~((enrollment))~~ form ~~((s))~~, the PEBB benefits services program may require the employee to provide evidence of eligibility and evidence of the event that creates a special open enrollment.

(4) Employees may waive enrollment in medical or enroll in medical if one of these special open enrollment events occur. The change in enrollment must ~~((be based on and related))~~ correspond to the ~~((change in status))~~ event that creates the special open enrollment. The following changes are events that create a special open enrollment:

(a) Employee acquires a new eligible dependent through marriage, domestic partnership, birth, adoption or placement for adoption, legal custody or legal guardianship;

(b) Employee's dependent child becomes eligible by fulfilling PEBB dependent eligibility criteria;

(c) Employee loses an eligible dependent or a dependent no longer meets PEBB eligibility criteria;

(d) Employee has a change in marital status, including legal separation documented by a court order;

(e) Employee or a dependent loses comprehensive group insurance coverage;

(f) Employee or ~~((one of the employee's))~~ a dependent ~~((s))~~ has a change in employment status that affects ~~((whether enrollment in PEBB insurance coverage will benefit the subscriber or the subscriber's dependent. This includes~~

~~beginning or end of employment, beginning or returning from an unpaid leave of absence, strike or lockout, change in worksite, becoming eligible or ceasing to be eligible for employer benefits))~~ the employee's or a dependent's eligibility, level of benefits, or cost of insurance coverage;

(g) Employee or a dependent has a change in place of residence that affects the ~~((subscriber's))~~ employee's or ~~((the))~~ a dependent's ~~((health plan))~~ eligibility ~~((or the))~~ level of benefits, or cost of ~~((the))~~ insurance coverage;

(h) Employee receives a court order or medical support enforcement order requiring the employee, ~~((their))~~ spouse, or qualified domestic partner to enroll an eligible dependent;

(i) Employee receives formal notice that the department of social and health services has determined it is more cost-effective to enroll the employee or an eligible dependent in PEBB medical than a medical assistance program.

To change enrollment during a special open enrollment, the employee must submit the appropriate ~~((enrollment))~~ form ~~((s))~~ to their employing agency no later than sixty days after the event that creates the special open enrollment.

Enrollment in insurance coverage will begin the first of the month following the event that created the special open enrollment; or in cases where the event occurs on the first day of a month, enrollment will begin on that date. If the special open enrollment is due to the birth or adoption of a child, insurance coverage will begin the month in which the event occurs.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-133 What options for continuing coverage are available to employees when they are no longer eligible for PEBB insurance coverage paid for by their employer? Eligible employees covered by PEBB insurance coverage have options for providing continued coverage for themselves and their dependents during temporary or permanent loss of eligibility. Except in the case of approved family and medical leave, and except as otherwise provided, only employees in pay status eight or more hours per month are eligible to receive the employer contribution.

(1) When an employee is on leave without pay due to an event described in (a) through (f) of this subsection, insurance coverage may be continued at the group rate by self-paying premiums. Employees may self-pay for a maximum of twenty-nine months. The number of months that an employee self-pays premium during a period of leave without pay will count toward the total months of continuation coverage allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). Employees may continue any combination of medical, dental and life insurance; however, only employees on approved educational leave may continue long-term disability insurance. The following types of leave qualify to continue coverage under this provision:

(a) The employee is on authorized leave without pay;

(b) The employee is laid off because of a reduction in force (RIF);

(c) The employee is receiving time-loss benefits under workers' compensation;

(d) The employee is applying for disability retirement;

(e) The employee is called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA); or

(f) The employee is on approved educational leave.

(2) Part-time faculty and part-time academic employees may self-pay premium at the group rate between periods of eligibility for a maximum of eighteen months. These employees may continue any combination of medical, dental and life insurance.

(3) The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) gives enrollees the right to continue medical and dental for a period of eighteen to twenty-nine months when they lose eligibility due to one of the following qualifying events.

(a) Termination of employment.

(b) The employee's hours are reduced to the extent of losing eligibility.

(4) Employees who are approved for leave under the federal Family and Medical Leave Act (FMLA) are eligible to receive the employer contribution toward premium for up to ~~((twelve))~~ twenty-six weeks, as provided in WAC 182-12-138.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-138 If an employee is approved for family and medical leave, what insurance coverage may be continued? Employees on approved leave under the federal Family and Medical Leave Act (FMLA) may continue to receive up to ~~((twelve))~~ twenty-six weeks of employer-paid medical, dental, basic life, and basic long-term disability insurance ~~((while on family and medical leave and))~~. These employees may also continue current optional life and long-term disability. ((AH)) The employee's employing agency is responsible for determining if the employee is eligible for leave under FMLA and the duration of such leave. The employee must pay the premium amounts associated with insurance coverage ((must be paid)) monthly as ((they)) premiums become due. If premiums are more than sixty days delinquent, insurance coverage will end as of the last day of the month ((of fully)) for which a full premium is paid ((coverage)).

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-171 When are retiring employees eligible to enroll in retiree insurance? (1) **Procedural requirements.** Retiring employees must meet these procedural requirements, as well as have substantive eligibility under subsection (2) or (3) of this section.

(a) The employee must submit ~~((an election))~~ the appropriate forms to enroll or defer insurance coverage within sixty days after ~~((their))~~ the employee's employer paid or COBRA coverage ends. The effective date of health plan enrollment will be the first day of the month following the loss of other coverage.

Exception: The effective dates of health plan enrollment for retirees who defer enrollment in a PEBB health plan at or

after retirement are identified in WAC 182-12-200 and 182-12-205.

Employees who ~~((cancel PEBB health plan coverage or))~~ do not enroll in a PEBB health plan at retirement are only eligible to enroll if they have deferred enrollment and maintained comprehensive coverage as ~~((defined))~~ identified in WAC 182-12-200 or 182-12-205.

(b) The employee and enrolled dependents who are entitled to Medicare must enroll and maintain enrollment in both Medicare parts A and B if the employee retired after July 1, 1991. If the employee or an enrolled dependent becomes entitled to Medicare after enrollment in PEBB retiree insurance, they must enroll and maintain enrollment in Medicare.

(2) **Eligibility requirements.** Eligible employees (as defined in WAC 182-12-115) who end public employment after becoming vested in a Washington state-sponsored retirement plan (as defined in subsection (4) of this section) are eligible to continue PEBB insurance coverage as a retiree if they meet procedural and eligibility requirements. To be eligible to continue PEBB insurance coverage as a retiree, the employee must be eligible to retire under a Washington state-sponsored retirement plan when ~~((their))~~ the employee's employer paid or COBRA coverage ends.

Employees who do not meet their Washington state-sponsored retirement plan's age requirements when their employer paid or COBRA coverage ends, but who meet the age requirement within sixty days of coverage ending, may request that their eligibility be reviewed by the ~~((health care authority's))~~ PEBB appeals committee to determine eligibility (see WAC ~~((182-16-030))~~ 182-16-032). Employees must meet other retiree insurance election procedural requirements.

- Employees must immediately begin to receive a monthly retirement plan payment, with exceptions described below.

- Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if this is required by department of retirement systems because their monthly retirement plan payment is below the minimum payment that can be paid.

- Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011 (13)), are eligible if they meet their retirement plan's age requirement and length of service when PEBB employee insurance coverage ends. They do not have to receive a retirement plan payment.

- Employees who are members of a Washington higher education retirement plan are eligible if they immediately begin to receive a monthly retirement plan payment, or meet their plan's age requirement, or are at least age fifty-five with ten years of state service.

- Employees who are permanently and totally disabled are eligible if they start receiving or defer a monthly disability retirement plan payment.

- Employees not retiring under ~~((the public employees'))~~ a Washington state-sponsored retirement ~~((system))~~ plan must meet the same age and years of service had the person been employed as a member of either public employees retirement system Plan 1 or Plan 2 for the same period of employment.

• Employees who retire from a local government or tribal government that participates in PEBB insurance coverage for their employees are eligible to continue PEBB insurance coverage as ((#)) retirees if the employees meet the procedural and eligibility requirements under this section.

(a) **Local government employees.** If the local government ends participation in PEBB insurance coverage, employees who enrolled after September 15, 1991, are no longer eligible for PEBB retiree insurance. These employees may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(b) **Tribal government employees.** If a tribal government ends participation in PEBB insurance coverage, its employees are no longer eligible for PEBB retiree insurance. These employees may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(c) **Washington state K-12 school district and educational service district employees for districts that do not participate in PEBB benefits.** Employees of Washington state K-12 school districts and educational service districts who separate from employment after becoming vested in a Washington state-sponsored retirement system are eligible to enroll in PEBB health plans when retired or permanently and totally disabled.

Except for employees who are members of a retirement Plan 3, employees who separate on or after October 1, 1993, must immediately begin to receive a monthly retirement plan payment from a Washington state-sponsored retirement system. Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if department of retirement systems requires this because their monthly retirement plan payment is below the minimum payment that can be paid or they enrolled before 1995.

Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011(13)), are eligible if they meet their retirement plan's age requirement and length of service when employer paid or COBRA coverage ends.

Employees who separate from employment due to total and permanent disability who are eligible for a deferred retirement allowance under a Washington state-sponsored retirement system (as defined in chapter 41.32, 41.35 or 41.40 RCW) are eligible if they enrolled before 1995 or within sixty days following retirement.

Employees who retired as of September 30, 1993, and began receiving a retirement allowance from a state-sponsored retirement system (as defined in chapter 41.32, 41.35 or 41.40 RCW) are eligible if they enrolled in a PEBB health plan not later than the HCA's annual open enrollment period for the year beginning January 1, 1995.

(3) **Elected state officials.** Employees who are elected state officials (as defined under WAC 182-12-115(6)) who voluntarily or involuntarily leave public office are eligible to continue PEBB insurance coverage as a retiree if they meet procedural and eligibility requirements. They do not have to receive a retirement plan payment from a state-sponsored retirement system.

(4) **Washington state-sponsored retirement systems include:**

- Higher education retirement plans;

- Law enforcement officers' and fire fighters' retirement system;

- Public employees' retirement system;
- Public safety employees' retirement system;
- School employees' retirement system;
- State judges/judicial retirement system;
- Teacher's retirement system; and
- State patrol retirement system.

The two federal retirement systems, Civil Service Retirement System and Federal Employees' Retirement System, are considered a Washington state-sponsored retirement system for Washington State University Extension employees covered under the PEBB insurance coverage at the time of retirement or disability.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-175 May a local government entity or tribal government entity applying for participation in PEBB insurance coverage include their retirees in the transfer unit? Local government or tribal government entities applying for participation in PEBB insurance coverage under WAC 182-12-111 (4) and (6), may request inclusion of retired employees who are covered under their retiree health plan at the time of application. The PEBB benefits services program will use the following criteria for approval of these requests for inclusion of retirees.

(1) The local government or tribal government retiree health plan must have existed at least three years before the date of application for participation in PEBB health plans.

(2) Eligibility for coverage under the local government's or tribal government's retiree health plan must have required immediate enrollment in retiree health plan coverage upon termination of employee coverage.

(3) The retiree must have maintained continuous enrollment in their local government or tribal government retiree health plan.

(4) To protect the integrity of the risk pool, if total local government or tribal government retiree enrollment exceeds ten percent of the total PEBB retiree population, the PEBB benefits services program may:

(a) Stop approving inclusion of retirees with local government or tribal government unit transfers; or

(b) May adopt a new rating methodology reflective of the cost of covering local government or tribal government retirees.

(5) Retirees and dependents included in the transfer unit are subject to the enrollment and eligibility rules outlined in chapters 182-08, 182-12 and 182-16 WAC.

(6) Employees eligible for retirement subsequent to the local government or tribal government transferring to PEBB health plan coverage must meet retiree eligibility as outlined in chapter 182-12 WAC.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-200 May a retiree who is enrolled as a dependent in a PEBB health plan or a Washington state K-12 school district sponsored health plan defer enroll-

ment in a PEBB retiree health plan? Retirees who are enrolled in a PEBB or Washington state K-12 school district sponsored medical plan as a dependent may defer enrollment in a PEBB retiree health plan. Retirees who defer enrollment in medical cannot remain enrolled in dental. Retirees who defer may later enroll themselves and their dependents in PEBB retiree medical, or medical and dental, if they provide evidence of continuous enrollment in a PEBB or K-12 school district sponsored medical plan. Continuous enrollment must be from the date the retiree deferred enrollment in retiree insurance. Retirees may enroll:

(1) During any PEBB annual open enrollment period. (Enrollment in the PEBB health plan will begin the first day of January after the annual open enrollment period.); or

(2) No later than sixty days after enrollment in the PEBB or K-12 school district sponsored medical plan ends. (Enrollment in the PEBB health plan will begin the first day of the month after the PEBB or K-12 school district health plan ends.)

AMENDATORY SECTION (Amending Order 08-01, filed 4/8/08, effective 4/9/08)

WAC 182-12-205 May a retiree defer enrollment in a PEBB health plan at or after retirement? Except as stated in subsection (1)(c) of this section and for adult dependents as defined in WAC 182-12-260 (4)(d), if ~~((a))~~ retiree(s) defer ~~((s))~~ enrollment in a PEBB health plan, they also defer enrollment for all eligible dependents. Retirees may not defer their retiree term life insurance, even if they have other life insurance.

(1) Retirees may defer enrollment in a PEBB health plan at or after retirement if continuously enrolled in other comprehensive medical as identified below:

(a) Beginning January 1, 2001, retirees may defer enrollment if they are enrolled in comprehensive employer-sponsored medical as an employee or the dependent of an employee.

(b) Beginning January 1, 2001, retirees may defer enrollment if they are enrolled in medical as a retiree or the dependent of a retiree enrolled in a federal retiree plan.

(c) Beginning January 1, 2006, retirees may defer enrollment if they are enrolled in Medicare Parts A and B and a Medicaid program that provides creditable coverage as defined in this chapter. The retiree's dependents may continue their PEBB health plan enrollment if they meet PEBB eligibility criteria and are not eligible for creditable coverage under a Medicaid program.

(2) To defer health plan enrollment, the retiree must ~~((send a completed election))~~ submit the appropriate forms to the PEBB benefits services program requesting to defer. The PEBB benefits services program must receive the form before health plan enrollment is deferred or no later than sixty days after the date the retiree becomes eligible to apply for PEBB retiree insurance coverage.

(3) Retirees who defer may enroll in a PEBB health plan as follows:

(a) Retirees who defer while enrolled in employer-sponsored medical may enroll in a PEBB health plan by ~~((sending a completed election))~~ submitting the appropriate forms and

evidence of continuous enrollment in comprehensive employer-sponsored medical to the PEBB benefits services program:

(i) During annual open enrollment. (Enrollment in the PEBB health plan will begin the first day of January after the annual open enrollment ~~((period))~~); or

(ii) No later than sixty days after their employer-sponsored medical ends. (Enrollment in the PEBB health plan will begin the first day of the month after the employer-sponsored medical ends.)

(b) Retirees who defer enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to enroll in a PEBB health plan by ~~((sending a completed election))~~ submitting the appropriate forms and evidence of continuous enrollment in a federal retiree medical plan to the PEBB benefits services program:

(i) During annual open enrollment. (Enrollment in the PEBB health plan will begin the first day of January after the annual open enrollment ~~((period))~~); or

(ii) No later than sixty days after the federal retiree medical ends. (Enrollment in the PEBB health plan will begin the first day of the month after the federal retiree medical ends.)

(c) Retirees who defer enrollment while enrolled in Medicare Parts A and B and Medicaid may enroll in a PEBB health plan by ~~((sending a completed election))~~ submitting the appropriate forms and evidence of continuous enrollment in creditable coverage to the PEBB benefits services program:

(i) During annual open enrollment. (Enrollment in the PEBB health plan will begin the first day of January after the annual open enrollment ~~((period))~~); or

(ii) No later than sixty days after their Medicaid coverage ends (Enrollment in the PEBB health plan will begin the first day of the month after the Medicaid coverage ends.); or

(iii) No later than the end of the calendar year when their Medicaid coverage ends if the retiree was also determined eligible under 42 USC § 1395w-114 and subsequently enrolled in a Medicare Part D plan. (Enrollment in the PEBB health plan will begin the first day of January following the end of the calendar year when the Medicaid coverage ends.)

(d) Retirees who defer enrollment may enroll in a PEBB health plan if the retiree receives formal notice that the department of social and health services has determined it is more cost-effective to enroll the retiree or the retiree's eligible dependent(s) in PEBB medical than a medical assistance program.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-209 Who is eligible for retiree life insurance? Eligible employees who participate in PEBB life insurance as an employee and meet qualifications for retiree insurance coverage as provided in WAC 182-12-171 are eligible for PEBB retiree life insurance. They must submit ~~((an election))~~ the appropriate forms to the PEBB benefits services program no later than sixty days after the date their PEBB employee life insurance ends. However, employees whose life insurance premiums are being waived under the

terms of the life insurance contract are not eligible for retiree term life insurance until their waiver of premium benefit ends. Retirees may not defer enrollment in retiree term life insurance.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-250 Insurance coverage eligibility for survivors of emergency service personnel killed in the line of duty. Surviving spouses and dependent children of emergency service personnel who are killed in the line of duty are eligible to enroll in health plans administered by the PEBB benefits services program within HCA.

(1) This section applies to the surviving spouse and dependent children of emergency service personnel "killed in the line of duty" as determined by the Washington state department of labor and industries.

(2) "Emergency service personnel" means law enforcement officers and fire fighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and fire fighters as defined in RCW 41.24.010.

(3) "Surviving spouse and children" means:

(a) A lawful spouse;

(b) An ex-spouse as defined in RCW 41.26.162;

(c) Children. The term "children" includes ~~((the following))~~ unmarried children of the emergency service worker who are ~~((: Under the age of twenty or under the age of twenty-four if he or she is a dependent student attending high school or registered at an accredited secondary school, college, university, vocational school, or school of nursing))~~ under the age of twenty-five. Children with disabilities as defined in RCW 41.26.030(7) are eligible at any age. "Children" ~~((are))~~ is defined as:

(i) Biological children (including the emergency service worker's posthumous children);

(ii) Stepchildren; and

(iii) Legally adopted children.

(4) Surviving spouses and children who are entitled to Medicare must enroll in both parts A and B of Medicare.

(5) The survivor (or agent acting on their behalf) must ~~((send a completed election))~~ submit the appropriate forms (to either enroll or defer enrollment in a PEBB health plan) to PEBB benefits services program no later than one hundred eighty days after the latter of:

(a) The death of the emergency service worker;

(b) The date on the letter from the department of retirement systems or the board for volunteer fire fighters and reserve officers that informs the survivor that he or she is determined to be an eligible survivor;

(c) The last day the surviving spouse or child was covered under any health plan through the emergency service worker's employer; or

(d) The last day the surviving spouse or child was covered under the Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage from the emergency service worker's employer.

(6) Survivors who do not choose to defer enrollment in a PEBB health plan may choose among the following options for when their enrollment in a PEBB health plan will begin:

(a) June 1, 2006, for survivors whose ~~((election))~~ appropriate forms ~~((is))~~ are received by the PEBB benefits services program no later than September 1, 2006;

(b) The first of the month that is ~~((no more))~~ not earlier than sixty days before the date that the PEBB benefits services program receives the ~~((election))~~ appropriate forms (for example, if the PEBB benefits services program receives the ~~((election))~~ appropriate forms on August 29, the survivor may request health plan enrollment to begin on July 1); or

(c) The first of the month after the date that the PEBB benefits services program receives the ~~((election))~~ appropriate forms.

For surviving spouses and children who enroll, monthly health plan premiums must be paid by the survivor except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b). For children age twenty through age twenty-four who enroll and are not students under the age of twenty-four attending high school or registered at an accredited secondary school, college, university, vocational school, or school of nursing: The adult dependent premium must be paid by the survivor except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b).

(7) Survivors must choose one of the following two options to maintain eligibility for PEBB insurance coverage:

(a) Enroll in a PEBB health plan:

(i) Enroll in medical; or

(ii) Enroll in medical and dental.

(iii) Survivors enrolling in dental must stay enrolled in dental for at least two years before dental can be dropped.

(iv) Dental only is not an option.

(b) Defer enrollment:

(i) Survivors may defer enrollment in a PEBB health plan if enrolled in comprehensive medical coverage through an employer.

(ii) Survivors may enroll in a PEBB health plan when they lose employer medical coverage. Survivors will need to provide evidence that they were continuously enrolled in comprehensive medical coverage through an employer when applying for a PEBB health plan, and apply within sixty days after the date their other coverage ended.

(iii) PEBB health plan enrollment and premiums will begin the first day of the month following the day that the other coverage ended for eligible spouses and children who enroll.

(8) Survivors may change their health plan during annual open enrollment. In addition to annual open enrollment, survivors may change health plans as described in WAC 182-08-198.

(9) Survivors may not add new dependents acquired through birth, marriage, or establishment of a qualified domestic partnership.

(10) Survivors will lose their right to enroll in a PEBB health plan if they:

(a) Do not apply to enroll or defer PEBB health plan enrollment within the timelines stated in subsection (5) of this section; or

(b) Do not maintain continuous enrollment in comprehensive medical coverage through an employer during the

deferral period, as provided in subsection (7)(b)(i) of this section.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-260 Who are eligible dependents? The following are eligible as dependents under the PEBB eligibility rules:

- (1) Lawful spouse.
- (2) Domestic partner qualified by the PEBB declaration of domestic partnership that meets all of the following criteria:
 - (a) Partners have a close personal relationship in lieu of a lawful marriage;
 - (b) Partners are not married to anyone;
 - (c) Partners are each other's sole domestic partner and are responsible for each other's common welfare;
 - (d) Partners are not related by blood as close as would bar marriage; and
 - (e) Partners are barred from a lawful marriage in Washington state.
- (3) Domestic partner qualified by the certificate of state registered domestic partnership or registration card issued by the Washington secretary of state for a same-sex partnership.
- (4) Children ~~((through age nineteen)).~~ Children are defined as the subscriber's biological children, stepchildren, legally adopted children, children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child, children of the subscriber's qualified domestic partner, or children specified in a court order or divorce decree. In addition, children include extended dependents in the legal custody or legal guardianship of the subscriber, the subscriber's spouse, or subscriber's qualified domestic partner. The legal responsibility is demonstrated by a valid court order and the child's official residence with the custodian or guardian. "Children" does not include foster children for whom support payments are made to the subscriber through the state department of social and health services foster care program.

Eligible children include:

- (a) ~~((The subscriber's biological children, stepchildren, legally adopted children, children for whom the subscriber has assumed a legal obligation for total or partial support of a child in anticipation of adoption of the child, children of the subscriber's qualified domestic partner, or children specified in a court order or divorce decree;))~~ Unmarried children through age nineteen.
- (b) Married children through age nineteen who qualify as dependents of the subscriber under the Internal Revenue Code(~~(:)~~).
- (c) ~~((Extended dependents in the legal custody or legal guardianship of the subscriber, their spouse, or qualified domestic partner. The legal responsibility is demonstrated by a valid court order and the child's official residence with the custodian or guardian. This does not include foster children for whom support payments are made to the subscriber through the state department of social and health services foster care program;~~

~~(d))~~ Unmarried children age twenty through age twenty-three who are attending high school or are registered students at an accredited secondary school, college, university, vocational school, or school of nursing (students). A married child is eligible as a student if the child is a dependent of the subscriber under the Internal Revenue Code.

~~(i) ((Student health plan enrollment begins the first day of the month of the quarter or semester for which the child is registered begins. Health plan enrollment ends the last day of the month in which the student stops attending or in which the quarter or semester ends, whichever is first, except that dependent student eligibility continues year-round for those who attend three of the four school quarters or two semesters.~~

~~(ii) Student eligibility for enrollment in a PEBB health plan continues during the three month period following graduation provided the subscriber is covered, the child has not reached age twenty-four, and meets all other eligibility requirements.~~

~~(iii))~~ A child is eligible as a student or can maintain eligibility as a student when not registered for courses through the summer or off quarter/semester as long as the child meets all other eligibility requirements and is in any one of the following circumstances:

- The child attended the three consecutive quarters or two consecutive semesters before the off quarter/semester.
- The child is an enrolled dependent turning age twenty or renewing annual student certification and the child is expected to register for three consecutive quarters or two consecutive semesters after the off quarter/semester.
- The child recently graduated. Graduation is defined as the successful completion of studies to earn a degree or certificate, not the date of the graduation ceremony. The child is eligible for the three month period following graduation.

~~(ii) For student dependents who are not eligible for the summer or off quarter/semester according to (c)(i) of this subsection, student eligibility begins the first day of the month of the quarter or semester for which the child is registered, and eligibility ends the last day of the month in which the student stops attending or in which the quarter or semester ends, whichever is first.~~

The PEBB benefits services program certifies students ((recertification occurs)) annually. Health plan enrollment ends the last day of the month in which certification ends or the student ceases to meet eligibility criteria, whichever comes first. See WAC 182-12-262 (3)(g) and (7) for enrollment requirements.

(d) Unmarried children age twenty through age twenty-four (adult dependents).

Subscriber must pay the adult dependent premium for adult dependents whom the subscriber has enrolled. Nonpayment of premium will result in termination of coverage back to the end of the month for which the last full month premium was paid.

Adult dependents must enroll in the same health plan as the subscriber.

Exception: The adult dependent may enroll in a different health plan than the subscriber if the dependent does not reside within the subscriber's plan service area or the subscriber has waived or deferred medical.

~~(e) ((Children as defined in (a) through (d) of this subsection who have disabilities are eligible by subsection (5) of this section.~~

~~(5)) Children of any age with disabilities, developmental disabilities, mental illness or mental retardation who are incapable of self-support, provided such condition occurs before age twenty or during the time the dependent was eligible as a student under (c) of this subsection ((4) of this section).~~

~~((a)) The subscriber must provide evidence that such disability occurred as stated below:~~

~~(i) For ((children)) a child enrolled in PEBB insurance coverage, the subscriber must provide evidence of the disability within sixty days of the child's attainment of age twenty.~~

~~(ii) For ((children)) a child enrolled in PEBB insurance coverage as a student under (c) of this subsection ((4)(d) of this section), the subscriber must provide evidence of the disability within sixty days after the student is no longer eligible under (c) of this subsection ((4)(d) of this section).~~

~~(iii) ((To enroll)) For a child, age twenty or older, who is a new dependent or for a child, age twenty or older, who is a dependent of a newly eligible subscriber, the child may be enrolled as a dependent child with disabilities ((age twenty or older)) if the subscriber ((must)) provides evidence that the condition occurred before the child reached age twenty or evidence that when the condition occurred the child would have satisfied PEBB eligibility for student coverage under (c) of this subsection ((4) of this section. The PEBB benefits services program will request evidence of the child's disability periodically thereafter)) had the subscriber been eligible for PEBB benefits at the time.~~

~~((b)) The subscriber must notify the PEBB benefits services program, in writing, no later than sixty days after the date that a child age twenty or older no longer qualifies under this subsection.~~

~~((i)) For example, children who become self-supporting are not eligible under this rule as of the last day of the month in which they become capable of self-support. The child may be eligible to continue enrollment as an adult dependent, as per (d) of this subsection, or in a PEBB health plan under provisions of WAC 182-12-270.~~

~~((ii)) Children age twenty and older who become capable of self-support do not regain eligibility under (e) of this subsection ((5) of this section) if they later become incapable of self-support.~~

~~((e) Disability recertification occurs)) The PEBB benefits services program will recertify the eligibility of children with disabilities periodically.~~

~~((6)) (5) Parents.~~

(a) Parents covered under PEBB medical before July 1, 1990, may continue enrollment on a self-pay basis as long as:

(i) The parent maintains continuous enrollment in PEBB medical;

(ii) The parent qualifies under the Internal Revenue Code as a dependent of the subscriber;

(iii) The subscriber continues enrollment in PEBB insurance coverage; and

(iv) The parent is not covered by any other group medical plan.

(b) Parents eligible under this subsection may be enrolled with a different health plan than that selected by the subscriber. Parents may not add additional dependents to their insurance coverage.

~~((7)) (6) The enrollee (or the subscriber on their behalf) must notify the PEBB benefits services program, in writing, no later than sixty days after the date they are no longer eligible under this section. A PEBB continuation of coverage election notice and continued health plan enrollment will only be available if the PEBB benefits services program is notified in writing within the sixty-day period.~~

AMENDATORY SECTION (Amending Order 08-01, filed 4/8/08, effective 4/9/08)

WAC 182-12-262 When may subscribers enroll, waive or remove eligible dependents? (1) **Subscribers may enroll or waive eligible dependents when the subscriber becomes eligible** and enrolls in PEBB insurance coverage. If enrolled, the dependent's effective date will be the same as the subscriber's effective date. Unless a dependent is independently eligible for PEBB ~~((insurance))~~ health plan coverage, the subscriber must be enrolled to enroll their dependent.

Exceptions: • Adult dependents may enroll in a health plan if the employee has waived medical coverage or the retiree has deferred enrollment in PEBB retiree insurance in accordance with PEBB rule;

OR

• Eligible dependents of a retiree may enroll in a health plan if the retiree deferred PEBB retiree insurance coverage due to the retiree's enrollment in Medicare and creditable Medicaid under WAC 182-12-205 (1)(c).

(2) **Subscribers may enroll eligible dependents during the annual open enrollment** with ~~((insurance))~~ health plan coverage beginning January of the following year.

(3) **Subscribers may enroll a newly acquired dependent or a dependent that becomes eligible during a special open enrollment.**

(a) A spouse may be enrolled upon marriage. If the date of marriage is the first day of the month, ~~((insurance))~~ health plan coverage will begin on that date; otherwise, it will begin the first of the following month.

(b) A qualified domestic partner may be enrolled upon declaration or registration of the domestic partnership (see WAC 182-12-260). If the date of declaration or registration is the first day of the month, ~~((insurance))~~ health plan coverage will begin on that date; otherwise, it will begin the first of the following month.

(c) Newborn children may be enrolled upon birth and adopted children may be enrolled when the subscriber assumes legal responsibility for the child in anticipation of adoption. The child's ~~((insurance))~~ health plan coverage will begin on the date of birth or the date the subscriber assumes legal responsibility for the child in anticipation of adoption. The subscriber must submit the appropriate ~~((enrollment))~~ form ~~((s))~~ as described in subsection (7) of this section no later than sixty days after birth or assuming legal responsibility for the child.

(d) Children acquired through marriage or a qualified domestic partnership may be enrolled upon marriage or declaration or registration of the domestic partnership as described in (a) or (b) of this subsection.

(e) ~~((Children))~~ Extended dependents acquired through legal guardianship or legal custody (see WAC 182-12-260(4)(~~(e)~~)) may be enrolled upon issuance of a court order granting such responsibility to the subscriber, ~~((their))~~ spouse, or qualified domestic partner. If legal guardianship or legal custody begins on the first day of the month, ~~((insurance))~~ health plan coverage will begin on that date; otherwise, it will begin the first of the following month.

(f) Children age twenty through age twenty-four (adult dependents) may be enrolled when they become eligible (see WAC 182-12-260 (4)(d)). If they become eligible on the first day of the month, health plan coverage will begin on that date; otherwise, it will begin the first of the month following the date they become eligible. For enrollment requirements, see subsection (7) of this section.

(g) Children ~~((twenty years or older))~~ who become eligible as ~~((a))~~ students ~~((or as a child with disabilities))~~ may be enrolled ~~((after))~~ provided the child's eligibility is certified by the PEBB benefits services program. If enrolled, the child's insurance coverage will begin ~~((as follows))~~:

(i) ~~Insurance coverage for a student will begin on the first day of the month of the quarter or semester for which the student is registered.~~

(ii) ~~Insurance))~~ or continue on the first day of the month the child becomes eligible as a student according to WAC 182-12-260 (4)(c).

(h) A child twenty years or older who becomes eligible as a child with disabilities under WAC 182-12-260 (4)(e) may be enrolled after the child's eligibility is certified by the PEBB benefits services program.

Health plan coverage ~~((for a child with disabilities))~~ will begin on the first day of the month that eligibility is certified by the PEBB benefits services program.

(4) **Subscribers may change the enrollment (enroll, waive or remove) of their dependents outside of the annual open enrollment if a special open enrollment event occurs.** The change in enrollment must ~~((be based on and related))~~ correspond to the ~~((change in status))~~ event that creates the special open enrollment for either the subscriber ~~((and))~~ or the subscriber's dependents or both. Enrollment in ~~((insurance))~~ health plan coverage will begin the first of the month following the event that created the special open enrollment; or in cases where the event occurs on the first day of a month, enrollment will begin on that date. If the special open enrollment is due to the birth or adoption of a child, ~~((insurance))~~ health plan coverage will begin the month in which the event occurs. The following changes are events that create a special open enrollment for medical and dental:

(a) Subscriber acquires ~~((a new))~~ an eligible dependent through marriage, domestic partnership, birth, adoption or placement for adoption, legal custody or legal guardianship;

(b) Subscriber loses an eligible dependent or a dependent no longer meets PEBB eligibility criteria;

(c) Subscriber has a change in marital status, including legal separation documented by a court order;

(d) Subscriber or a dependent loses comprehensive group health insurance coverage;

(e) Subscriber or ~~((one of the subscriber's))~~ a dependent~~((s))~~ has a change in employment status that affects ~~((whether enrollment in PEBB insurance coverage will benefit the subscriber or the subscriber's dependent. This includes beginning or end of employment, beginning or returning from an unpaid leave of absence, strike or lockout, change in worksite, becoming eligible for or ceasing to be eligible for employer benefits))~~ the subscriber's or a dependent's eligibility, level of benefits, or cost of insurance coverage;

(f) Subscriber or a dependent has a change in place of residence that affects the subscriber's or ~~((the))~~ a dependent's ~~((health plan))~~ eligibility ~~((or the))~~, level of benefits, or cost of ((the)) insurance coverage;

(g) Subscriber receives a court order or medical support enforcement order requiring the subscriber, their spouse, or qualified domestic partner to provide insurance coverage for an eligible dependent. (A former spouse is not an eligible dependent.);

(h) Subscriber receives formal notice that the department of social and health services has determined it is more cost-effective to enroll an eligible dependent in PEBB medical than a medical assistance program.

(5) Subscribers may waive (interrupt or postpone) enrollment of an eligible dependent.

(a) Employees may only waive dependents if those dependents are enrolled in ~~((either))~~ another comprehensive group ~~((insurance coverage))~~ health plan. Employees may only waive an eligible dependent's enrollment at the following times:

(i) When the employee is first eligible and enrolls in PEBB benefits. (The dependent's enrollment will be waived beginning with the employee's effective date.);

(ii) During the annual open enrollment. (The dependent's enrollment will be waived beginning January of the following year.);

(iii) No later than sixty days after the dependent becomes eligible as described in subsection (3) of this section. (The dependent's enrollment will be waived beginning the date enrollment would have begun.); or

(iv) During a special open enrollment as described in subsection (4) of this section. (The dependent's enrollment will be waived as of the date corresponding to the ~~((change in status))~~ event that ~~((created))~~ creates the special open enrollment.)

(b) Retirees, survivors or individuals continuing PEBB insurance coverage under WAC 182-12-133 or 182-12-270 may waive enrollment of an eligible dependent outside of the annual open enrollment or a special open enrollment. Unless otherwise approved by the PEBB benefits services program, enrollment will be waived prospectively.

(c) Subscribers may enroll eligible dependents that were waived as stated in subsections (2) and (4) of this section.

(6) Subscribers must remove dependents from the subscriber's insurance coverage within sixty days of the date the dependent no longer meets eligibility criteria in WAC 182-12-250 or 182-12-260. Insurance coverage enrollment ends the last day of the month in which the dependent is eligible.

Subscribers may remove a lawful spouse from PEBB insurance coverage in the event of legal separation documented by a court order, provided the court did not order the subscriber to maintain the spouse's health plan enrollment. Subscribers must remove former spouses and former qualified domestic partners upon finalization of a divorce, annulment, or termination of a partnership, even if a court order requires the subscriber to provide health insurance for the former spouse or partner.

Consequences for not submitting notice as described in subsection (7) of this section within sixty days of any dependent ceasing to be eligible may include:

(a) The dependent's loss of eligibility to continue health plan enrollment under one of the continuation options described in WAC 182-12-270;

(b) The subscriber being billed for claims paid by the health plan for services after the dependent lost eligibility; and

(c) The subscriber being responsible for premiums paid by the state for the dependent's health plan enrollment after the dependent lost eligibility.

(7) **Subscribers must submit the appropriate ~~(enrollment)~~ form~~((f))s((g))~~ within the time frames described in this subsection.** Employees submit the ~~(enrollment)~~ appropriate form~~((f))s((g))~~ to their employing agency. All other subscribers submit the ~~(enrollment)~~ appropriate form~~((f))s((g))~~ to the PEBB benefits services program. In addition to the appropriate forms indicating dependent enrollment, the PEBB benefits services program may require the subscriber to provide evidence of eligibility or evidence of the event that created the special open enrollment.

(a) If a subscriber wants to enroll their eligible dependent(s) when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the ~~(enrollment)~~ appropriate form~~((f))s((g))~~ that the subscriber submits within the relevant time frame described in WAC 182-08-197, 182-12-171, or 182-12-250.

(b) If a subscriber wants to enroll eligible dependents during the annual open enrollment, the subscriber must submit the appropriate ~~(enrollment)~~ forms~~((f))s((g))~~ no later than the end of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the subscriber must submit the appropriate enrollment form~~((f))s((g))~~ no later than sixty days after the dependent becomes eligible.

~~(d) ((If the subscriber wants to enroll a child age twenty or older as a registered student, the subscriber must submit the appropriate enrollment form(s) required to certify the child as a student no later than sixty days after the first day of the month of the quarter or semester that the subscriber wants to enroll the student in PEBB insurance coverage.~~

~~(e))~~ If the subscriber wants to enroll a child age twenty or older as a child with disabilities, the subscriber must submit the appropriate enrollment form(s) required to certify the dependent's eligibility within the relevant time frame described in WAC 182-12-250(3) or 182-12-260~~((5))~~ (4).

~~((f))~~ (e) If the subscriber wants to change a dependent's enrollment status during a special open enrollment, the subscriber must submit the appropriate ~~(enrollment)~~

form~~((f))s((g))~~ no later than sixty days after the event that creates the special open enrollment.

~~((g))~~ (f) If the subscriber wants to waive a dependent's enrollment, the subscriber must submit the appropriate ~~(enrollment)~~ forms. Unless otherwise approved by the PEBB benefits services program, enrollment will be waived prospectively.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-265 What options for continuing health plan enrollment are available to widows, widowers and dependent children if the employee or retiree dies? The surviving dependent of an eligible employee or retiree who meets the eligibility criteria in subsection (1), (2), or (3) of this section is eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage as a surviving dependent. An eligible surviving spouse, qualified domestic partner, or child must enroll in or defer enrollment in a PEBB ~~(health)~~ medical plan no later than sixty days after the date of the employee's or retiree's death.

(1) Dependents who lose eligibility due to the death of an eligible employee may continue enrollment in a PEBB health plan enrollment as a survivor under retiree insurance coverage provided they immediately begin receiving a monthly retirement benefit from any state of Washington sponsored retirement system.

(a) The employee's spouse or qualified domestic partner may continue health plan enrollment until death.

(b) Children may continue health plan enrollment until they lose eligibility under PEBB rules.

(c) If a surviving spouse, qualified domestic partner, or child of an eligible employee is not eligible for a monthly retirement benefit (or a lump-sum payment because the monthly pension payment would be less than the minimum amount established by the department of retirement systems) the dependent is not eligible for PEBB retiree insurance as a survivor. However, the dependent may continue health plan enrollment under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) or WAC 182-12-270.

(d) The two federal retirement systems, Civil Service Retirement System and Federal Employees Retirement System, shall be considered a Washington sponsored retirement system for Washington State University extension service employees who were covered under PEBB insurance coverage at the time of death.

(2) Dependents who lose eligibility due to the death of a PEBB eligible retiree may continue health plan enrollment under retiree insurance.

(a) The retiree's spouse or qualified domestic partner may continue health plan enrollment until death.

(b) Children may continue health plan enrollment until they lose eligibility under PEBB rules.

(c) Dependents ~~((who are waiving enrollment in a PEBB health plan))~~, whose enrollment in a PEBB health plan is waived at the time of the retiree's death, are eligible to enroll or defer enrollment in PEBB retiree insurance. A form to enroll or defer PEBB health plan enrollment must be hand-

delivered or mailed to the PEBB benefits services program no later than sixty days after the retiree's death. To enroll in a PEBB health plan, the dependent must provide satisfactory evidence of continuous enrollment in other medical coverage from the most recent open enrollment for which enrollment in PEBB was waived.

(3) Surviving spouses or eligible children of a deceased school district or educational service district employee who were not enrolled in PEBB insurance coverage at the time of the subscriber's death may enroll in a PEBB health plan provided the employee died on or after October 1, 1993, and the dependent(s) immediately began receiving a retirement benefit allowance under chapter 41.32, 41.35 or 41.40 RCW.

(a) The employee's spouse or qualified domestic partner may continue health plan enrollment until death.

(b) Children may continue health plan enrollment until they lose eligibility under PEBB rules.

(4) Surviving dependents must notify the PEBB benefits services program of their decision to enroll or defer enrollment in a PEBB health plan no later than sixty days after the date of death of the employee or retiree. If PEBB health plan enrollment ended due to the death of the employee or retiree, PEBB will reinstate health plan enrollment without a gap subject to payment of premium. In order to avoid duplication of group medical coverage, surviving dependents may defer enrollment in a PEBB health plan under WAC 182-12-200 and 182-12-205. To notify the PEBB benefits services program of their intent to enroll or defer enrollment in a PEBB health plan the surviving dependent must (~~send a completed election~~) submit the appropriate forms to the PEBB benefits services program no later than sixty days after the date of death of the employee or retiree.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-270 What options are available to dependents who cease to meet the eligibility criteria in WAC 182-12-260? If eligible, dependents may continue health plan enrollment under one of the continuation options in subsection (1)(~~;~~) or (2)(~~or (3)~~) of this section by self-paying premiums following their loss of eligibility. The PEBB benefits services program must receive (~~a timely election~~) the appropriate forms as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*. Options for continuing health plan enrollment are based on the reason that eligibility was lost.

(1) Spouses, qualified domestic partners, or children who lose eligibility due to the death of an employee or retiree may be eligible to continue health plan enrollment under provisions of WAC 182-12-250 or 182-12-265(~~;~~) or

(2) Dependents (~~of a lawful marriage~~) who lose eligibility because they no longer meet the eligibility criteria in WAC 182-12-260 are eligible to continue health plan enrollment under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA)(~~;~~ or ~~(3) Dependents of~~).

Exception: A qualified domestic partner who loses eligibility because he or she no longer meets the eligibility criteria in WAC 182-12-260 may continue health plan

enrollment under an extension of PEBB insurance coverage for a maximum of thirty-six months.

No extension of PEBB coverage will be offered unless the PEBB benefits services program is notified through hand-delivery or United States Postal Service mail of a completed notice of qualifying event as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*.

AMENDATORY SECTION (Amending WSR 91-14-025, filed 6/25/91, effective 7/26/91)

WAC 182-16-010 Adoption of model rules of procedure. The model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use by this agency in PEBB benefits related proceedings. Those rules may be found in chapter 10-08 WAC. Other procedural rules adopted in this title are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and the procedural rules adopted in this title, the procedural rules adopted in this title shall govern.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-16-020 Definitions. As used in this chapter the term:

"Administrator" means the administrator of the health care authority (HCA) or designee;

"Agency" means the health care authority;

(~~"Agent" means a person, association, or corporation acting on behalf of the health care authority pursuant to a contract between the health care authority and the person, association, or corporation.~~) "Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Employing agency" means a division, department, or separate agency of state government; a county, municipality, school district, educational service district, or other political subdivision; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Health plan" or "plan" means a medical or dental plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance administered as a PEBB benefit.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB benefits services program. The administrator has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverage or other employee benefit administered by the PEBB benefits services program within the HCA.

"PEBB benefits services program" means the program within the health care authority which administers insurance and other benefits ~~((to))~~ for eligible employees ~~((of the state))~~ (as defined in WAC 182-12-115), eligible retired and disabled employees of the state (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260), and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-16-030 ~~((Appeals of decisions of the agency or its agent - Applicability-))~~ How can an employee or an employee's dependent appeal a decision made by an employing agency about eligibility or enrollment in benefits? ~~((Except as provided by RCW 48.43.530 and 48.43.535, any person aggrieved by a decision of the health care authority or its agent may appeal that decision.~~

~~(1) **Eligibility appeals.** Decisions concerning eligibility determinations are reviewable by the health care authority. The PEBB appeals manager must receive the appeal within ninety days from the date of the denial notice.~~

~~(2) **Noneligibility appeals.** Appeals of decisions made by the agency's self-insured medical plans, managed health care plans, and other agency contractors are governed by the appeal provisions of those plans. Those appeals are not subject to this chapter, except for eligibility determinations.~~

~~(3) **Dental plan appeals.** Any enrollee of the health care authority's self-administered dental plan aggrieved by a decision of the agency or its agent may appeal to the PEBB appeals manager. The PEBB appeals manager must receive the appeal within ninety days from the date of the denial notice.~~

~~(4) **Retirement plan age appeals.** Employees who do not meet their Washington state-sponsored retirement plan's age requirements when their employer paid or COBRA coverage ends, but who meet the age requirement within sixty days of coverage ending, may appeal the denial of their retiree insurance eligibility. The PEBB appeals manager must receive the appeal within ninety days from the date of the denial notice. Employees must meet other retiree insur-~~

~~ance election procedural requirements. Eligibility denials caused by these circumstances may be reversed:~~

~~(a) Misleading or incorrect written information provided by employees of the health care authority or employers;~~

~~(b) Loss of COBRA coverage due to Medicare eligibility;~~

~~(c) Other related miscalculations of the duration of COBRA coverage; or~~

~~(d) Administrative errors or delays attributable to the state that have material impact on eligibility.~~

~~(5) **Limited retiree insurance coverage reinstatement.** Reinstatement of a retiree's insurance coverage may be approved when coverage was terminated because of late payment or late paperwork, or in extraordinary circumstances such as the retiree's impaired decision-making which adversely affects eligibility. No retiree's insurance coverage may be reinstated more than three times. Reinstatement may be approved only if:~~

~~(a) The retiree or a representative acting on their behalf submits a written appeal within sixty days after the notice of termination was mailed; and~~

~~(b) The retiree agrees to make payment in accordance with the terms of an agreement with the HCA-)) Any employee or employee's dependent aggrieved by a decision made by an employing agency with regard to public employee benefits eligibility or enrollment may appeal that decision to the employing agency.~~

Note: Eligibility decisions address whether an employee or an employee's dependent is entitled to insurance coverage, as described in PEBB rules and policies. Enrollment decisions address the application for PEBB benefits as described in PEBB rules and policies, including but not limited to the submission of proper documentation and meeting enrollment deadlines.

The employing agency may only reverse eligibility or enrollment decisions based on circumstances that arose due to delays caused by the employing agency or error(s) made by the employing agency.

(1) Any employee or employee's dependent aggrieved by an eligibility or enrollment decision made by an employing agency may appeal the decision by submitting a written request for review to the employing agency. The employing agency must receive the request for review within thirty days of the date of the initial denial notice. The contents of the request for review are to be provided in accordance with WAC 182-16-040.

(a) Upon receiving the request for review, the employing agency shall make a complete review of the initial denial by one or more staff who did not take part in the initial denial. As part of the review, the employing agency may hold a formal meeting or hearing, but is not required to do so.

(b) The employing agency shall render a written decision within thirty days of receiving the request for review. The written decision shall be sent to the appellant.

(c) A copy of the employing agency's written decision shall be sent to the employing agency's administrator or designee and to the PEBB appeals manager. The employing agency's written decision shall become the employing agency's final decision effective fifteen days after the date it is rendered.

(2) Any employee or employee's dependent who disagrees with the employing agency's decision in response to a request for review, as described in subsection (1) of this section, may appeal that decision by submitting a notice of appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal within thirty days of the date of the employing agency's written decision on the request for review.

As well, any employee or employee's dependent may appeal a decision about premium payments by submitting a notice of appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal within thirty days of the date of the denial notice. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision within thirty days of receiving the notice of appeal. The written decision shall be sent to the appellant.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

NEW SECTION

WAC 182-16-032 How can a retiree or self-pay enrollee appeal a decision made by the PEBB benefits services program regarding eligibility, enrollment or premium payments? Any retiree or self-pay enrollee aggrieved by a decision made by the PEBB benefits services program with regard to public employee benefit eligibility, enrollment, or premium payments may appeal the decision to the PEBB appeals committee.

Note: Eligibility decisions address whether a retiree, self-pay enrollee or their dependent is entitled to insurance coverage, as described in PEBB rules and policies. Enrollment decisions address the application for PEBB benefits as described in PEBB rules and policies, including, but not limited to the submission of proper documentation, enrollment deadlines, and premium related issues.

The PEBB appeals manager must receive the notice of appeal within sixty days of the date of the denial notice by the PEBB benefits services program. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(1) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(2) The PEBB appeals committee shall render a written decision within thirty days of receiving the notice of appeal. The written decision shall be sent to the appellant.

(3) Any appellant who disagrees with the decisions of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

NEW SECTION

WAC 182-16-034 How can a PEBB enrollee appeal a decision regarding the administration of a PEBB medical plan, insured dental plan, life insurance, long-term care insurance, long-term disability insurance, or property or

casualty insurance? Any PEBB enrollee aggrieved by a decision regarding the administration of a PEBB medical plan, insured dental plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance may do so by following the appeal provisions of those plans. Those appeals are not subject to this chapter, except for eligibility, enrollment and premium payment determinations. Employees and their dependents should refer to WAC 182-16-030 for eligibility, enrollment and premium payment appeals. Retirees, self-pay enrollees, and their dependents should refer to WAC 182-16-032 for eligibility, enrollment and premium payment appeals.

NEW SECTION

WAC 182-16-036 How can an enrollee appeal a decision regarding the administration of benefits offered under the state's salary reduction plan? (1) Any enrollee aggrieved by a decision regarding the medical FSA and DCAP offered under the state's salary reduction plan may appeal that decision to the third-party administrator contracted to administer the plan.

(2) Any enrollee who disagrees with a decision in response to an appeal filed with the third-party administrator that administers the medical FSA and DCAP under the state's salary reduction plan may appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal within thirty days of the date of the appeal decision by the third-party administrator that administers the medical FSA and DCAP offered under the state's salary reduction plan. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision within thirty days of receiving the notice of appeal. The written decision shall be sent to the appellant.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

(3) Any enrollee aggrieved by a decision regarding the administration of the premium payment plan offered under the state's salary reduction plan may appeal that decision to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal within thirty days of the date of the denial notice by the PEBB benefits services program. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision within thirty days of receiving the notice of appeal. The written decision shall be sent to the appellant.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

NEW SECTION

WAC 182-16-037 How can an enrollee appeal a decision by the agency's self-insured dental plan? Any enrollee

aggrieved by a decision by the agency's self-insured dental plan may appeal that decision to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal within thirty days of the date of the denial notice by the agency's self-insured dental plan. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(1) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(2) The PEBB appeals committee shall render a written decision within thirty days of receiving the notice of appeal. The written decision shall be sent to the appellant.

(3) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

NEW SECTION

WAC 182-16-038 How can an entity or organization appeal a decision to deny its participation in PEBB? Any entity or organization whose application to participate in PEBB benefits has been denied may appeal the decision to the PEBB appeals committee. For rules regarding eligible entities, see WAC 182-12-111. The PEBB appeals manager must receive the notice of appeal within thirty days of the date of the denial notice. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(1) The PEBB appeals manager shall notify the appealing party in writing when the notice of appeal has been received.

(2) The PEBB appeals committee shall render a written decision on the notice of appeal within thirty days of receiving the notice of appeal. The written decision shall be sent to the appealing party.

(3) Any appealing party aggrieved with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-16-040 ((Appeals—Notice of appeal contents)) What should the request for review or notice of appeal contain? ((Except as provided by RCW 48.43.530 and 48.43.535 and WAC 182-16-030(2), any person aggrieved by a decision of the health care authority or its agent may appeal that decision by filing a notice of appeal with the PEBB appeals manager. The notice of appeal must)) A request for review or notice of appeal is to contain:

(1) ((The name and mailing address of the enrollee;

(2)) The name and mailing address of the appealing party;

((3)) (2) The name and mailing address of the appealing party's representative, if any;

(3) Documentation, or reference to documentation, of decisions previously rendered through the appeal process, if any;

(4) A statement identifying the specific portion of the decision being appealed ((making it clear)) and clarifying what is believed to be unlawful or ((unjust)) in error;

(5) A ((clear and concise)) statement of facts in support of the appealing party's position;

(6) Any information or documentation that the appealing party would like considered and substantiates why the decision should be reversed. Information or documentation submitted at a later date, unless specifically requested by the PEBB appeals manager, may not be considered in the appeal decision;

(7) ((A copy of the health care authority's or its agent's response to the issue the appealing party has raised;

(8)) The type of relief sought;

((9)) (8) A statement that the appealing party has read the notice of appeal and believes the contents to be true;

((10)) (9) The signature of the appealing party((s signature and)) or the ((signature of his or her)) appealing party's representative((, if any;

(11) The appealing party shall file the original notice of appeal with the PEBB benefits services program using hand delivery, electronic mail or United States Postal Service mail. The notice of appeal must be received by the PEBB benefits services program within ninety days after the decision of the PEBB staff was mailed to the appealing party. The PEBB appeals manager shall acknowledge receipt of the copies filed with the PEBB benefits services program;

(12) The health care authority's appeals committee will render a written decision within thirty working days after receipt of the complete notice of appeal).

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-16-050 ((Appeals—Hearings)) How can an enrollee or entity get a hearing if aggrieved by a decision made by the PEBB appeals committee? (1) ((If the appealing party is not satisfied with the decision of the health care authority's)) Any party aggrieved by a decision of the PEBB appeals committee, ((the appealing party)) may request an administrative hearing.

(2) The request must be made in writing to the PEBB appeals manager. ((The appeal is not effective unless)) The PEBB appeals manager must receive((s)) the ((written)) request for ((a)) an administrative hearing within thirty days of the date of the ((appeals)) written decision ((was mailed to the appealing party)) by the PEBB appeals committee.

((2)) (3) The agency shall set the time and place of the hearing and give not less than twenty days notice to all parties ((and persons who have filed written petitions to intervene)).

((3)) (4) The administrator, or his or her designee, shall preside at all hearings resulting from the filings of appeals under this chapter.

((4)) (5) All hearings must be conducted in compliance with these rules, chapter 34.05 RCW and chapter 10-08 WAC as applicable.

((5)) (6) Within ninety days after the hearing record is closed, the administrator or his or her designee shall render a decision which shall be the final decision of the agency. A copy of that decision ((accompanied by a written statement of the reasons for the decision)) shall be ((served on)) mailed to all parties ((and persons who have intervened)).

WSR 08-17-083
PROPOSED RULES
GAMBLING COMMISSION

[Filed August 19, 2008, 2:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-08-003.

Title of Rule and Other Identifying Information: Alternative #2 Up filed at the August 2008 commission meeting: Amending WAC 230-15-035 Authorizing new games or changing game rules, 230-15-040 Requirements for authorized card games, and 230-15-045 Withdrawing ~~approved~~ card games authorization.

Hearing Location(s): Red Lion Hotel, 303 West North River Drive, Spokane, WA 99201, (509) 326-8000, on October 10, 2008, at 9:30 a.m.

Date of Intended Adoption: October 10, 2008.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by October 1, 2008.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by October 1, 2008, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: At their May 2008 meeting, the commission filed a petition for rule change submitted by the Recreational Gaming Association (RGA) requesting that card players be allowed to use community cards in card games (such as Baccarat or Mini-Baccarat) and that nickels and dimes be used in any card game that charges a commission.

At their June 2008 meeting, at the request of the RGA, the commission filed Alternative #1 that would specifically allow Mini-Baccarat and no other games that allow community cards.

At their August 2008 commission meeting, the commission filed Alternative #2 in response to questions raised by Chair Bierbaum at the July 2008 commission meeting. Alternative #2 would:

-Switch the order of WAC 230-15-035 and 230-15-040 in the rules manual. The requirement that card game licensees must operate only card games the director or the director's designee has specifically authorized should be listed before what games are authorized.

-Add WAC 230-15-040(4), to clarify that Mini-Baccarat is authorized to be operated as explained for Baccarat in The New Complete Hoyle, Revised or Hoyle's Encyclopedia of Card Games, including three subsections for clarification.

-Finally, small housekeeping changes to WAC 230-15-045.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Recreational Gaming Association, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

August 18, 2008

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending Order 617, filed 10/22/07, effective 1/1/08)

WAC 230-15-035 ((Requirements for authorized card games.)) Authorizing new games or changing game rules. (((1) In order for a game to be authorized, the game must:

(a) ~~Be played with standard playing cards or with electronic card facsimiles approved by the director or the director's designee; and~~

(b) ~~Offer no more than three separate games with a single hand of cards. We consider bonus features and progressive jackpots separate games. If a player does not have to place a separate wager to participate, we do not consider it a separate game. An example of this is an "envy" or "share the wealth" pay out when another player achieves a specific hand; and~~

(c) ~~Not allow side bets between players.~~

(2) ~~Card game licensees may use more than one deck of cards for a specific game. They also may remove cards to comply with rules of a specific game, such as Pinochle or Spanish 21.~~

(3) ~~Players must:~~

(a) ~~Compete against all other players on an equal basis for nonhouse-banked games or against the house for house-banked games. All players must compete solely as a player in the card game; and~~

(b) ~~Receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager; and~~

(c) ~~Not place wagers on any other player's or the house's hand or make side wagers with other players, except for:~~

(i) ~~An insurance wager placed in the game of Blackjack; or~~

(ii) ~~An "envy" or "share the wealth" wager which allows a player to receive a prize if another player wins a jackpot or odds based wager; or~~

(iii) ~~A tip wager made on behalf of a dealer.~~

(4) ~~A player's win or loss must be determined during the course of play of a single card game.)~~ Card game licensees must operate only the card games the director or the director's designee has specifically authorized. The director or the director's designee authorizes each new card game or changes to existing card games on an individual basis. A list of all authorized games and the rules of play are available at all commission offices and on the commission web site.

(1) Card game licensees must submit:

(a) Requests for authorizing new card games in the format we require; and

(b) Changes to an existing card game in writing.

(2) The director or the director's designee will notify the licensee in writing if the request is denied. The notification will include reasons for the denial and provide the licensee all information necessary to file a petition to the commission for rule making.

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

~~WAC 230-15-040 ((Authorizing new games or changing game rules.)) Requirements for authorized card games. ((Card game licensees must operate only the card games the director or the director's designee has specifically authorized. The director or the director's designee authorizes each new card game or changes to existing card games on an individual basis. A list of all authorized games and the rules of play are available at all commission offices and on the commission web site.~~

~~(1) Card game licensees must submit:~~

~~(a) Requests for authorizing new card games in the format we require; and~~

~~(b) Changes to an existing card game in writing.~~

~~(2) The director or the director's designee will notify the licensee in writing if the request is denied. The notification will include reasons for the denial and provide the licensee all information necessary to file a petition to the commission for rule making.)) (1) In order for a game to be authorized, the game must:~~

~~(a) Be played with standard playing cards or with electronic card facsimiles approved by the director or the director's designee; and~~

~~(b) Offer no more than three separate games with a single hand of cards. We consider bonus features and progressive jackpots separate games. If a player does not have to place a separate wager to participate, we do not consider it a separate game. An example of this is an "envy" or "share the wealth" pay out when another player achieves a specific hand; and~~

~~(c) Not allow side bets between players.~~

~~(2) Card game licensees may use more than one deck of cards for a specific game. They also may remove cards to comply with rules of a specific game, such as Pinochle or Spanish 21.~~

~~(3) Players must:~~

~~(a) Compete against all other players on an equal basis for nonhouse-banked games or against the house for house-banked games. All players must compete solely as a player in the card game; and~~

~~(b) Receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager; and~~

~~(c) Not place wagers on any other player's or the house's hand or make side wagers with other players, except for:~~

~~(i) An insurance wager placed in the game of Blackjack; or~~

~~(ii) An "envy" or "share the wealth" wager which allows a player to receive a prize if another player wins a jackpot or odds-based wager; or~~

~~(iii) A tip wager made on behalf of a dealer.~~

~~(4) Mini-Baccarat is authorized when operated in the manner explained for Baccarat in the most current version of *The New Complete Hoyle, Revised* or *Hoyle's Encyclopedia of Card Games*, or similar authoritative book on card games we have approved. However:~~

~~(a) Card game licensees may make immaterial modifications to the game; and~~

~~(b) Subsections (1), (2), and (3) of this section do not apply; and~~

~~(c) The number of players is limited under WAC 230-15-055.~~

~~(5) A player's win or loss must be determined during the course of play of a single card game.~~

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

WAC 230-15-045 Withdrawing ((approved)) card game(s) authorization. If the director or the director's designee withdraws ((approval)) authorization of a card game:

(1) The director or the director's designee will give licensees written notice and an opportunity to object to the decision. If a licensee files an objection in writing, an administrative law judge will review the decision.

(2) The director or the director's designee will provide written notice to impacted licensees after a final decision is made.

WSR 08-17-084

PROPOSED RULES

GAMBLING COMMISSION

[Filed August 19, 2008, 2:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-06-010.

Title of Rule and Other Identifying Information: New sections WAC 230-06-109 Sales invoices for merchandise prizes, 230-09-022 Wager limits for fund-raising events and 230-06-083 Card game licensees reporting changes in licensed employees; amending WAC 230-09-020 Post house rules and 230-15-205 Card tournament licenses; and repealing WAC 230-06-115 Using checks or credit cards to purchase gambling equipment, products, or services, 230-03-290 Card room employees working for additional employer or changing employer, and 230-15-175 Reporting card room employees no longer working.

Hearing Location(s): Red Lion Hotel, 303 West North River Drive, Spokane, WA 99201, (509) 326-8000, on October 10, 2008, at 9:30 a.m.

Date of Intended Adoption: October 10, 2008.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by October 1, 2008.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by October 1, 2008, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Housekeeping changes.

Reasons Supporting Proposal: This new rule would require licensees who offer merchandise prizes to have a sales receipt or invoice provided by the seller. The invoice or receipt must include the following information: (1) Date of purchase; (2) the seller's name and address; (3) a full description of each item purchased; (4) quantity of items purchased; and (5) cost per individual items purchased.

Using checks or credit cards to purchase gambling equipment, products, or services.

WAC 230-06-115, repealing this rule which was inadvertently included in our new rules manual. This requirement was repealed in Administrative Order 459, effective August 2006.

Reporting Changes in Card Room Employees (CRE):

Licensing services has an online process for card game licensees to notify us of changes in their licensed CREs. When this rule was rewritten during RSP, the requirement to notify us of CRE employment changes was inadvertently moved to the CREs. This change will require card game licensees to notify us when a licensed CRE changes or adds an employer, or is no longer working for them. This change also combines two rules that relate to this requirement (WAC 230-03-290 and 230-15-175) into WAC 230-06-083.

Card Tournaments: WAC 230-15-205: Class D card room licensees may offer a card tournament without a tournament license if players are not charged a fee to play. They must get a tournament license if they charge players a fee to play. The word "buy-in" was inadvertently added into this rule and needs to be removed. This will allow class D licensees to conduct no-fee tournaments without obtaining an additional tournament license.

Fund-Raising Events: The commission does not have limits on wagers made with poker tournament chips or scrip. However, fund-raising event licensees may set limits. WAC 230-09-020(2) needs to be rewritten to clarify this requirement. The proposed amendment requires licensees to include game rules and payout restrictions in house rules. Wagering limits were moved from WAC 230-09-020 to a new rule so they are easier to locate.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

August 18, 2008

Susan Arland

Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-03-290

Card room employees working for additional employer or changing employer.

NEW SECTION

WAC 230-06-083 Card game licensees reporting changes in licensed employees. Card game licensees, except Class B or Class D must:

(1) Submit an add/transfer application and the required fees before allowing a licensed card room employee to begin working.

(2) Notify us in writing when a licensed card room employee no longer works for them. We must receive the notice at our Lacey office within ten days of the card room employee terminating employment.

NEW SECTION

WAC 230-06-109 Sales invoices for merchandise prizes. Operators may purchase merchandise prizes from a licensed or unlicensed distributor or business. The sales invoice or receipt must include at least the following information:

- (1) The date of purchase; and
- (2) The seller's name and complete address; and
- (3) A full description of each item purchased; and
- (4) The quantity of items purchased; and
- (5) The cost per individual items purchased.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-06-115

Using checks or credit cards to purchase gambling equipment, products, or services.

AMENDATORY SECTION (Amending Order 604, filed 10/27/06, effective 1/1/08)

WAC 230-09-020 Post house rules. Licensees must develop house rules to govern the scope and manner of all gambling activities they will conduct during the FRE and prominently post these rules in the area where they will conduct the FRE. At a minimum, these rules (~~must~~:

~~(1) State that single wagers must not exceed ten dollars. Raffle wagers may exceed ten dollars, but must not exceed the limits set forth in RCW 9.46.0277; and~~

~~(2) State that there are no limits on wagers made with scrip and no limits on the number of poker tournament chips that may be wagered; and~~

~~(3) Prohibit tipping;)) include:~~

~~(1) Game rules; and~~

~~(2) Wager limits; and~~

~~(3) Payout restrictions; and~~

~~(4) That tipping is prohibited.~~

NEW SECTION

WAC 230-09-022 Wagering limits for fund-raising events. (1) Wager limits must not exceed ten dollars. However, raffle wagers must not exceed the limits in RCW 9.46.0277; and

(2) There are no limits on wagers made using scrip or poker tournament chips.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-15-175 Reporting card room employees no longer working.

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

WAC 230-15-205 Card tournament licenses. (1) Class A, B, E, F, or house-banked licensees may conduct a card tournament where a fee or buy-in is charged without getting a card tournament license, but they must only operate those card games approved for their license class.

(2) Class D licensees must obtain a card tournament license to charge a fee (~~or buy-in~~) for a card tournament.

**WSR 08-17-085
PROPOSED RULES
GAMBLING COMMISSION**
[Filed August 19, 2008, 3:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-05-031.

Title of Rule and Other Identifying Information: Amending WAC 230-15-030 Authorized nonhouse-banked card games and new section WAC 230-16-157 Electronic poker tables.

Hearing Location(s): Red Lion Hotel, 303 West North River Drive, Spokane, WA 99201, (509) 326-8000, on October 10, 2008, at 9:30 a.m.

Date of Intended Adoption: October 10, 2008.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by October 1, 2008.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by October 1, 2008, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: PokerTek Inc. has submitted a petition for rule change requesting that electronic poker gambling tables be authorized for use in card rooms. The electronic poker table, PokerPro, provides an opportunity to play poker without a center dealer and uses electronic facsimiles of cards and chips. No physical gambling chips or cards are used during play.

PokerTek withdrew a similar petition at the March 2008 commission meeting. PokerTek has amended their petition to address staff's technical concerns.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: PokerTek, Inc., private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

August 18, 2008
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

WAC 230-15-030 Authorized nonhouse-banked card games. (1) Only the following nonhouse-banked card games are authorized:

- (a) Poker;
- (b) Hearts;
- (c) Pinochle;
- (d) Cribbage;
- (e) Rummy;
- (f) Panguingue (Pan);
- (g) Pitch; and
- (h) Bid Whist.

(2) Card game licensees must operate these games in the manner explained in the most current version of *The New Complete Hoyle, Revised* or *Hoyle's Modern Encyclopedia of Card Games*, or similar authoritative book on card games we have approved. Card game licensees may make immaterial modifications to the games.

(3) Card game licensees may offer poker with electronic poker tables, as authorized by WAC 230-16-157. The specific poker games offered must comply with the standard rules of play as referenced in subsection (2) of this section, and the following operational rules that are unique to electronic poker tables:

(a) A licensed card room employee must supervise all gaming conducted with the electronic poker table(s); and

(b) Every player must establish an account unique to each individual by presenting, at minimum, valid identification, proof of age, and a signature sample; and

(c) A player may fund his or her account with cash, funds drawn on U.S. bank accounts, or gaming chips issued by the card room licensee; and

(d) A player or card room employee must transfer funds from the player's account to a specified seat at a designated electronic poker table and activate play at the seat by use of a nonvalue identification card unique to the player; and

(e) Neither a player nor card room employee may insert cash or other instruments of value in the electronic poker table; and

(f) Players may purchase chips only at their assigned table through funds accessible from their individual account; and

(g) Fees may be assessed by time, per hand played, or by rake, and a licensed card room employee shall oversee the collection of all fees and the deposit of said fees in the table's electronic drop box; and

(h) A minimum of two or more players is required before a game can begin; and

(i) All wagers must be made with chips issued by and used as part of the electronic poker table; and

(j) Games offered on electronic poker tables must operate as center-dealt games; and

(k) All poker games offered with electronic poker tables must meet all applicable surveillance requirements; and

(l) If a player wins a player supported jackpot or other prize of five hundred dollars or more while playing on an electronic poker table, the winning combination of cards must be recorded by surveillance and an electronic or paper record of the card combination must be generated and retained in accordance with agency rules; and

(m) To cash out, a player must conclude play at the table, remove his or her player account card, and present it with valid photo identification to a licensed card room employee at the cashier's cage; the card room employee must confirm the player's identity and, if applicable, cause appropriate financial and/or tax reporting forms to be completed; and

(n) Because the electronic poker tables operate with a self-contained accounting system, no count room procedures are required; however, all fees collected by electronic poker tables will be recorded as part of the card room's daily records at least once every twenty-four hours.

NEW SECTION

WAC 230-16-157 Electronic poker tables. (1) Manufacturers of electronic poker tables must ensure their poker table system:

(a) Reproduces accurate facsimiles of a single, standard deck of cards; and

(b) Randomly shuffles cards before each round of play; and

(c) Reproduces accurate facsimiles of chips, clearly evidencing chip color and value; and

(d) Employs an accounting system or software to document the method of collection for game fees and, if applicable, player supported jackpot funds and fees; and

(e) Contains a backup system that records and displays at least five previous rounds of play; and

(f) Contains security protocol which prevents unauthorized access; and

(g) May be operated only by card room personnel and does not allow players to play solely against the equipment; and

(h) Allows testing of the computer software; and

(i) Operates in accordance with approved internal controls specific to electronic poker tables.

(2) Manufacturers must have a licensed gaming laboratory test and certify the system complies with subsection (1) of this section.

(3) Manufacturers must also submit their system to us for testing, as explained in WAC 230-06-050, with the certification from the independent laboratory and receive our approval before electronic poker tables may be offered for play.

WSR 08-17-086

PROPOSED RULES

BUILDING CODE COUNCIL

[Filed August 19, 2008, 3:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-14-042.

Title of Rule and Other Identifying Information: Amending chapter 51-11 WAC, Washington State Energy Code.

Hearing Location(s): Renton Holiday Inn Select, One South Grady Way, Renton, WA 98055-2500, on October 10, 2008, at 10:00 a.m.

Date of Intended Adoption: November 14, 2008.

Submit Written Comments to: John Neff, Council Chair, P.O. Box 42525, Olympia, WA 98504-2525, e-mail sbcc@ctd.wa.gov, fax (360) 586-9383, by October 10, 2008.

Assistance for Persons with Disabilities: Contact Sue Mathers by October 3, 2008, TTY (360) 753-7427 or (360) 725-2966.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The state building code council is considering revisions to the energy code to (1) allow for unvented attic assemblies and (2) require residential duct testing or placing the heating systems inside the conditioned space. The requirements for unvented attic assemblies are found in Sections 502.1.6.3, 1007 and 1313.2, and a new definition is added to Section 201. The proposed requirements for residential duct sealing and testing are found in Section 503.10.2.

Reasons Supporting Proposal: RCW 19.27A.025 and 19.27A.045.

Statutory Authority for Adoption: RCW 19.27A.025, 19.27A.045.

Statute Being Implemented: Chapters 19.27, 19.27A, and 34.05 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The council is seeking comments on the issue proposed in the rule shown below.

Name of Proponent: Washington state building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Krista Braaksma, P.O. Box 42525, Olympia, WA 98504-2525, (360) 725-2964; and Enforcement: Local jurisdictions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed amendment is intended to reduce the cost of residential cooling systems and was determined to not have a disproportionate cost on small businesses. This rule effectively cancels out the code change previously proposed and reinstates the previous code provision; therefore, there is no difference in cost.

A cost-benefit analysis is not required under RCW 34.05.328. This rule reinstates a previous rule and poses no change in cost or compliance.

August 19, 2008

John P. Neff

Council Chair

AMENDATORY SECTION (Amending WSR 07-01-089, filed 12/19/06, effective 7/1/07)

WAC 51-11-0201 Scope. The following definitions shall apply to chapters 1 through 20.

201.1 Application of Terms: For the purposes of this Code, certain abbreviations, terms, phrases, words and their derivatives, shall be as set forth in this chapter. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used. In the event there is a question about the definition of a term, the definitions for terms in the codes enumerated in RCW 19.27.031 and the edition of Webster's dictionary referenced therein shall be considered as the sources for providing ordinarily accepted meanings.

Addition: See the Washington State Building Code.

Advanced framed ceiling: Advanced framing assumes full and even depth of insulation extending to the outside edge of exterior walls. (See Standard Framing and Section 1007.2 of this Code.)

Advanced framed walls: Studs framed on twenty-four inch centers with double top plate and single bottom plate. Corners use two studs or other means of fully insulating corners, and one stud is used to support each header. Headers consist of double 2X material with R-10 insulation between the header and exterior sheathing. Interior partition wall/exterior wall intersections are fully insulated in the exterior

wall. (See Standard Framing and Section 1005.2 of this Code.)

AFUE. Annual fuel utilization efficiency: Unlike steady state conditions, this rating is based on average usage including on and off cycling as set out in the standardized Department of Energy Test Procedures.

Air conditioning, comfort: The process of treating air to control simultaneously its temperature, humidity, cleanliness and distribution to meet requirements of the conditioned space.

Air-impermeable insulation. An insulation having an air permeance equal to or less than 0.02L/s-m² at 75 Pa pressure differential tested in accordance with ASTM E 2178 or ASTM E 283.

ARI: Air-Conditioning and Refrigeration Institute.

ASHRAE: American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc.

ASTM: American Society for Testing and Materials

Automatic: Self-acting, operating by its own mechanism when actuated by some impersonal influence, as for example, a change in current strength, pressure, temperature or mechanical configuration. (See **Manual**.)

Below grade walls: Walls or the portion of walls which are entirely below the finish grade or which extend two feet or less above the finish grade.

Boiler capacity: The rate of heat output in Btu/h measured at the boiler outlet, at the design inlet and outlet conditions and rated fuel/energy input.

Building envelope: For Group R Occupancy, the elements of a building which enclose conditioned spaces through which thermal energy may be transferred to or from the exterior or to or from spaces exempted by the provisions of Section 101.3.1. For other than Group R Occupancy, the elements of a building which enclose conditioned spaces through which thermal energy may be transferred to or from the exterior, or to or from unconditioned spaces, or to or from semi-heated spaces, or to or from spaces exempted by the provisions of Section 1301.

Building, existing: See the Washington State Building Code.

Building official: The official authorized to act in behalf of a jurisdiction code enforcement agency or its authorized representative.

Building project: A building or group of buildings, including on-site energy conversion or electric-generating facilities, which utilize a single submittal for a construction permit or are within the boundary of a contiguous area under one ownership.

Conditioned floor area: (See Gross conditioned floor area.)

Conditioned space: A cooled space, heated space (fully heated), heated space (semi-heated) or indirectly conditioned space.

Cooled space: An enclosed space within a building that is cooled by a cooling system whose sensible capacity

a. Exceeds 5 Btu/(h·ft²), or

b. Is capable of maintaining space dry bulb temperature of 90°F or less at design cooling conditions.

COP - Coefficient of performance: The ratio of the rate of net heat output (heating mode) or heat removal (cool-

ing mode) to the rate of total on-site energy input to the heat pump, expressed in consistent units and under designated rating conditions. (See Net Heat Output, Net Heat Removal, Total On-Site Energy Input.)

Daylighted zone:

a. Under overhead glazing: The area under overhead glazing whose horizontal dimension, in each direction, is equal to the overhead glazing dimension in that direction plus either the floor to ceiling height or the dimension to a ceiling height opaque partition, or one-half the distance to adjacent overhead or vertical glazing, whichever is least.

b. At vertical glazing: The area adjacent to vertical glazing which receives daylighting from the glazing. For purposes of this definition and unless more detailed daylighting analysis is provided, the daylighting zone depth is assumed to extend into the space a distance of 15 feet or to the nearest ceiling height opaque partition, whichever is less. The daylighting zone width is assumed to be the width of the window plus either two feet on each side (the distance to an opaque partition) or one-half the distance to adjacent overhead or vertical glazing, whichever is least.

Daylight sensing control (DS): A device that automatically regulates the power input to electric lighting near the glazing to maintain the desired workplace illumination, thus taking advantage of direct or indirect sunlight.

Deadband: The temperature range in which no heating or cooling is used.

Demand control ventilation (DCV): A ventilation system capability that provides for the automatic reduction of outdoor air intake below design rates when the actual occupancy of spaces served by the system is less than design occupancy.

Design cooling conditions: The cooling outdoor design temperature from the 0.5% column for summer from the Puget Sound Chapter of ASHRAE publication "Recommended Outdoor Design Temperatures, Washington State, ASHRAE."

Design heating conditions: The heating outdoor design temperature from the 0.6% column for winter from the Puget Sound Chapter of ASHRAE publication "Recommended Outdoor Design Temperatures, Washington State, ASHRAE."

Door: All operable opening areas, which are not glazing, in the building envelope including swinging and roll-up doors, fire doors, smoke vents and access hatches.

Door area: Total area of door measured using the rough opening and including the door and frame.

Dwelling unit: See the Washington State Building Code.

Economizer, air: A ducting arrangement and automatic control system that allows a cooling supply fan system to supply outside air to reduce or eliminate the need for mechanical refrigeration during mild or cold weather.

Economizer, water: A system by which the supply air of a cooling system is cooled directly, indirectly or both, by evaporation of water or by other appropriate fluid in order to reduce or eliminate the need for mechanical refrigeration.

EER. Energy efficiency ratio: The ratio of net equipment cooling capacity in Btu/h to total rate of electric input in watts under designated operating conditions.

Efficiency, HVAC system: The ratio of useful energy (at the point of use) to the energy input for a designated time period, expressed in percent.

Emissivity: The ability to absorb infrared radiation. A low emissivity implies a higher reflectance of infrared radiation.

Energy: The capacity for doing work; taking a number of forms which may be transformed from one into another, such as thermal (heat), mechanical (work), electrical and chemical; in customary units, measured in kilowatt-hours (kWh) or British thermal units (Btu). (See **New energy**.)

Energy, recovered: (See **Recovered energy**.)

Exterior envelope: (See **Building envelope**.)

F-Factor: The perimeter heat loss factor expressed in Btu/hr·ft·°F.

F-Value: (See F-Factor.)

Facade area: Vertical projected area including nonhorizontal roof area, overhangs, cornices, etc. measured in elevation in a vertical plane parallel to the plane of the building face.

Floor over unconditioned space: A floor which separates a conditioned space from an unconditioned space which is buffered from exterior ambient conditions including vented crawl spaces and unconditioned basements or other similar spaces, or exposed to exterior ambient conditions including open parking garages and enclosed garages which are mechanically ventilated.

Garden window: A multisided glazing product that projects beyond the plane of the wall.

Glazed wall system: A category of site assembled fenestration products used in the NFRC 100 and NFRC 200 rating procedures that include curtainwalls.

Glazing: All areas, including the frames, in the shell of a conditioned space that let in natural light including windows, clerestories, skylights, sliding or swinging glass doors and glass block walls.

Glazing area: Total area of the glazing measured using the rough opening, and including the glazing, sash, and frame. For doors where the daylight opening area is less than 50% of the door area, the glazing area is the daylight opening area. For all other doors, the glazing area is the door area.

Gross conditioned floor area: The horizontal projection of that portion of interior space which is contained within exterior walls and which is conditioned directly or indirectly by an energy-using system, and which has an average height of five feet or greater, measured from the exterior faces.

Gross exterior wall area: The normal projection of the building envelope wall area bounding interior space which is conditioned by an energy-using system and which separates conditioned space from: Unconditioned space, or semi-heated space, or exterior ambient conditions or earth; includes opaque wall, vertical glazing and door areas. The gross area of walls consists of all opaque wall areas, including foundation walls, between floor spandrels, peripheral edges of floors, vertical glazing areas and door areas, where such surfaces are exposed to exterior ambient conditions and enclose a conditioned space including interstitial areas between two such spaces. The area of the wall is measured from the top of the floor insulation to the bottom of the roof insulation. (See **Below grade wall**.)

Gross floor area: The sum of the areas of the several floors of the building, including basements, cellars, mezzanine and intermediate floored tiers and penthouses of headroom height, measured from the exterior faces of exterior walls or from the center line of walls separating buildings, but excluding: Covered walkways, open roofed-over areas, porches and similar spaces. Pipe trenches, exterior terraces or steps, chimneys, roof overhangs and similar features.

Gross roof/ceiling area: A roof/ceiling assembly shall be considered as all components of the roof/ceiling envelope through which heat flows, thus creating a building transmission heat loss or gain, where such assembly is exposed to exterior ambient conditions and encloses a conditioned space. The assembly does not include those components that are separated from a heated and/or cooled space by a vented airspace. The gross area of a roof/ceiling assembly consists of the total interior surface of such assembly, including over-head glazing.

Guest room: See the Washington State Building Code.

Heat: The form of energy that is transferred by virtue of a temperature difference.

Heat storage capacity: The physical property of materials (mass) located inside the building envelope to absorb, store, and release heat.

Heated space (Fully heated): An enclosed space within a building, including adjacent connected spaces separated by an uninsulated component (e.g., basements, utility rooms, garages, corridors), which is heated by a heating system whose output capacity is

- a. Capable of maintaining a space dry-bulb temperature of 45°F or greater at design heating conditions; or
- b. 8 Btu/(h·ft²) or greater in Climate Zone 1 and 12 Btu/(h·ft²) or greater in Climate Zone 2.

Heated space (Semi-heated): An enclosed space within a building, including adjacent connected spaces separated by an uninsulated component (e.g., basements, utility rooms, garages, corridors), which is heated by a heating system

- a. Whose output capacity is 3 Btu/(h·ft²) or greater in Climate Zone 1 and 5 Btu/(h·ft²) or greater in Climate Zone 2; and
- b. Is not a Heated Space (Fully Heated).

High efficacy luminaire: A lighting fixture that does not contain a medium screw base socket (E24/E26) and whose lamps have a minimum efficiency of:

- a. 60 lumens per watt for lamps over 40 watts;
- b. 50 lumens per watt for lamps over 15 watts to 40 watts;
- c. 40 lumens per watt for lamps 15 watts or less.

HSPF. Heating season performance factor: The total heating output (in Btu) of a heat pump during its normal annual usage period for heating divided by the total (watt hour) electric power input during the same period, as determined by test procedures consistent with the U.S. Department of Energy "Test Procedure for Central Air Conditioners, Including Heat Pumps" published in Standard RS-30. When specified in Btu per watt hour an HSPF of 6.826 is equivalent to a COP of 2.0.

Humidistat: A regulatory device, actuated by changes in humidity, used for automatic control of relative humidity.

HVAC: Heating, ventilating and air conditioning.

HVAC system components: HVAC system components provide, in one or more factory-assembled packages, means for chilling and/or heating water with controlled temperature for delivery to terminal units serving the conditioned spaces of the buildings. Types of HVAC system components include, but are not limited to, water chiller packages, reciprocating condensing units and water source (hydronic) heat pumps. (See **HVAC system equipment**.)

HVAC system efficiency: (See **Efficiency, HVAC system**.)

HVAC system equipment: HVAC system equipment provides, in one (single package) or more (split system) factory-assembled packages, means for air circulation, air cleaning, air cooling with controlled temperature and dehumidification; and optionally, either alone or in combination with a heating plant, the functions of heating and humidifying. The cooling function may be either electrically or heat operated and the refrigerant condenser may be air, water or evaporatively cooled. Where the equipment is provided in more than one package, the separate packages shall be designed by the manufacturer to be used together. The equipment may provide the heating function as a heat pump or by the use of electric elements. (The word "equipment" used without modifying adjective may, in accordance with common industry usage, apply either to HVAC system equipment or HVAC system components.)

Indirectly conditioned space: An enclosed space within a building that is not a heated or cooled space, whose area weighted heat transfer coefficient to heated or cooled spaces exceeds that to the outdoors or to unconditioned spaces; or through which air from heated or cooled spaces is transferred at a rate exceeding three air changes per hour. Enclosed corridors between conditioned spaces shall be considered as indirectly conditioned space. (See **Heated Space, Cooled Space and Unconditioned Space**.)

Infiltration: The uncontrolled inward air leakage through cracks and interstices in any building element and around windows and doors of a building caused by the pressure effects of wind and/or the effect of differences in the indoor and outdoor air density.

Insulation baffle: A rigid material, resistant to wind driven moisture, the purpose of which is to allow air to flow freely into the attic or crawl space and to prevent insulation from blocking the ventilation of these spaces, or the loss of insulation. Example materials for this purpose are sheet metal, or wax impregnated cardboard.

Insulation position:

a. **Exterior Insulation Position:** A wall having all or nearly all of its mass exposed to the room air with the insulation on the exterior of the mass.

b. **Integral Insulation Position:** A wall having mass exposed to both room and outside air, with substantially equal amounts of mass on the inside and outside of the insulation layer.

c. **Interior Insulation Position:** A wall not meeting either of the above definitions; particularly a wall having most of its mass external to the insulation layer.

International Building Code (IBC): (See Washington State Building Code.)

International Mechanical Code (IMC): (See Washington State Building Code.)

IPLV—Integrated part-load value: A single number figure of merit based on part-load EER or COP expressing part-load efficiency for air conditioning and heat pump equipment on the basis of weighted operation at various load capacities for the equipment as specified in the Air-Conditioning and Refrigeration Institute (ARI) and Cooling Tower Institute (CTI) procedures.

Luminaire: A complete lighting unit consisting of a lamp or lamps together with the parts designed to distribute the light, to position and protect the lamps and to connect the lamps to the electric power supply.

Manual: Capable of being operated by personal intervention. (See **Automatic**.)

Microcell: A wireless communication facility consisting of an antenna that is either: (a) Four (4) feet in height and with an area of not more than 580 square inches; or (b) if a tubular antenna, no more than four (4) inches in diameter and no more than six (6) feet in length; and the associated equipment cabinet that is six (6) feet or less in height and no more than 48 square feet in floor area.

NFPA: National Fire Protection Association.

NFRC: National Fenestration Rating Council.

Net heat output: The change in the total heat content of the air entering and leaving the equipment (not including supplementary heat and heat from boilers).

Net heat removal: The total difference in heat content of the air entering and leaving the equipment (without heat) or the difference in total heat content of the water or refrigerant entering and leaving the component.

New energy: Energy, other than recovered energy, utilized for the purpose of heating or cooling. (See **energy**.)

Nominal R-value: The thermal resistance of insulation alone as determined in accordance with the U.S. Federal Trade Commission R-value rule (CFR Title 16, Part 460) in units of $h \cdot ft^2 \cdot ^\circ F/Btu$ at a mean temperature of 75°F. Nominal R-value refers to the thermal resistance of the added insulation in framing cavities or insulated sheathing only and does not include the thermal resistance of other building materials or air films.

Nonrenewable energy sources: All energy sources that are not renewable energy sources including natural gas, oil, coal, wood, liquified petroleum gas, steam, and any utility-supplied electricity.

Nonresidential: All buildings and spaces in the International Building Code (IBC) occupancies other than Group R.

Occupancy: See the Washington State Building Code.

Occupancy sensor: A device that detects occupants within an area, causing any combination of lighting, equipment or appliances to be turned on or shut off.

Opaque envelope areas: All exposed areas of a building envelope which enclose conditioned space, except openings for doors, glazing and building service systems.

Open blown: Loose fill insulation pneumatically installed in an unconfined attic space.

Outdoor air (outside air): Air taken from the outdoors and, therefore, not previously circulated through a building.

Overhead glazing: A glazing surface that has a slope of less than 60° from the horizontal plane.

Packaged terminal air conditioner: A factory-selected combination of heating and cooling components, assemblies or sections intended to serve a room or zone. (For the complete technical definition, see Standard RS-5.)

Permeance (perm): The ability of a material of specified thickness to transmit moisture in terms of amount of moisture transmitted per unit time for a specified area and differential pressure (grains per hour $\cdot ft^2 \cdot inches$ of HG). Permeance may be measured using ASTM E-96-00 or other approved dry cup method as specified in RS-1.

Personal wireless service facility: A Wireless Communication Facility (WCF), including a microcell, which is a facility for the transmission and/or reception of radio frequency signals and which may include antennas, equipment shelter or cabinet, transmission cables, a support structure to achieve the necessary elevation, and reception and/or transmission devices or antennas.

Pool cover: A vapor-retardant cover which lies on or at the surface of the pool.

Power: In connection with machines, the time rate of doing work. In connection with the transmission of energy of all types, the rate at which energy is transmitted; in customary units, it is measured in watts (W) or British Thermal Units per hour (Btu/h).

Process energy: Energy consumed in support of a manufacturing, industrial, or commercial process other than the maintenance of building comfort or amenities for building occupants.

Radiant slab floor: A slab floor assembly on grade or below, containing heated pipes, ducts, or electric heating cables that constitute a floor or portion thereof for complete or partial heating of the structure.

Readily accessible: See the Washington State Mechanical Code.

Recooling: The removal of heat by sensible cooling of the supply air (directly or indirectly) that has been previously heated above the temperature to which the air is to be supplied to the conditioned space for proper control of the temperature of that space.

Recovered energy: Energy utilized which would otherwise be wasted (i.e. not contribute to a desired end use) from an energy utilization system.

Reheat: The application of sensible heat to supply air that has been previously cooled below the temperature of the conditioned space by either mechanical refrigeration or the introduction of outdoor air to provide cooling.

Renewable energy sources: Renewable energy sources of energy (excluding minerals) are derived from: (1) Incoming solar radiation, including but not limited to, natural daylighting and photosynthetic processes; (2) energy sources resulting from wind, waves and tides, lake or pond thermal differences; and (3) energy derived from the internal heat of the earth, including nocturnal thermal exchanges.

Reset: Adjustment of the set point of a control instrument to a higher or lower value automatically or manually to conserve energy.

Roof/ceiling assembly: (See Gross roof/ceiling area.)

SEER - Seasonal Energy Efficiency Ratio: The total cooling output of an air conditioner during its normal annual usage period, in Btu's, divided by the total electric energy

input in watt-hours, during the same period, as determined by 10 CFR, Part 430.

Semi-heated space: Sub-category of **Heated Space**. (See **Heated Space**.)

Sequence: A consecutive series of operations.

Service systems: All energy-using systems in a building that are operated to provide services for the occupants or processes housed therein, including HVAC, service water heating, illumination, transportation, cooking or food preparation, laundering or similar functions.

Service water heating: Supply of hot water for domestic or commercial purposes other than comfort heating.

Shaded: Glazed area which is externally protected from direct solar radiation by use of devices permanently affixed to the structure or by an adjacent building, topographical feature, or vegetation.

Shading coefficient: The ratio of solar heat gain occurring through nonopaque portions of the glazing, with or without integral shading devices, to the solar heat gain occurring through an equivalent area of unshaded, 1/8 inch thick, clear, double-strength glass.

Note: Heat gains to be compared under the same conditions. See Chapter 30 of Standard RS-1, listed in Chapter 7 of this Code.

Shall: Denotes a mandatory code requirement.

Single family: One and two family residential dwelling units with no more than two units in a single building.

Skylight: (See **Overhead glazing**.)

Slab-below-grade: Any portion of a slab floor in contact with the ground which is more than 24 inches below the final elevation of the nearest exterior grade.

Slab-on-grade, exterior: Any portion of a slab floor in contact with the ground which is less than or equal to twenty-four inches below the final elevation of the nearest exterior grade.

Small business: Any business entity (including a sole proprietorship, corporation, partnership, or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has fifty or fewer employees, or which has a million dollars or less per year in gross sales, of window products.

Solar energy source: Source of natural daylighting and of thermal, chemical or electrical energy derived directly from conversion of incident solar radiation.

Solar heat gain coefficient (SHGC): The ratio of the solar heat gain entering the space through the glazing product to the incident solar radiation. Solar heat gain includes directly transmitted solar heat and absorbed solar radiation which is then reradiated, conducted or convected into the space.

Split system: Any heat pump or air conditioning unit which is provided in more than one assembly requiring refrigeration piping installed in the field.

Standard framing: All framing practices not defined as "intermediate" or "advanced" shall be considered standard. (See **Advanced framed ceiling**, **Advanced framed walls**, **Intermediate framed wall** and **Section 1005.2** of this Code.)

Substantial contact: A condition where adjacent building materials are placed in a manner that proximal surfaces are contiguous, being installed and supported as to eliminate

voids between materials, without compressing or degrading the thermal performance of either product.

System: A combination of central or terminal equipment or components and/or controls, accessories, interconnecting means, and terminal devices by which energy is transformed so as to perform a specific function, such as HVAC, service water heating or illumination.

Tapering: Installation of a reduced level of ceiling insulation at the eaves, due to reduced clearance.

Thermal by-pass: An area where the envelope surrounding the conditioned space is breached, or where an ineffective application compromises the performance of a thermal or infiltration barrier, increasing the structure's energy consumption by exposing finished surfaces to ambient conditions and additional heat transfer.

Thermal conductance (C): Time rate of heat flow through a body (frequently per unit area) from one of its bounding surfaces to the other for a unit temperature difference between the two surfaces, under steady conditions (Btu/hr • ft² • °F).

Thermal resistance (R): The reciprocal of thermal conductance (hr • ft² • °F/Btu).

Thermal transmittance (U): The coefficient of heat transmission (air to air). It is the time rate of heat flow per unit area and unit temperature difference between the warm side and cold side air films (Btu/hr • ft² • °F).

Thermal transmittance, overall (U_o): The overall (average) heat transmission of a gross area of the exterior building envelope (Btu/hr • ft² • °F). The U_o-factor applies to the combined effect of the time rate of heat flows through the various parallel paths, such as glazing, doors and opaque construction areas, comprising the gross area of one or more exterior building components, such as walls, floors or roof/ceiling.

Thermostat: An automatic control device actuated by temperature and designed to be responsive to temperature.

Total on-site energy input: The combination of all the energy inputs to all elements and accessories as included in the equipment components, including but not limited to, compressor(s), compressor sump heater(s), circulating pump(s), purge devices, fan(s), and the HVAC system component control circuit.

Transmission coefficient: The ratio of the solar heat gain through a glazing system to that of an unshaded single pane of double strength window glass under the same set of conditions.

Transverse joint: The primary connection between air distribution system fittings.

U-factor: (See **thermal transmittance**.)

U-Value: (See **U-factor**.)

Uniform Plumbing Code (UPC): (See **Washington State Plumbing Code**.)

Unitary cooling and heating equipment: One or more factory-made assemblies which include an evaporator or cooling coil, a compressor and condenser combination, and may include a heating function as well. Where such equipment is provided in more than one assembly, the separate assemblies shall be designed to be used together.

Unitary heat pump: One or more factory-made assemblies which include an indoor conditioning coil, compres-

sor(s) and outdoor coil or refrigerant-to-water heat exchanger, including means to provide both heating and cooling functions. When such equipment is provided in more than one assembly, the separate assemblies shall be designed to be used together.

Vapor retarder: A layer of low moisture transmissivity material (not more than 1.0 perm dry cup) placed over the warm side (in winter) of insulation, over the exterior of below grade walls, and under floors as ground cover to limit the transport of water and water vapor through exterior walls, ceilings, and floors. Vapor retarding paint, listed for this application, also meets this definition.

Vaulted ceilings: All ceilings where enclosed joist or rafter space is formed by ceilings applied directly to the underside of roof joists or rafters.

Ventilation: The process of supplying or removing air by natural or mechanical means to or from any space. Such air may or may not have been conditioned.

Ventilation air: That portion of supply air which comes from outside (outdoors) plus any recirculated air that has been treated to maintain the desired quality of air within a designated space.

Vertical glazing: A glazing surface that has a slope of 60° or greater from the horizontal plane.

Walls (exterior): Any member or group of members which defines the exterior boundaries or courts of a building and which have a slope of sixty degrees or greater with the horizontal plane, and separates conditioned from unconditioned space. Band joists between floors are to be considered a part of exterior walls.

Washington State Building Code: The Washington State Building Code is comprised of the International Building Code; the International Residential Code; the International Mechanical Code; the International Fire Code; the Uniform Plumbing Code; the state regulations for barrier-free facilities, as designated in RCW 19.27.031; the State Energy Code; and any other codes so designated by the Washington state legislature as adopted and amended by the State Building Code Council.

Zone: A space or group of spaces within a building with heating and/or cooling requirements sufficiently similar so that comfort conditions can be maintained throughout by a single controlling device. Each dwelling unit in residential buildings shall be considered a single zone.

AMENDATORY SECTION (Amending WSR 07-01-089, filed 12/19/06, effective 7/1/07)

WAC 51-11-0502 Building envelope requirements.

502.1 General:

502.1.1: The stated U- or F-factor of any component assembly, listed in Table 5-1 (~~(or 5-2)~~), such as roof/ceiling, opaque wall or opaque floor may be increased and the U-factor for other components decreased, provided that the total heat gain or loss for the entire building envelope does not exceed the total resulting from compliance to the U-factors specified in this section.

The U-factors for typical construction assemblies are included in Chapter 10. These values shall be used for all cal-

culations. Where proposed construction assemblies are not represented in Chapter 10, values shall be calculated in accordance with Chapters 23-30 in Standard RS-1 listed in Chapter 7, using the framing factors listed in Chapter 10 where applicable.

For envelope assemblies containing metal framing, the U-factor shall be determined by one of the following methods:

1. Results of laboratory or field measurements.
2. Standard RS-1, listed in Chapter 7, where the metal framing is bonded on one or both sides to a metal skin or covering.
3. The zone method as provided in Chapter 25 of Standard RS-1, listed in Chapter 7.
4. Results of parallel path correction factors effective framing/cavity R-values as provided in Table 10-5A - EFFECTIVE R-VALUES FOR METAL FRAMING AND CAVITY ONLY for metal stud walls and roof/ceilings.

502.1.2: For consideration of thermal mass effects, see section 402.4.

502.1.3: When return air ceiling plenums are employed, the roof/ceiling assembly shall:

- a. For thermal transmittance purposes, not include the ceiling proper nor the plenum space as part of the assembly; and
- b. For gross area purposes, be based upon the interior face of the upper plenum surface.

502.1.4 Insulation:

502.1.4.1 General: All insulating materials shall comply with sections 2603 and/or 719 of the International Building Code. Substantial contact of the insulation with the surface being insulated is required. All insulation materials shall be installed according to the manufacturer's instructions to achieve proper densities and maintain uniform R-values and shall be installed in a manner which will permit inspection of the manufacturer's R-value identification mark. To the maximum extent possible, insulation shall extend over the full component area to the intended R-value.

Alternatively, the thickness of roof/ceiling and wall insulation that is either blown in or spray-applied shall be identified by inches of thickness, density and R-value markers installed at least one for every 300 square feet (28 m²) through the attic, ceiling and/or wall space. In attics, the markers shall be affixed to the trusses or joists and marked with the minimum initial installed thickness and minimum settled thickness with numbers a minimum 1.0 inch (25 mm) in height. Each marker shall face the attic access. The thickness of installed attic insulation shall meet or exceed the minimum initial installed thickness shown by the marker. In cathedral ceilings and walls, the markers shall be affixed to the rafter and wall frame at alternating high and low intervals and marked with the minimum installed density and R-value with numbers a minimum 1.0 inch (25 mm) in height. Each marker shall face the conditioned room area.

502.1.4.2 Insulation Materials: All insulation materials including facings such as vapor barriers or breather papers installed within floor/ceiling assemblies, roof/ceiling assemblies, walls, crawl spaces, or attics shall have a flame spread rating of less than 25 and a smoke density not to exceed 450 when tested in accordance with ASTM E84-01.

EXCEPTIONS:

1. Foam plastic insulation shall comply with section 2603 of the International Building Code.
2. When such materials are installed in concealed spaces of Types III, IV and V construction, the flame spread and smoke developed limitations do not apply to facing, provided that the facing is installed in substantial contact with the unexposed surface of the ceiling, floor or wall finish.
3. Cellulose insulation shall comply with section 719 of the International Building Code.

502.1.4.3 Clearances: Where required, insulation shall be installed with clearances according to manufacturer's specifications. Insulation shall be installed so that required ventilation is unobstructed. For blown or poured loose fill insulation, clearances shall be maintained through installation of a permanent retainer.

502.1.4.4 Access Hatches and Doors: Access doors from conditioned spaces to unconditioned spaces (e.g., attics and crawl spaces) shall be weatherstripped and insulated to a level equivalent to the insulation on the surrounding surfaces. Access shall be provided to all equipment which prevents damaging or compressing the insulation. A wood framed or equivalent baffle or retainer must be provided when loose fill insulation is installed, the purpose of which is to prevent the loose fill insulation from spilling into the living space when the attic access is opened, and to provide a permanent means of maintaining the installed R-value of the loose fill insulation.

502.1.4.5 Roof/Ceiling Insulation: Open-blown or poured loose fill insulation may be used in attic spaces where the slope of the ceiling is not more than 3 feet in 12 and there is at least 30 inches of clear distance from the top of the bottom chord of the truss or ceiling joist to the underside of the sheathing at the roof ridge. When eave vents are installed, baffling of the vent openings shall be provided so as to deflect the incoming air above the surface of the insulation. Baffles shall be, rigid material, resistant to wind driven moisture. Requirements for baffles for ceiling insulation shall meet the International Building Code section 1203.2 for minimum ventilation requirements. When feasible, the baffles shall be installed from the top of the outside of the exterior wall, extending inward, to a point 6 inches vertically above the height of noncompressed insulation, and 12 inches vertically above loose fill insulation.

502.1.4.6 Wall Insulation: Insulation installed in exterior walls shall comply with the provisions of this section. All wall insulation shall fill the entire framed cavity. Exterior wall cavities isolated during framing shall be fully insulated to the levels of the surrounding walls. All faced insulation shall be face stapled to avoid compression.

EXCEPTION: Framed cavity can be empty or partially filled provided:

1. The wall assembly calculations are performed along with a completed performance calculation for the whole building; and
2. Insulation installed in partially filled cavities is not included in the performance calculation.

502.1.4.7 Floor Insulation: Floor insulation shall be installed in a permanent manner in substantial contact with the surface being insulated. Insulation supports shall be installed so spacing is no more than 24 inches on center. Foundation vents shall be placed so that the top of the vent is below the lower surface of the floor insulation.

EXCEPTION: Insulation may be omitted from floor areas over heated basements, heated garages or underfloor areas used as HVAC supply plenums. When foundation walls are insulated, the insulation shall be attached in a permanent manner. The insulation shall not block the airflow through foundation vents when installed. When foundation vents are not placed so that the top of the vent is below the lower surface of the floor insulation, a permanently attached baffle shall be installed at an angle of 30° from horizontal, to divert air flow below the lower surface of the floor insulation.

502.1.4.8 Slab-On-Grade: Slab-on-grade insulation, installed inside the foundation wall, shall extend downward from the top of the slab for a minimum distance of 24 inches or downward and then horizontally beneath the slab for a minimum combined distance of 24 inches. Insulation installed outside the foundation shall extend downward to a minimum of 24 inches or to the frostline. Above grade insulation shall be protected.

EXCEPTION: For monolithic slabs, the insulation shall extend downward from the top of the slab to the bottom of the footing.

502.1.4.9 Radiant Slabs: The entire area of a radiant slab shall be thermally isolated from the soil, with a minimum of R-10 insulation. The insulation shall be an approved product for its intended use. If a soil gas control system is present below the radiant slab, which results in increased convective flow below the radiant slab, the radiant slab shall be thermally isolated from the sub-slab gravel layer.

502.1.4.10 Below Grade Walls: Below grade exterior wall insulation used on the exterior (cold) side of the wall shall extend from the top of the below grade wall to the top of the footing and shall be approved for below grade use. Above grade insulation shall be protected.

Insulation used on the interior (warm) side of the wall shall extend from the top of the below grade wall to the below grade floor level.

502.1.5 Glazing and Door U-factors: Glazing and door U-factors shall be determined in accordance with sections 502.1.5.1 and 502.1.5.2. All products shall be labeled with the NFRC certified or default U-factor. The labeled U-factor shall be used in all calculations to determine compliance with this Code. Sealed insulating glass shall conform to, or be in test for, ASTM E-774-81 class A.

EXCEPTIONS:

1. For glazed wall systems, assemblies with all of the following features are deemed to satisfy the vertical glazing U-factor requirement in Table 6-1 or 6-2 options with vertical glazing U-0.40 and greater:

a. Double glazing with a minimum 1/2 inch gap width, having a low-emissivity coating with $e = 0.10$ maximum, with 90% minimum argon gas fill, and a non-aluminum spacer (as defined in footnote 1 to Table 10-6B), and

b. Frame that is thermal break aluminum (as defined in footnote 9 to Table 10-6B), wood, aluminum clad wood, vinyl, aluminum clad vinyl, or reinforced vinyl. The only labeling requirement for products using this exception shall be a description of the product and a label stating: "This product is deemed to satisfy the Table 6-1 or 6-2 vertical glazing U-factor requirement using the exception to Section 502.1.5 in the Washington State Energy Code."

2. For overhead glazing, assemblies with all of the following features are deemed to satisfy the overhead glazing U-factor requirement in Table 6-1 or 6-2 options **except** the unlimited glazing area options (Options IV and V in Table 6-1 and Options V, VI and VII in Table 6-2):

a. Either, double glazing with a minimum 1/2 inch gap width, having a low-emissivity coating with $e = 0.20$ maximum, with 90% minimum argon gas fill, or, triple glazed plastic domes, and

b. Frame that is thermal break aluminum (as defined in footnote 9 to Table 10-6B), wood, aluminum clad wood, vinyl, aluminum clad vinyl, or reinforced vinyl. The only labeling requirement for products using this exception shall be a description of the product and a label stating: "This product is deemed to satisfy the Table 6-1 or 6-2 overhead glazing U-factor requirement using the exception to Section 502.1.5 in the Washington State Energy Code."

3. For solariums with a floor area which does not exceed 300 square feet, assemblies which comply with the features listed in exception 2 are deemed to satisfy the vertical glazing and overhead glazing U-factor requirement in Table 6-1 or 6-2 options with vertical glazing U-0.40 and greater.

The only labeling requirement for products using this exception shall be a description of the product and a label stating: "This product is deemed to satisfy the Table 6-1 or 6-2 vertical glazing and overhead glazing U-factor requirements using the exception to Section 502.1.5 in the Washington State Energy Code."

502.1.5.1 Standard Procedure for Determination of Glazing U-factors: U-factors for glazing shall be determined, certified and labeled in accordance with the National Fenestration Rating Council (NFRC) Product Certification Program (PCP), as authorized by an independent certification and inspection agency licensed by the NFRC. Compliance shall be based on the Residential Model Size. Product samples used for U-factor determinations shall be production line units or representative of units as purchased by the consumer or contractor. Products that are listed in the NFRC Certified Products Directory or certified to the NFRC standard shall not use default values.

EXCEPTIONS:

1. Glazing products without NFRC ratings may be assigned default U-factors from Table 10-6A for vertical glazing and from Table 10-6E for overhead glazing.
2. Units without NFRC ratings produced by a small business may be assigned default U-factors from Table 10-6A for garden windows, from Table 10-6B for other vertical glazing, and from Table 10-6E for overhead glazing.

502.1.5.2 Standard Procedure for Determination of Door U-factors: All doors, including fire doors, shall be assigned default U-factors from Table 10-6C.

EXCEPTIONS:

1. U-factors determined, certified and labeled in accordance with the National Fenestration Rating Council (NFRC) Product Certification Program (PCP), as authorized by an independent certification and inspection agency licensed by the NFRC.

2. The default values for the opaque portions of doors shall be those listed in Table 10-6C, provided that the U-factor listed for a door with a thermal break shall only be allowed if both the door and the frame have a thermal break.

3. One unlabeled or untested exterior swinging door with the maximum area of 24 square feet may be installed for ornamental, security or architectural purposes. Products using this exception shall not be included in the U-factor calculation requirements, however glazing area shall be included in glazing area calculations.

502.1.6 Moisture Control:

502.1.6.1 Vapor Retarders: Vapor retarders shall be installed on the warm side (in winter) of insulation as specified in the following cases.

EXCEPTION: Vapor retarder installed with not more than 1/3 of the nominal R-value between it and the conditioned space.

502.1.6.2 Floors: Floors separating conditioned space from unconditioned space shall have a vapor retarder installed. The vapor retarder shall have a one perm dry cup rating or less (i.e., four mil [0.004 inch thick] polyethylene or kraft faced material).

502.1.6.3 Roof/Ceilings: Roof/ceiling assemblies where the ventilation space above the insulation is less than an average of 12 inches shall be provided with a vapor retarder. Faced batt insulation where used as a vapor retarder shall be face stapled. Single rafter joist vaulted ceiling cavities shall be of sufficient depth to allow a minimum one inch vented air space above the insulation.

EXCEPTION: Unvented attic assemblies (spaces between the ceiling joists of the top story and the roof rafters) shall be permitted if all the following conditions are met:

1. The unvented attic space is completely contained within the building thermal envelope.

2. No interior vapor retarders are installed on the ceiling side (attic floor) of the unvented attic assembly.

3. Where wood shingles or shakes are used, a minimum 1/4 inch (6 mm) vented air space separates the shingles or shakes or the roofing underlayment above the structural sheathing.

4. Any air-impermeable insulation shall be a vapor retarder, or shall have a vapor retarder coating or covering in direct contact with the underside of the insulation.

5. Either Items a, b or c shall be met, depending on the air permeability of the insulation directly under the structural roof sheathing.

a. Air-impermeable insulation only. Insulation shall be applied in direct contact to the underside of the structural roof sheathing.

b. Air-permeable insulation only. In addition to the air-permeable insulation installed directly below the structural sheathing, rigid board or sheet insulation shall be installed directly above the structural roof sheathing as specified per WA Climate Zone for condensation control.

i. Climate Zone #1 - R-10 minimum rigid board or air-impermeable insulation R-value.

ii. Climate Zone #2 - R-25 minimum rigid board or air-impermeable insulation R-value.

c. Air-impermeable and air-permeable insulation. The air-impermeable insulation shall be applied in direct contact to the underside of the structural roof sheathing as specified per WA Climate Zone for condensation control. The air-permeable insulation shall be installed directly under the air-impermeable insulation.

i. Climate Zone #1 - R-10 minimum rigid board or air-impermeable insulation R-value.

ii. Climate Zone #2 - R-25 minimum rigid board or air-impermeable insulation R-value.

502.1.6.4: Vapor retarders shall not be required in roof/ceiling assemblies where the ventilation space above the insulation averages 12 inches or greater.

502.1.6.5: Vapor retarders shall not be required where all of the insulation is installed between the roof membrane and the structural roof deck.

502.1.6.6 Walls: Walls separating conditioned space from unconditioned space shall have a vapor retarder installed. Faced batt insulation shall be face stapled.

EXCEPTION: For climate zone 1, wood framed walls with a minimum of nominal R-5 continuous insulated sheathing installed outside of the framing and structural sheathing. For climate zone 2, wood framed walls with a minimum of nominal R-7.5 continuous insulated sheathing installed outside of the framing and structural sheathing. The interior cavity insulation for this exception shall be a maximum of nominal R-21.

502.1.6.7 Ground Cover: A ground cover of six mil (0.006 inch thick) black polyethylene or approved equal shall be laid over the ground within crawl spaces. The ground cover shall be overlapped 12 inches minimum at the joints and shall extend to the foundation wall.

EXCEPTION: The ground cover may be omitted in crawl spaces if the crawl space has a concrete slab floor with a minimum thickness of 3-1/2 inches.

502.2 Thermal Criteria for Group R Occupancy:

502.2.1 UA Calculations: The proposed UA as calculated using Equations 2 and 3 shall not exceed the target UA as calculated using Equation 1. For the purpose of determining equivalent thermal performance, the glazing area for the target UA shall be calculated using values in Table 5-1. The opaque door area shall be the same in the target UA and the proposed UA.

EXCEPTION: Log and solid timber walls that have a minimum average thickness of 3.5" and with space heat type other than electric resistance, are exempt from wall target UA and proposed UA calculations.

502.2.2 Space Heat Type: The following two categories comprise all space heating types:

1. Electric Resistance: Space heating systems which include baseboard units, radiant units and forced air units as either the primary or secondary heating system.

EXCEPTION: Electric resistance systems for which the total electric heat capacity in each individual dwelling unit does not exceed the greater of: 1) One thousand watts (1000 w) per dwelling unit, or; 2) One watt per square foot (1 w/ft²) of the gross floor area.

2. Other: All gas, wood, oil and propane space heating systems, unless electric resistance is used as a secondary heating system, and all heat pump space heating systems. (See EXCEPTIONS, Electric Resistance, section 502.2.2 above.)

502.3 Reserved.

502.4 Air Leakage:

502.4.1 General: The requirements of this section shall apply to all buildings and structures, or portions thereof, and only to those locations separating outdoor ambient conditions from interior spaces that are heated or mechanically cooled.

502.4.2 Doors and Windows, General: Exterior doors and windows shall be designed to limit air leakage into or from the building envelope. Site-constructed doors and windows shall be sealed in accordance with Section 502.4.3.

502.4.3 Seals and Weatherstripping:

a. Exterior joints around windows and door frames, openings between walls and foundation, between walls and roof and wall panels; openings at penetrations of utility services through walls, floors and roofs; and all other openings in the building envelope for all occupancies and all other openings in between units in R-1 and R-2 Occupancy shall be sealed, caulked, gasketed or weatherstripped to limit air leakage. Other exterior joints and seams shall be similarly treated, or taped, or covered with moisture vapor permeable housewrap.

b. All exterior doors or doors serving as access to an enclosed unheated area shall be weatherstripped to limit leakage around their perimeter when in a closed position.

c. Site built windows are exempt from testing but shall be made tight fitting. Fixed lights shall have glass retained by stops with sealant or caulking all around. Operating sash shall have weatherstripping working against overlapping trim and a closer/latch which will hold the sash closed. The window frame to framing crack shall be made tight with caulking, overlapping membrane or other approved technique.

d. Openings that are required to be fire resistive are exempt from this section.

502.4.4 Recessed Lighting Fixtures: When installed in the building envelope, recessed lighting fixtures shall be Type IC rated and certified under ASTM E283 to have no more than 2.0 cfm air movement from the conditioned space to the ceiling cavity. The lighting fixture shall be tested at 75 Pascals or 1.57 lbs/ft² pressure difference and have a label attached, showing compliance with this test method. Recessed lighting fixtures shall be installed with a gasket or caulk between the fixture and ceiling to prevent air leakage.

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

AMENDATORY SECTION (Amending WSR 07-01-089, filed 12/19/06, effective 7/1/07)

WAC 51-11-0503 Building mechanical systems.

503.1 General: This section covers the determination of design requirements, system and component performance, control requirements, insulating systems and duct sealing. For all other duct construction requirements, refer to the State Mechanical Code (chapter 51-42 WAC).

503.2 Calculations of Heating and Cooling Loads, and System Sizing Limits: The design parameters specified in Chapter 3 shall apply for all computations.

503.2.1 Calculation Procedures: Heating and cooling design loads for the purpose of sizing HVAC systems are required and shall be calculated in accordance with accepted engineering practice, including infiltration and ventilation.

503.2.2 Space Heating and Space Cooling System Sizing Limits: Building mechanical systems for all buildings which provide space heating and/or space cooling shall be sized no greater than one hundred fifty percent (150%) of the heating and cooling design loads as calculated above.

EXCEPTIONS: The following limited exemptions from the sizing limit shall be allowed; however, in all cases heating and/or cooling design load calculations shall be submitted.

1. For equipment which provides both heating and cooling in one package unit, including heat pumps with electric heating and cooling and gas-pack units with gas heating and electric cooling, compliance need only be demonstrated for either the space heating or space cooling system size.
2. Natural gas- or oil-fired space heating equipment whose total rated space heating output in any one dwelling unit is
 - a. 40,000 Btu/h or less is exempt from the sizing limit,
 - b. Larger than 40,000 Btu/h may exceed the one hundred fifty (150%) percent sizing limit but not exceed 250 percent provided that the installed equipment has an annual fuel utilization efficiency (AFUE) of ninety (90%) percent or greater.
3. Stand-by equipment may be installed if controls and other devices are provided which allow redundant equipment to operate only when the primary equipment is not operating.

503.3 Simultaneous Heating and Cooling: Systems and equipment that provide simultaneous heating and cooling shall comply with the requirements in, as appropriate, Section 1422 or Section 1435.

503.4 HVAC Equipment Performance Requirements: All heating equipment shall meet the requirements of the National Appliance Energy Conservation Act (NAECA) and be so labeled. Equipment shall also comply with Section 1411.

503.5 Reserved.

503.6 Balancing: The HVAC system design shall provide a means for balancing air and water systems. Balancing the system shall include, but not be limited to, dampers, temperature and pressure test connections and balancing valves.

503.7 Cooling with Outdoor Air (Economizer Cycle): Systems and equipment that provide mechanical cooling

shall comply with Section 1413 and, as appropriate, Section 1423 or 1433.

503.8 Controls:

503.8.1 Temperature Control: Each system shall be provided with at least one adjustable thermostat for the regulation of temperature. Each thermostat shall be capable of being set by adjustment or selection of sensors as follows:

503.8.1.1: When used to control heating only: Fifty-five degrees to seventy-five degrees F.

503.8.1.2: When used to control cooling only: Seventy degrees to eighty-five degrees F.

503.8.1.3: When used to control both heating and cooling, it shall be capable of being set from fifty-five degrees to eighty-five degrees F and shall be capable of operating the system heating and cooling in sequence. The thermostat and/or control system shall have an adjustable deadband of not less than ten degrees F.

503.8.2 Humidity Control: If a system is equipped with a means for adding moisture to maintain specific selected relative humidities in space or zones, a humidistat shall be provided. Humidistats shall be capable of being set to prevent new energy from being used to produce space-relative humidity above thirty percent.

EXCEPTION: Special uses requiring different relative humidities may be permitted when approved by the building official.

503.8.3 Zoning for Temperature Control:

503.8.3.1 One- and Two-Family Dwellings: At least one thermostat for regulation of space temperature shall be provided for each separate system. In addition, a readily accessible manual or automatic means shall be provided to partially restrict or shut off the heating and/or cooling input to each zone or floor.

503.8.3.2 Multifamily Dwellings: For multifamily dwellings, each individual dwelling unit shall have at least one thermostat for regulation of space temperature. A readily accessible manual or automatic means shall be provided to partially restrict or shut off the heating and/or cooling input to each room. Spaces other than living units shall meet the requirements of 503.8.3.3.

503.8.3.3 Control Setback and Shutoff:

One- and Two-Family and Individual Multifamily dwelling units—The thermostat required in section 503.8.3.1 or section 503.8.3.2, or an alternate means such as a switch or clock, shall provide a readily accessible, manual or automatic means for reducing the energy required for heating and cooling during the periods of nonuse or reduced need, such as, but not limited to unoccupied periods and sleeping hours. Lowering thermostat set points to reduce energy consumption of heating systems shall not cause energy to be expended to reach the reduced setting.

503.8.3.4 Systems Serving Multiple Dwelling Units, Guest Rooms, and Common Areas: Systems that serve more than two dwelling units, guest rooms, and common areas

shall comply with the control requirements in Sections 1412 and 1432, with the exceptions of Sections 1412.4.2 and 1432.1.

503.8.3.5 Heat Pump Controls: Programmable thermostats are required for all heat pump systems. The cut-on temperature for the compression heating shall be higher than the cut-on temperature for the supplementary heat, and the cut-off temperature for the compression heating shall be higher than the cut-off temperature for the supplementary heat. Heat pump thermostats will be capable of providing at least two programmable setback periods per day. The automatic setback thermostat shall have the capability of limiting the use of supplemental heat during the warm-up period.

503.9 Air Handling Duct System Insulation: Ducts, plenums and enclosures installed in or on buildings shall be thermally insulated per Table 5-11.

EXCEPTIONS: Duct insulation (except where required to prevent condensation) is not required in any of the following cases:

1. When the heat gain or loss of the ducts, without insulation, will not increase the energy requirements of the building.
2. Within the HVAC equipment.
3. Exhaust air ducts.
4. Supply or return air ducts installed in unvented crawl spaces with insulated walls, basements, or cellars in one- and two-family dwellings.

503.10 Ducts.

503.10.1 Leakage Testing: High-pressure and medium-pressure ducts shall be leak tested in accordance with the 1985 Edition of the SMACNA HVAC Air Duct Leakage Test Manual with the rate of air leakage not to exceed the maximum rate specified in that standard.

503.10.2 ~~((Seams and Joints))~~ Sealing: All ~~((low pressure supply and return duct transverse joints, and enclosed stud bays or joist cavities/space used to transport air, shall be securely fastened and sealed with welds, gaskets, mastics (adhesives), or mastic plus embedded fabric systems installed in accordance with the manufacturer's installation instructions))~~ ducts, air handlers, filter boxes, and building cavities used as ducts shall be sealed. Joints and seams shall comply with Section M1601.3 of the International Residential Code or Section 603.9 of the International Mechanical Code. Duct tightness testing shall be conducted to verify that the ducts are sealed. A signed affidavit documenting the test results shall be provided to the jurisdiction having authority by the testing agent. When required by the building official, the test shall be conducted in the presence of department staff. Duct tightness shall be verified by either of the following:

1. Postconstruction test: Leakage to outdoors shall be less than or equal to 6 cfm per 100 ft² of conditioned floor area or a total leakage less than or equal to 8 cfm per 100 ft² of conditioned floor area when tested at a pressure differential of 0.1 inches w.g. (25 Pa) across the entire system, including the manufacturer's air handler enclosure. All register boots shall be taped or otherwise sealed during the test.

2. Rough-in test: Total leakage shall be less than or equal to 6 cfm per 100 ft² of conditioned floor area when tested at a pressure differential of 0.1 inches w.g. (25 Pa) across the roughed-in system, including the manufacturer's air handler enclosure. All register boots shall be taped or otherwise sealed during the test. If the air handler is not installed at the time of the test, total leakage shall be less than or equal to 4 cfm per 100 ft² of conditioned floor area.

EXCEPTIONS:

1. ~~((Ducts or building cavities used for air distribution that are located entirely within the conditioned space of the building are exempt from this section.))~~ Duct tightness test is not required if the air handler and all ducts are located within conditioned space.
2. ~~((UL-181A listed tapes used with listed rigid fibrous glass ducts may be used as the primary sealant, when installed in accordance with the listing.))~~ Duct tightness test is not required if the furnace is a nondirect vent type combustion appliance installed in an unconditioned space. A maximum of six feet of connected ductwork in the unconditioned space is allowed. All additional supply and return ducts shall be within the conditioned space. Ducts outside the conditioned space shall be sealed with a mastic type duct sealant and insulated on the exterior with R-8 insulation for above grade ducts and R-5 water resistant insulation when within a slab or earth.
~~((3-UL-181B listed tapes used with listed flexible air ducts may be used as the primary sealant, when installed in accordance with the listing.~~
4. ~~Where enclosed stud bays or joist cavities/spaces are used to transport air sealing may be accomplished using drywall, drywall tape plus joint compound.~~
5. ~~Tapes installed in accordance with the manufacturer's installation instructions, providing detailed information specific to application on ducts, including approved duct materials and required duct surface cleaning.))~~

503.10.3 Dampers: Requirements for Automatic or manual dampers are found in the Washington State Ventilation and Indoor Air Quality Code.

503.11 Pipe Insulation: All piping shall be thermally insulated in accordance with Table 5-12.

EXCEPTION: Piping installed within unitary HVAC equipment.

Cold water pipes outside the conditioned space shall be insulated in accordance with the Washington State Plumbing Code (chapter 51-56 WAC).

AMENDATORY SECTION (Amending WSR 04-01-106, filed 12/17/03, effective 7/1/04)

WAC 51-11-1007 Section 1007 Ceilings.

1007.1 General: Table 10-7 lists heat-loss coefficients for the opaque portion of exterior ceilings below vented attics, vaulted ceilings, and roof decks in units of Btu/h•ft²•°F of ceiling.

They are derived from procedures listed in Standard RS-1, listed in Chapter 7. Ceiling U-factors are modified for the buffering effect of the attic, assuming an indoor temperature of 65° F and an outdoor temperature of 45° F.

Metal Framed Ceilings: The nominal R-values in Table 10-5A - EFFECTIVE R-VALUES FOR METAL FRAMING AND CAVITY ONLY may be used for purposes of calculating metal framed ceiling section U-factors in lieu of the

ASHRAE zone calculation method as provided in Chapter 25 of Standard RS-1.

1007.2 Component Description: The four types of ceilings are characterized as follows:

Ceilings Below a Vented Attic: Attic insulation is assumed to be blown-in, loose-fill fiberglass with a K-value of 2.6 hr • ft² • °F/Btu per inch. Full bag count for specified R-value is assumed in all cases. Ceiling dimensions for flat ceiling calculations are forty-five by thirty feet, with a gabled roof having a 4/12 pitch. The attic is assumed to vent naturally at the rate of three air changes per hour through soffit and ridge vents. A void fraction of 0.002 is assumed for all attics with insulation baffles. Standard-framed, un baffled attics assume a void fraction of 0.008.

Attic framing is either standard or advanced. Standard framing assumes tapering of insulation depth around the perimeter with resultant decrease in thermal resistance. An increased R-value is assumed in the center of the ceiling due to the effect of piling leftover insulation. Advanced framing assumes full and even depth of insulation extending to the outside edge of exterior walls. Advanced framing does not change from the default value.

U-factors for flat ceilings below vented attics with standard framing may be modified with the following table:

Roof Pitch	U-Factor for Standard Framing	
	R-30	R-38
4/12	.036	.031
5/12	.035	.030
6/12	.034	.029
7/12	.034	.029
8/12	.034	.028
9/12	.034	.028

Roof Pitch	U-Factor for Standard Framing	
	R-30	R-38
10/12	.033	.028
11/12	.033	.027
12/12	.033	.027

Vented scissiors truss attics assume a ceiling pitch of 2/12 with a roof pitch of either 4/12 or 5/12. Unbaffled standard framed scissiors truss attics are assumed to have a void fraction of 0.016.

Vaulted Ceilings: Insulation is assumed to be fiberglass batts installed in roof joist cavities. In the vented case, at least 1.5-inches between the top of the batts and the underside of the roof sheathing is left open for ventilation in each cavity. A ventilation rate of 3.0 air changes per hour is assumed. In the unvented or dense pack case, the ceiling cavity is assumed to be fully packed with insulation, leaving no space for ventilation.

EXCEPTION: Where spray polyurethane foam meets the requirements of Section 502.1.6.3 or Section 1313.2, the cavity shall be filled to the depth to achieve R-value requirements.

Roof Decks: Rigid insulation is applied to the top of roof decking with no space left for ventilation. Roofing materials are attached directly on top of the insulation. Framing members are often left exposed on the interior side.

Metal Truss Framing: Overall system tested values for the roof/ceiling U_o for metal framed truss assemblies from approved laboratories shall be used, when such data is acceptable to the building official.

Alternatively, the U_o for roof/ceiling assemblies using metal truss framing may be obtained from Tables 10-7A, 10-7B, 10-7C, 10-7D and 10-7E.

**TABLE 10-7
DEFAULT U-FACTORS FOR CEILINGS**

Ceilings Below Vented Attics

	Standard Frame	Advanced Frame
	Baffled	
Flat Ceiling		
R-19	0.049	0.047
R-30	0.036	0.032
R-38	0.031	0.026
R-49	0.027	0.020
R-60	0.025	0.017
Scissiors Truss		
R-30 (4/12 roof pitch)	0.043	0.031
R-38 (4/12 roof pitch)	0.040	0.025
R-49 (4/12 roof pitch)	0.038	0.020
R-30 (5/12 roof pitch)	0.039	0.032
R-38 (5/12 roof pitch)	0.035	0.026
R-49 (5/12 roof pitch)	0.032	0.020

			Standard Frame	Advanced Frame
Vaulted Ceilings				
			16" O.C.	24" O.C.
Vented				
R-19 2x10 joist			0.049	0.048
R-30 2x12 joist			0.034	0.033
R-38 2x14 joist			0.027	0.027
Unvented				
R-30 2x10 joist			0.034	0.033
R-38 2x12 joist			0.029	0.027
R-21 + R-21 2x12 joist			0.026	0.025
Roof Deck				
			4x Beams, 48" O.C.	
R-12.5	2"	Rigid insulation	0.064	
R-21.9	3.5"	Rigid insulation	0.040	
R-37.5	6"	Rigid insulation	0.025	
R-50	8"	Rigid insulation	0.019	

Table 10-7A
Steel Truss¹ Framed Ceiling U_O

Cavity R-value	Truss Span (ft)												
	12	14	16	18	20	22	24	26	28	30	32	34	36
19	0.1075	0.0991	0.0928	0.0878	0.0839	0.0807	0.0780	0.0757	0.0737	0.0720	0.0706	0.0693	0.0681
30	0.0907	0.0823	0.0760	0.0710	0.0671	0.0638	0.0612	0.0589	0.0569	0.0552	0.0538	0.0525	0.0513
38	0.0844	0.0759	0.0696	0.0647	0.0607	0.0575	0.0548	0.0525	0.0506	0.0489	0.0474	0.0461	0.0449
49	0.0789	0.0704	0.0641	0.0592	0.0552	0.0520	0.0493	0.0470	0.0451	0.0434	0.0419	0.0406	0.0395

Table 10-7B
Steel Truss¹ Framed Ceiling U_O with R-3 Sheathing²

Cavity R-value	Truss Span (ft)												
	12	14	16	18	20	22	24	26	28	30	32	34	36
19	0.0809	0.0763	0.0728	0.0701	0.0679	0.0661	0.0647	0.0634	0.0623	0.0614	0.0606	0.0599	0.0592
30	0.0641	0.0595	0.0560	0.0533	0.0511	0.0493	0.0478	0.0466	0.0455	0.0446	0.0438	0.0431	0.0424
38	0.0577	0.0531	0.0496	0.0469	0.0447	0.0430	0.0415	0.0402	0.0392	0.0382	0.0374	0.0367	0.0361
49	0.0523	0.0476	0.0441	0.0414	0.0393	0.0375	0.0360	0.0348	0.0337	0.0328	0.0319	0.0312	0.0306

Table 10-7C
Steel Truss¹ Framed Ceiling U_O with R-5 Sheathing²

Cavity R-value	Truss Span (ft)												
	12	14	16	18	20	22	24	26	28	30	32	34	36
19	0.0732	0.0697	0.0670	0.0649	0.0633	0.0619	0.0608	0.0598	0.0590	0.0583	0.0577	0.0571	0.0567
30	0.0564	0.0529	0.0502	0.0481	0.0465	0.0451	0.0440	0.0430	0.0422	0.0415	0.0409	0.0403	0.0399
38	0.0501	0.0465	0.0438	0.0418	0.0401	0.0388	0.0376	0.0367	0.0359	0.0351	0.0345	0.0340	0.0335
49	0.0446	0.0410	0.0384	0.0363	0.0346	0.0333	0.0322	0.0312	0.0304	0.0297	0.0291	0.0285	0.0280

Table 10-7D
Steel Truss¹ Framed Ceiling U_O with R-10 Sheathing²

Cavity R-value	Truss Span (ft)												
	12	14	16	18	20	22	24	26	28	30	32	34	36
19	0.0626	0.0606	0.0590	0.0578	0.0569	0.0561	0.0555	0.0549	0.0545	0.0541	0.0537	0.0534	0.0531

Cavity R-value	Truss Span (ft)												
	12	14	16	18	20	22	24	26	28	30	32	34	36
30	0.0458	0.0437	0.0422	0.0410	0.0401	0.0393	0.0387	0.0381	0.0377	0.0373	0.0369	0.0366	0.0363
38	0.0394	0.0374	0.0359	0.0347	0.0337	0.0330	0.0323	0.0318	0.0313	0.0309	0.0305	0.0302	0.0299
49	0.0339	0.0319	0.0304	0.0292	0.0283	0.0275	0.0268	0.0263	0.0258	0.0254	0.0251	0.0247	0.0245

Table 10-7E Steel Truss ¹ Framed Ceiling U _O with R-15 Sheathing ²													
Cavity R-value	Truss Span (ft)												
	12	14	16	18	20	22	24	26	28	30	32	34	36
19	0.0561	0.0550	0.0541	0.0535	0.0530	0.0526	0.0522	0.0519	0.0517	0.0515	0.0513	0.0511	0.0509
30	0.0393	0.0382	0.0373	0.0367	0.0362	0.0358	0.0354	0.0351	0.0349	0.0347	0.0345	0.0343	0.0341
38	0.0329	0.0318	0.0310	0.0303	0.0298	0.0294	0.0291	0.0288	0.0285	0.0283	0.0281	0.0279	0.0278
49	0.0274	0.0263	0.0255	0.0249	0.0244	0.0239	0.0236	0.0233	0.0230	0.0228	0.0226	0.0225	0.0223

- 1 - Assembly values based on 24 inch on center truss spacing; 11 Truss member connections penetrating insulation (4 at the eaves, 7 in the interior space); 1/2 inch drywall ceiling; all truss members are 2x4 "C" channels with a solid web.
- 2 - Ceiling sheathing installed between bottom chord and drywall.

AMENDATORY SECTION (Amending WSR 04-01-106, filed 12/17/03, effective 7/1/04)

WAC 51-11-1313 Moisture control.

1313.1 Vapor Retarders: Vapor retarders shall be installed on the warm side (in winter) of insulation as required by this section.

EXCEPTION: Vapor retarder installed with not more than 1/3 of the nominal R-value between it and the conditioned space.

1313.2 Roof/Ceiling Assemblies: Roof/ceiling assemblies where the ventilation space above the insulation is less than an average of twelve inches shall be provided with a vapor retarder. (For enclosed attics and enclosed rafter spaces see Section 1203.2 of the International Building Code.) Roof/ceiling assemblies without a vented airspace, allowed only where neither the roof deck nor the roof structure are made of wood, shall provide a continuous vapor retarder with taped seams.

- EXCEPTIONS:
- 1. Vapor retarders need not be provided where all of the insulation is installed between the roof membrane and the structural roof deck.
 - 2. Unvented attic assemblies (spaces between the ceiling joists of the top story and the roof rafters) shall be permitted if all the following conditions are met:
 - 2.1 The unvented attic space is completely contained within the building thermal envelope.
 - 2.2 No interior vapor retarders are installed on the ceiling side (attic floor) of the unvented attic assembly.
 - 2.3 Where wood shingles or shakes are used, a minimum 1/4 inch (6 mm) vented air space separates the shingles or shakes and the roofing underlayment above the structural sheathing.
 - 2.4 Any air-impermeable insulation shall be a vapor retarder, or shall have a vapor retarder coating or covering in direct contact with the underside of the insulation.
 - 2.5 Either Items a, b or c shall be met, depending on the air permeability of the insulation directly under the structural roof sheathing.

a. Air-impermeable insulation only. Insulation shall be applied in direct contact to the underside of the structural roof sheathing.

b. Air-permeable insulation only. In addition to the air-permeable insulation installed directly below the structural sheathing, rigid board or sheet insulation shall be installed directly above the structural roof sheathing as specified per WA Climate Zone for condensation control.

i. Climate Zone #1 - R-10 minimum rigid board or air-impermeable insulation R-value.

ii. Climate Zone #2 - R-25 minimum rigid board or air-impermeable insulation R-value.

c. Air-impermeable and air-permeable insulation. The air-impermeable insulation shall be applied in direct contact to the underside of the structural roof sheathing as specified per WA Climate Zone for condensation control. The air-permeable insulation shall be installed directly under the air-impermeable insulation.

i. Climate Zone #1 - R-10 minimum rigid board or air-impermeable insulation R-value.

ii. Climate Zone #2 - R-25 minimum rigid board or air-impermeable insulation R-value.

1313.3 Walls: Walls separating conditioned space from unconditioned space shall be provided with a vapor retarder.

1313.4 Floors: Floors separating conditioned space from unconditioned space shall be provided with a vapor retarder.

1313.5 Crawl Spaces: A ground cover of six mil (0.006 inch thick) black polyethylene or approved equal shall be laid over the ground within crawl spaces. The ground cover shall be overlapped twelve inches minimum at the joints and shall extend to the foundation wall.

EXCEPTION: The ground cover may be omitted in crawl spaces if the crawl space has a concrete slab floor with a minimum thickness of three and one-half inches.

WSR 08-17-087
PROPOSED RULES
BUILDING CODE COUNCIL

[Filed August 19, 2008, 3:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-14-041.

Title of Rule and Other Identifying Information: Amendment of chapter 51-50 WAC, further amendment of the 2006 Edition of the International Building Code (IBC).

Hearing Location(s): Holiday Inn Select Renton, One Grady Way South, Renton, WA, on October 10, 2008, at 10:00 a.m.

Date of Intended Adoption: November 14, 2008.

Submit Written Comments to: John Neff, Council Chair, P.O. Box 42525, Olympia, WA 98504-2525, e-mail sbcc@ctd.wa.gov, fax (360) 586-9383, by October 10, 2008.

Assistance for Persons with Disabilities: Contact Sue Mathers by October 3, 2008, TTY (360) 586-0772 or (360) 725-2966.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules make changes to the state amendments to 2006 International Building Code. These changes include requirements for the use of unvented attic assemblies (Section 1203.2 and the definition of air-impermeable insulation in Section 202), relocating the existing amendment of Section 407.8 to Section 1008.1.8.3 and adding a reference to boarding homes, adding a specification that full NFPA 13 fire sprinkler systems are requirement in licensed boarding homes (Section 903.2.7), requiring a manual fire alarm system in licensed boarding homes (Section 907.2.9), and relocating the existing amendments in Section 1017.1 and 1017.6 regarding corridor construction to Section 419.4 and 419.5 and including reference to boarding homes.

Reasons Supporting Proposal: RCW 19.27.031 and 19.27.074.

Statutory Authority for Adoption: RCW 19.27.031 and 19.27.074.

Statute Being Implemented: Chapters 19.27 and 34.05 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The council is seeking comments on the issues proposed in the rules shown below.

Name of Proponent: Washington state building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Tim Nogler, P.O. Box 42525, Olympia, WA 98504-2525, (360) 725-2969; and Enforcement: Local jurisdictions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No disproportionate economic impact on small business was identified.

A cost-benefit analysis is not required under RCW 34.05.328. The state building code council is not listed in this

section as one of the agencies required to comply with this statute.

August 19, 2008
 John P. Neff
 Council Chair

AMENDATORY SECTION (Amending WSR 08-01-110, filed 12/18/07, effective 4/1/08)

WAC 51-50-0200 Chapter 2—Definitions.

SECTION 202—DEFINITIONS.

ADULT FAMILY HOME. See Section 310.2.

AIR-IMPERMEABLE INSULATION. An insulation having an air permeance equal to or less than 0.02 L/s-m² at 75 Pa pressure differential tested in accordance with ASTM E2178 or ASTM E283.

CHILD DAY CARE. See Section 310.2.

CHILD DAY CARE HOME, FAMILY. See Section 310.2.

NIGHTCLUB. An A-2 Occupancy use under the 2006 International Building Code in which the aggregate area of concentrated use of unfixed chairs and standing space that is specifically designated and primarily used for dancing or viewing performers exceeds three hundred fifty square feet, excluding adjacent lobby areas. "Nightclub" does not include theaters with fixed seating, banquet halls, or lodge halls.

PORTABLE SCHOOL CLASSROOM. See Section 902.1.

RESIDENTIAL CARE/ASSISTED LIVING FACILITIES. See Section 310.2. This definition is not adopted.

STORY. That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above, including basements (also see "Mezzanine" and Section 502.1). It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

STORY ABOVE GRADE PLANE. Any story having its finished floor surface entirely above grade plane, except that a basement shall be considered as a story above grade plane where the finished surface of the floor or roof next above the basement is:

1. More than 6 feet (1829 mm) above grade plane; or
2. More than 12 feet (3658 mm) above the finished ground level at any point.

AMENDATORY SECTION (Amending WSR 07-01-091, filed 12/19/06, effective 7/1/07)

WAC 51-50-0407 Section 407—Group I-2.

~~((407.8 Locks on exit doors. Approved, listed locks without delayed egress shall be permitted in nursing homes or portions of nursing homes, provided that:~~

1. The clinical needs of one or more patients require specialized security measures for their safety.

~~2. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.~~

~~3. The doors unlock upon loss of electrical power controlling the lock or lock mechanism.~~

~~4. The lock shall be capable of being deactivated by a signal from a switch located in an approved location.~~

~~5. There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.))~~

NEW SECTION

WAC 51-50-0420 Section 419—Group I-1, R-1, R-2, R-3.

419.4 Subdivision of building spaces—Smoke barriers. Smoke barriers complying with Section 709 shall be installed on floors other than the level of exit discharge of a Group R-2 residential treatment facility licensed by the state of Washington, and on all floors of a Group R-2 boarding home licensed by the state of Washington where a fire-resistance rated corridor is required by Table 1017.1. The smoke barrier shall subdivide the floor into at least two compartments complying with Section 407.4.

419.5 Corridor construction. In Group R-2 boarding homes and residential treatment facilities licensed by the state of Washington, rest areas constructed as required for corridors shall be allowed to be open to the corridor provided:

1. The area does not exceed 150 square feet, excluding the corridor width;
2. The floor is separated into at least two compartments complying with Section 407.4;
3. Combustible furnishings located within the rest area shall be in accordance with the International Fire Code Section 805; and
4. Emergency means of egress lighting is provided as required by Section 1006 to illuminate the area.

AMENDATORY SECTION (Amending WSR 08-01-110, filed 12/18/07, effective 4/1/08)

WAC 51-50-0903 Section 903—Automatic sprinkler systems.

903.2.1.6 Nightclub. An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code. An existing nightclub constructed prior to July 1, 2006, shall be provided with automatic sprinklers not later than December 1, 2009.

903.2.2 Group E. An automatic sprinkler system shall be provided for Group E Occupancies.

EXCEPTIONS: 1. Portable school classrooms, provided aggregate area of any cluster or portion of a cluster of portable school classrooms does not exceed 5,000 square feet (1465 m²); and clusters of portable school classrooms shall be separated as required in chapter 5 of the building code.
2. Group E Occupancies with an occupant load of 50 or less.

903.2.7 Group R. An automatic fire sprinkler system installed in accordance with Section 903.3 shall be provided

throughout all buildings with a Group R fire area. Sprinkler systems in boarding homes licensed by the state of Washington shall comply with Section 903.3.1.1.

EXCEPTION: Group R-1 if all of the following conditions apply:

1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.
7. A hand held (portable) fire extinguisher is in every Group R fire area.

NEW SECTION

WAC 51-50-0907 Section 907—Fire alarm and detection systems.

907.2.9.1 Group R-2 boarding homes. A manual fire alarm system shall be installed in Group R-2 Occupancies where the building contains a boarding home licensed by the state of Washington.

EXCEPTION: In boarding homes licensed by the state of Washington, manual fire alarm boxes in resident sleeping areas shall not be required at exits if located at all constantly attended staff locations, provided such staff locations are visible, continuously accessible, located on each floor, and positioned so no portion of the story exceeds a horizontal travel distance of 200 feet to a manual fire alarm box.

AMENDATORY SECTION (Amending WSR 07-01-091, filed 12/19/06, effective 7/1/07)

WAC 51-50-1008 Section 1008—Doors, gates and turnstiles.

1008.1.2 Door swing. Egress doors shall be side-hinged swinging.

EXCEPTIONS: 1. Private garages, office areas, factory and storage areas with an occupant load of 10 or less.
2. Group I-3 Occupancies used as a place of detention.
3. Critical or intensive care patient rooms within suites of health care facilities.
4. Doors within or serving a single dwelling unit in Groups R-2 and R-3.
5. In other than Group H Occupancies, revolving doors complying with Section 1008.1.3.1.
6. In other than Group H Occupancies, horizontal sliding doors complying with Section 1008.1.3.3 are permitted as a means of egress.
7. Power-operated doors in accordance with Section 1008.1.3.2.
8. Doors serving a bathroom within an individual sleeping unit in Group R-1.
9. In other than Group H Occupancies, manually operated horizontal sliding doors are permitted in a means of egress from occupied spaces with an occupant load of 10 or less.

Doors shall swing in the direction of egress travel where serving an occupant load of 50 or more persons or a Group H Occupancy.

The opening force for interior side-swinging doors without closers shall not exceed a 5-pound (22 N) force. For other

side-swinging, sliding, and folding doors, the door latch shall release when subjected to a 15-pound (67 N) force. The door shall be set in motion when subjected to a 30-pound (133 N) force. The door shall swing to a full-open position when subjected to a 15-pound (67 N) force. Forces shall be applied to the latch side.

1008.1.8.3 Locks and latches. Locks and latches shall be permitted to prevent operation of doors where any of the following exists:

1. Places of detention or restraint.
2. In buildings in occupancy Group A having an occupant load of 300 or less, Groups B, F, M and S, and in places of religious worship, the main exterior door or doors are permitted to be equipped with key-operated locking devices from the egress side provided:
 - 2.1 The locking device is readily distinguishable as locked;
 - 2.2 A readily visible durable sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED. The sign shall be in letters 1 inch (25 mm) high on a contrasting background; and
 - 2.3 The use of the key-operated locking device is revocable by the fire code official for due cause.
3. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that the door leaf having the automatic flush bolts has no door-knob or surface-mounted hardware.
4. Doors from individual dwelling or sleeping units of Group R Occupancies having an occupant load of 10 or less are permitted to be equipped with a night latch, dead bolt or security chain, provided such devices are openable from the inside without the use of a key or tool.
5. Approved, listed locks without delayed egress shall be permitted in nursing homes or portions of nursing homes, and boarding homes licensed by the state of Washington, provided that:
 - 5.1 The clinical needs of one or more patients require specialized security measures for their safety;
 - 5.2 The doors unlock upon actuation of the automatic sprinkler systems or automatic fire detection system;
 - 5.3 The doors unlock upon loss of electrical power controlling the lock or lock mechanism;
 - 5.4 The lock shall be capable of being deactivated by a signal from a switch located in an approved location; and
 - 5.5 There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.

AMENDATORY SECTION (Amending WSR 07-01-091, filed 12/19/06, effective 7/1/07)

WAC 51-50-1017 Corridors.

~~((1017.1 Construction. Corridors shall be fire-resistance rated in accordance with Table 1017.1. The corridor walls required to be fire-resistance rated shall comply with Section 708 for fire partitions.~~

- EXCEPTIONS:**
1. ~~A fire-resistance rating is not required for corridors in an occupancy in Group E where each room that is used for instruction has at least one door directly to the exterior and rooms for assembly purposes have at least one-half of the required means of egress doors opening directly to the exterior. Exterior doors specified in this exception are required to be at ground level.~~
 2. ~~A fire-resistance rating is not required for corridors contained within a dwelling or sleeping unit in an occupancy in Group R.~~
 3. ~~A fire-resistance rating is not required for corridors in open parking garages.~~
 4. ~~A fire-resistance rating is not required for corridors in an occupancy in Group B which is a space requiring only a single means of egress complying with Section 1015.1.~~
 5. ~~In Group R-2 boarding homes and residential treatment facilities licensed by Washington state, rest areas constructed as required for corridors shall be allowed to be open to the corridor provided:~~
 - 5.1 ~~The area does not exceed 150-square feet, excluding the corridor width;~~
 - 5.2 ~~The floor is separated into at least two compartments complying with Section 407.4;~~
 - 5.3 ~~Combustible furnishings located within the rest area shall be in accordance with the International Fire Code section 805;~~
 - 5.4 ~~Emergency means of egress lighting is provided as required by Section 1006 to illuminate the area.))~~

1017.4 Air movement in corridors. Corridors shall not serve as supply, return, exhaust, relief or ventilation air ducts.

- EXCEPTIONS:**
1. Use of a corridor as a source of makeup air for exhaust systems in rooms that open directly onto such corridors, including toilet rooms, bathrooms, dressing rooms, smoking lounges and janitor closets, shall be permitted provided that each such corridor is directly supplied with outdoor air at a rate greater than the rate of makeup air taken from the corridor.
 2. Where located within a dwelling unit, the use of corridors for conveying return air shall not be prohibited.
 3. Where located within tenant spaces of one thousand square feet (93 m²) or less in area, utilization of corridors for conveying return air is permitted.
 4. Where such air is part of an engineered smoke control system.
 5. ~~((Make up))~~ Makeup or relief air in corridors of Group ~~((+2))~~ 1-2 Occupancies.
 6. Corridors serving residential occupancies shall be permitted to be supplied without specific mechanical exhaust subject to the following:
 - 6.1 The supply air is one hundred percent outside air; and
 - 6.2 The units served by the corridor have conforming ventilation independent of the air supplied to the corridor; and
 - 6.3 For other than high-rise buildings, the supply fan will automatically shut off upon activation of corridor smoke detectors which shall be spaced at no more than thirty feet (9,144 mm) on center along the corridor; or
 - 6.4 For high-rise buildings, corridor smoke detector activation will close required smoke/fire dampers at the supply inlet to the corridor at the floor receiving the alarm.

~~((1017.6 Subdivision of building spaces—Smoke barriers. Smoke barriers complying with Section 709 shall be installed on floors other than the level of exit discharge of a Group R-2 boarding home or residential treatment facility licensed by Washington state, where a fire-resistance rated corridor is required by Table 1017.1. The smoke barrier shall subdivide the floor into at least two compartments complying with Section 407.4.))~~

WSR 08-17-089
PROPOSED RULES
BUILDING CODE COUNCIL
 [Filed August 19, 2008, 3:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-14-041.

Title of Rule and Other Identifying Information: Amendment of chapter 51-51 WAC, further amendment of the 2006 Edition of the International Residential Code (IRC).

Hearing Location(s): Holiday Inn Select Renton, One Grady Way South, Renton, WA, on October 10, 2008, at 10:00 a.m.

Date of Intended Adoption: November 14, 2008.

Submit Written Comments to: John Neff, Council Chair, P.O. Box 42525, Olympia, WA 98504-2525, e-mail sbcc@ctd.wa.gov, fax (360) 586-9383, by October 10, 2008.

Assistance for Persons with Disabilities: Contact Sue Mathers by October 3, 2008, TTY (360) 586-0772 or (360) 725-2966.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The state building code council is considering rules (1) allowing unvented attic assemblies, (2) revisions to safety requirements for adult family homes, and (3) clarifications to fire separation requirements. The requirements for unvented attic assemblies are found in Section R806.4, and a new definition for air-impermeable insulation is added. The proposed amendments to Section R325 for adult family homes includes handrail requirements for ramps (R325.9) and stairs (R325.10), grab bar specifications (with options of extracting the text or referencing the standard) (R325.8), and requirements for locking devices (R325.4).

Reasons Supporting Proposal: RCW 19.27.031 and 19.27.074.

Statutory Authority for Adoption: RCW 19.27.031 and 19.27.074.

Statute Being Implemented: Chapters 19.27 and 34.05 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The council is seeking comments on the issues proposed in the rules shown below.

Name of Proponent: Washington state building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Tim Nogler, P.O. Box 42525, Olympia, WA 98504-2525, (360) 725-2969; and Enforcement: Local jurisdictions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No disproportionate economic impact on small business was identified.

A cost-benefit analysis is not required under RCW 34.05.328. The state building code council is not listed in this

section as one of the agencies required to comply with this statute.

August 19, 2008
 John P. Neff
 Council Chair

AMENDATORY SECTION (Amending WSR 08-01-102, filed 12/18/07, effective 4/1/08)

WAC 51-51-0202 Section R202—Definitions.

ADULT FAMILY HOME means a dwelling in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

AIR-IMPERMEABLE INSULATION. An insulation having an air permeance equal to or less than 0.02 L/s-m² at 75 Pa pressure differential tested in accordance with ASTM E2178 or ASTM E283.

BALCONY, EXTERIOR. Definition is not adopted.

CHILD DAY CARE, shall, for the purposes of these regulations, mean the care of children during any period of a 24 hour day.

CHILD DAY CARE HOME, FAMILY is a child day care facility, licensed by the state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home.

DECK. Definition is not adopted.

DWELLING UNIT. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Dwelling units may also include the following uses:

1. Adult family homes, foster family care homes and family day care homes licensed by the Washington state department of social and health services.
2. Offices, mercantile, food preparation for off-site consumption, personal care salons or similar uses which are conducted primarily by the occupants of the dwelling unit and are secondary to the use of the unit for dwelling purposes, and which do not exceed 500 square feet (46.4m²).

FIRE SEPARATION DISTANCE. The distance measured from the foundation wall or face of the wall framing, whichever is closer, to one of the following:

1. To the closest interior lot line; or
 2. To the centerline of a street, an alley or public way; or
 3. To an imaginary line between two buildings on the lot.
- The distance shall be measured at a right angle from the wall.

SMALL BUSINESS. Any business entity (including a sole proprietorship, corporation, partnership or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has fifty or fewer employees, or which has a million dollars or less per year in gross sales, of window products.

UNUSUALLY TIGHT CONSTRUCTION. Construction meeting the following requirements:

1. Walls exposed to the outside atmosphere having a continuous water vapor retarder with a rating of 1 perm (57 ng/s·m²·Pa) or less with openings gasketed or sealed;
2. Openable windows and doors meeting the air leakage requirements of the *International Energy Conservation Code*, Section 502.1.4; and
3. Caulking or sealants are applied to areas such as joints around window and door frames, between sole plates and floors, between wall-ceiling joints, between wall panels, at penetrations for plumbing, electrical and gas lines, and at other openings; or
4. Buildings built in compliance with the 1986 or later editions of the Washington State Energy Code chapter 51-11 WAC, Northwest Energy Code, or Super Good Cents weath-erization standards or equivalent.

AMENDATORY SECTION (Amending WSR 08-01-102, filed 12/18/07, effective 4/1/08)

WAC 51-51-0302 Section R302—Location on lot.

R302.1 Exterior walls. Exterior walls with a fire separation distance (~~(less than)~~ of 3 feet (914 mm) or less) shall have not less than a one-hour fire-resistive rating with exposure from both sides. Projections shall not extend to a point closer than 2 feet (610 mm) from the line used to determine the fire separation distance.

EXCEPTION: Detached garages accessory to a dwelling located within 2 feet of a lot line may have roof eave projections not exceeding 4 inches.

Projections extending into the fire separation distance shall have not less than one-hour fire-resistive construction on the underside. The above provisions shall not apply to walls which are perpendicular to the line used to determine the fire separation distance.

EXCEPTIONS: 1. Tool and storage sheds, playhouses and similar structures exempted from permits by Section R105.2 are not required to provide wall protection based on location on the lot. Projections beyond the exterior wall shall not extend over the lot line.

2. Eave projections into the fire separation distance do not require one-hour fire-resistive construction where no openings are provided in the eaves, including openings for ventilation.

R302.2 Openings. Openings shall not be permitted in the exterior wall of a dwelling or accessory building with a fire separation distance (~~(less than)~~ of 3 feet (914 mm) or less. Openings, including openings for ventilation, shall be limited to 25% of the exterior wall area with a fire separation distance between 3 feet (914 mm) to less than 5 feet (1524 mm).) This distance shall be measured perpendicular to the line used to determine the fire separation distance.

EXCEPTIONS: 1. Openings shall be permitted in walls that are perpendicular to the line used to determine the fire separation distance.
2. Foundation vents installed in compliance with this code are permitted.

R302.3 Penetrations. Penetrations located in the exterior wall of a dwelling with a fire separation distance (~~(less than)~~)

of 3 feet (914 mm) or less shall be protected in accordance with Section R317.3.

EXCEPTION: Penetrations shall be permitted in walls that are perpendicular to the line used to determine the fire separation distance.

AMENDATORY SECTION (Amending WSR 07-01-090, filed 12/19/06, effective 7/1/07)

WAC 51-51-0325 Section R325—Adult family homes.

**SECTION R325
ADULT FAMILY HOMES**

R325.1 General. This section shall apply to all newly constructed adult family homes and all existing single family homes being converted to adult family homes. This section shall not apply to those adult family homes licensed by the state of Washington department of social and health services prior to July 1, 2001.

R325.2 Submittal Standards. In addition to those requirements in Section 106.1, the submittal shall identify the project as a Group R-3 Adult Family Home Occupancy. A floor plan shall be submitted identifying the means of egress and the components in the means of egress such as stairs, ramps, platform lifts and elevators. The plans shall indicate the rooms used for clients and the sleeping room classification of each room.

R325.3 Sleeping Room Classification. Each sleeping room in an adult family home shall be classified as:

1. Type S - where the means of egress contains stairs, elevators or platform lifts.

2. Type NS1 - where one means of egress is at grade level or a ramp constructed in accordance with (~~(R311.6)~~ R325.9) is provided.

3. Type NS2 - where two means of egress are at grade level or ramps constructed in accordance with (~~(R311.6)~~ R325.9) are provided.

R325.4 Types of Locking Devices. All bedroom and bathroom doors shall be openable from the outside when locked.

Every closet shall be readily openable from the inside.

Operable parts of door handles, pulls, latches, locks and other devices installed in adult family homes shall be operable with one hand and shall not require tight grasping, pinching or twisting of the wrist. The force required to activate operable parts shall be 5.0 pounds (22.2 N) maximum. Exit doors shall have no additional locking devices.

R325.5 Smoke Alarm Requirements. All adult family homes shall be equipped with smoke alarms installed as required in Section R313. Alarms shall be installed in such a manner so that the fire warning may be audible in all parts of the dwelling upon activation of a single device.

R325.6 Escape Windows and Doors. Every sleeping room shall be provided with emergency escape and rescue windows as required by Section R310. No alternatives to the sill height such as steps, raised platforms or other devices placed by the openings will be approved as meeting this requirement.

R325.7 Fire Apparatus Access Roads and Water Supply for Fire Protection. Adult family homes shall be served by fire apparatus access roads and water supplies meeting the requirements of the local jurisdiction.

Option 1 R325.8

R325.8 Grab Bars. Grab bars shall be installed for all water closets and bathtubs and showers. The grab bars shall comply with ICC/ANSI A117.1 Sections 604.5 and 607.4 and 608.3.

EXCEPTION: Grab bars are not required for water closets and bathtubs and showers used exclusively by staff of the adult family home.

Option 2 R325.8

R325.8 Grab Bars. Grab bars shall be installed to assist the occupants of adult family homes in accordance with this section.

R325.8.1 General. Grab bars for all water closets and bathtubs and showers shall comply with Section R325.8.

EXCEPTION: Grab bars are not required for water closets and bathtubs and showers used exclusively by staff of the adult family home.

R325.8.2 Cross Section. Grab bars shall have a cross section complying with Section R325.8.2.1 or R325.8.2.2.

R325.8.2.1 Circular Cross Section. Grab bars with a circular cross section shall have an outside diameter of 1-1/4 inch (32 mm) minimum and 2 inches (51 mm) maximum.

R325.8.2.2 Noncircular Cross Section. Grab bars with a noncircular cross section shall have a cross section dimension of 2 inches (51 mm) maximum, and a perimeter dimension of 4 inches (102 mm) minimum and 4.8 inches (122 mm) maximum.

R325.8.3 Spacing. The space between the wall and the grab bar shall be 1-1/2 inches (38 mm). The space between the grab bar and projecting objects below and at the ends of the grab bar shall be 1-1/2 inches (38 mm) minimum. The space between the grab bar and projecting objects above the grab bar shall be 12 inches (305 mm) minimum.

EXCEPTION: The space between the grab bars and shower controls, shower fittings, and other grab bars above the grab bar shall be permitted to be 1-1/2 inches (38 mm) minimum.

R325.8.4 Position of Grab Bars. Grab bars shall be installed in a horizontal position, 33 inches (840 mm) minimum and 36 inches (915 mm) maximum above the floor measured to the top of the gripping surface. In addition, grab bars shall be installed in accordance with R325.8.4.1 through R325.8.4.7.

R325.8.4.1 Water Closet Fixed Side Wall Grab Bars. Horizontal fixed side wall grab bars for water closets shall be 42 inches (1065 mm) minimum in length, located 12 inches (305 mm) maximum from the rear wall and extending 54 inches (1370 mm) minimum from the rear wall. In addition, a vertical grab bar 18 inches (455 mm) minimum in length shall be mounted with the bottom of the bar located between 39 inches (990 mm) and 41 inches (1040 mm) above the floor, and with the center line of the bar located between 39

inches (990 mm) and 41 inches (1040 mm) from the rear wall.

R325.8.4.2 Water Closet Rear Wall Grab Bar. The rear wall grab bar shall be horizontal and 36 inches (915 mm) minimum in length, and extend from the centerline of the water closet 12 inches (305 mm) minimum on the side closest to the wall, and 24 inches (610 mm) minimum on the transfer side.

R325.8.4.3 Bathtub Horizontal Grab Bar. A horizontal grab bar 24 inches (610 mm) minimum in length shall be provided on the control end wall beginning near the front edge of the bath tub and extend toward the inside corner of the bath tub.

R325.8.4.4 Bathtub Vertical Grab Bar. A vertical grab bar 18 inches (455 mm) minimum in length shall be provided on the control end wall 3 inches (76 mm) minimum to 6 inches (150 mm) maximum above the horizontal grab bar, and 4 inches (102 mm) maximum inward from the front edge of the bath tub.

R325.8.4.5 Shower Horizontal Grab Bars. Horizontal grab bars for showers shall be provided across the control wall and on the back wall to a point 18 inches (455 mm) from the control wall.

R325.8.4.6 Shower Vertical Grab Bar. A vertical grab bar for showers 18 inches (455 mm) minimum in length shall be provided on the control end wall 3 inches (75 mm) minimum to 6 inches (150 mm) maximum above the horizontal grab bar, and 4 inches (100 mm) maximum inward from the edge of the shower.

R325.8.4.7 Shower Grab Bar Configuration. Grab bars complying with Sections R325.8.4.5 and R325.8.4.6 shall be permitted to be separate bars, a single piece bar, or combination thereof.

R325.8.5 Surface Hazards. Grab bars, and any wall or other surfaces adjacent to grab bars, shall be free of sharp or abrasive elements. Edges shall be rounded.

R325.8.6 Fittings. Grab bars shall not rotate within their fittings.

R325.8.7 Installation. Grab bars shall be installed in any manner that provides a gripping surface at the locations specified in this standard and does not obstruct the clear floor space.

R325.8.8 Structural Strength. Allowable stresses shall not be exceeded for materials used where a vertical or horizontal force of 250 pounds (1112 N) is applied at any point on the grab bar, fastener mounting device, or supporting structure.

R325.9 Ramps. All interior and exterior ramps, when provided, shall be constructed in accordance with Section R311.6 with a maximum slope of 1 vertical to 12 horizontal. The exception to R311.6.1 is not allowed for adult family homes. Handrails shall be installed in accordance with R325.9.1.

R325.9.1 Handrails for Ramps. Handrails shall be installed on both sides of ramps between the slope of 1 vertical to 12

horizontal and 1 vertical and 20 horizontal in accordance with R311.6.3.1 through R311.6.3.3.

R325.10 Stair Treads and Risers. Stair treads and risers shall be constructed in accordance with R311.5.3.2. Handrails shall be installed in accordance with R325.10.1.

R325.10.1 Handrails for Treads and Risers. Handrails shall be installed on both sides of treads and risers numbering from one riser to multiple risers. Handrails shall be installed in accordance with R311.5.6.1 through R311.5.6.3.

AMENDATORY SECTION (Amending WSR 07-01-090, filed 12/19/06, effective 7/1/07)

WAC 51-51-0806 Section R806—Roof ventilation.

R806.4 ((Conditioned)) Unvented attic assemblies. ~~((This section is not adopted.))~~ Unvented attic assemblies (spaces between the ceiling joists of the top story and the roof rafters) shall be permitted if all of the following conditions are met:

1. The unvented attic space is completely contained within the building thermal envelope.

2. No interior vapor retarders are installed on the ceiling side (attic floor) of the unvented attic assembly.

3. Where wood shingles or shakes are used, a minimum 1/4 inch (6 mm) vented air space separates the shingles or shakes and the roofing underlayment above the structural sheathing.

4. Any air-impermeable insulation shall be a vapor retarder, or shall have a vapor retarder coating or covering in direct contact with the underside of the insulation.

5. Either items a, b or c below shall be met, depending on the air permeability of the insulation directly under the structural roof sheathing.

a. Air-impermeable insulation only. Insulation shall be applied in direct contact to the underside of the structural roof sheathing.

b. Air-permeable insulation only. In addition to the air-permeable insulation installed directly below the structural sheathing, rigid board or sheet insulation shall be installed directly above the structural roof sheathing as specified per WA Climate Zone for condensation control.

i. Climate Zone #1 - R-10 minimum rigid board or air-impermeable insulation R-value.

ii. Climate Zone #2 - R-25 minimum rigid board or air-impermeable insulation R-value.

c. Air-impermeable and air-permeable insulation. The air-impermeable insulation shall be applied in direct contact to the underside of the structural roof sheathing as specified per WA Climate Zone for condensation control. The air-permeable insulation shall be installed directly under the air-impermeable insulation.

i. Climate Zone #1 - R-10 minimum rigid board or air-impermeable insulation R-value.

ii. Climate Zone #2 - R-25 minimum rigid board or air-impermeable insulation R-value.

WSR 08-17-090

PROPOSED RULES

BUILDING CODE COUNCIL

[Filed August 19, 2008, 3:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-14-040.

Title of Rule and Other Identifying Information: Amendment of chapter 51-54 WAC, further amendment of the 2006 Edition of the International Fire Code (IFC).

Hearing Location(s): Holiday Inn Select Renton, One Grady Way South, Renton, WA, on October 10, 2008, at 10:00 a.m.

Date of Intended Adoption: November 14, 2008.

Submit Written Comments to: John Neff, Council Chair, P.O. Box 42525, Olympia, WA 98504-2525, e-mail sbcc@ctd.wa.gov, fax (360) 586-9383, by October 10, 2008.

Assistance for Persons with Disabilities: Contact Sue Mathers by October 3, 2008, TTY (360) 586-0772 or (360) 725-2966.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules make changes to the state amendments to 2006 Edition of the International Fire Code. The proposals include changes to Chapter 4 regarding procedures for emergency lock-down and shelter-in-place currently adopted as an emergency rule under WSR 08-09-001, and changes to requirements for boarding homes licensed through the department of social and health services. The latter category includes changes to Section 1008.1.8.3 for door locks, Section 903.2.7 for automatic fire sprinkler systems, and Section 907.2.9 for manual fire alarm systems.

Reasons Supporting Proposal: RCW 19.27.031 and 19.27.074.

Statutory Authority for Adoption: RCW 19.27.031 and 19.27.074.

Statute Being Implemented: Chapters 19.27 and 34.05 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The council is seeking comments on the issues proposed in the rules shown below.

Name of Proponent: Washington state building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Tim Nogler, P.O. Box 42525, Olympia, WA 98504-2525, (360) 725-2969; and Enforcement: Local jurisdictions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No disproportionate economic impact on small business was identified.

A cost-benefit analysis is not required under RCW 34.05.328. The state building code council is not listed in this section as one of the agencies required to comply with this statute.

August 19, 2008

John P. Neff
Council Chair

AMENDATORY SECTION (Amending WSR 07-01-093, filed 12/19/06, effective 7/1/07)

WAC 51-54-0400 Chapter 4—Emergency planning and preparedness.

401.2 Approval. Where required by the fire code official, fire safety plans, emergency procedures, and employee training programs shall be approved.

SECTION 402 DEFINITIONS

EMERGENCY DRILL. An exercise performed to train staff and occupants and to evaluate their efficiency and effectiveness in carrying out emergency procedures.

LOCKDOWN. An action used to position occupants behind secured openings and isolated from threats.

Full lockdown. Occupants remain out of sight and as quiet as possible, with only limited authorized entry, exit, or movement within the building. Occupants in corridors, common areas, or unsecured areas move quickly to the nearest secured area.

Modified lockdown. Occupants of a facility are isolated from potential outside threats by remaining within a building with exterior doors and other exits secured, and that entry and exit from the building is limited to that which is authorized. During a modified lockdown, interior movement and other activities within the building may be allowed or restricted in accordance to the lockdown plan.

SHELTER-IN-PLACE. An emergency response used to minimize exposure of facility occupants to chemical or environmental hazards by taking refuge in predetermined interior rooms or areas where actions are taken to isolate the interior environment from the exterior hazard.

SECTION 404 EMERGENCY PLANS

404.1 General. Fire safety, evacuation, shelter-in-place, and lockdown plans shall comply with the requirements of this section.

404.2 Fire safety and evacuation plans. Fire safety and evacuation plans shall comply with the requirements of Sections 404.2.1 through 404.2.4.

404.2.1 Where required. A fire safety and evacuation plan shall be prepared and maintained in accordance with this chapter for the following occupancies and buildings when required by the fire code official.

1. Group A having an occupant load of 100 or more.
2. Group B buildings having an occupant load of 500 or more persons or more than 100 persons above or below the lowest level of exit discharge.
3. Group E.
4. Group H.
5. Group I.
6. Group R-1.
7. Group R-2 college and university buildings. Boarding homes, group homes, and residential treatment facilities licensed by the state of Washington.
8. High-rise buildings.

9. Group M buildings having an occupant load of 500 or more persons or more than 100 persons above or below the lowest level of exit discharge.

10. Covered malls exceeding 50,000 sf in aggregate floor area.

11. Underground buildings.

12. Buildings with an atrium and having an occupancy in Group A, E, or M.

~~((404.4 Maintenance. Fire safety and evacuation plans shall be reviewed by the owner or occupant annually or as necessitated by changes in staff assignments, occupancy, or the physical arrangement of the building.))~~ **404.2.2 Contents.** Fire safety and evacuation plan contents shall be in accordance with Sections 404.2.2.1 and 404.2.2.2.

404.2.2.1 Fire evacuation plans. Fire evacuation plans shall include the following:

1. Emergency egress or escape routes and whether evacuation of the building is to be complete or, where approved, by selected floors or areas only.

2. Procedures for employees who must remain to operate critical equipment before evacuating.

3. Procedures for accounting for employees and occupants after evacuation has been completed.

4. Identification and assignment of personnel responsible for rescue or emergency medical aid.

5. The preferred and any alternative means of notifying occupants of a fire or emergency.

6. The preferred and any alternative means of reporting fires and other emergencies to the fire department or designated emergency response organization.

7. Identification and assignment of personnel who can be contacted for further information or explanation of duties under the plan.

8. A description of the emergency voice/alarm communication system alert tone and preprogrammed voice messages, where provided.

404.2.2.2 Fire safety plans. Fire safety plans shall include the following:

1. The procedure for reporting a fire or other emergency.

2. The life safety strategy and procedures for notifying, relocating, or evacuating occupants.

3. Site plans indicating the following:

3.1 The occupancy assembly point.

3.2 The locations of fire hydrants.

3.3 The normal routes of fire department vehicle access.

4. Floor plans identifying the locations of the following:

4.1 Exits.

4.2 Primary evacuation routes.

4.3 Secondary evacuation routes.

4.4 Accessible egress routes.

4.5 Areas of refuge.

4.6 Manual fire alarm boxes.

4.7 Portable fire extinguishers.

4.8 Occupant-use hose stations.

4.9 Fire alarm annunciators and controls.

5. A list of major fire hazards associated with the normal use and occupancy of the premises, including maintenance and housekeeping procedures.

6. Identification and assignment of personnel responsible for maintenance of systems and equipment installed to prevent or control fires.

7. Identification and assignment of personnel responsible for maintenance, housekeeping and controlling fuel hazard sources.

404.2.3 Maintenance. Fire safety and evacuation plans shall be reviewed by the owner or occupant annually or more often, as necessitated by changes in staff assignments, occupancy, or the physical arrangement of the building.

404.2.4 Availability. Fire safety and evacuation plans shall be available in the workplace for reference and review by employees, and copies shall be furnished to the fire code official for review upon request.

404.3 Shelter-in-place and lockdown plans. Shelter-in-place and lockdown plans shall comply with the requirements of Sections 404.3.1 through 404.3.4.

404.3.1 Where required. A shelter-in-place and lockdown plan shall be prepared and maintained for all Group E occupancies.

EXCEPTION: Daycares not collocated on a Group E campus.

404.3.2 Contents. Shelter-in-place and lockdown plan contents shall be in accordance with Sections 404.3.2.1 and 404.3.2.2.

404.3.2.1 Shelter-in-place plans. Shelter-in-place plans shall include the following:

1. Identification of the procedures of initiating the shelter-in-place plan throughout the facility or campus.
2. Identification of prearranged alert and recall signals to notify all occupants.
3. Identification of procedures for reporting the facility is sheltering-in-place to the local emergency dispatch center.
4. A means of two-way communication between a central location and each secure area.
5. Identification of protective security measures.
6. Location of emergency supplies.
7. Accountability procedures for staff to report the presence or absence of occupants.
8. Identification of crisis response team members in accordance with the National Incident Management System.
9. Actions to be taken in the event of a fire or medical emergency while sheltering-in-place.

404.3.2.2 Lockdown plans. Lockdown plans shall include the following:

1. Identification of the procedures of initiating the lockdown plan throughout the facility or campus.
2. Identification of prearranged alert and recall signals to notify all occupants.
3. Identification of procedure for access to facility for emergency responders.
4. Identification of procedures for reporting the facility is in lockdown to the local emergency dispatch center.
5. A means of two-way communication between a central location and each secure area.
6. Identification of protective security measures.
7. Location of emergency supplies.

8. Accountability procedures for staff to report the presence or absence of occupants.

9. Identification of crisis response team members in accordance with the National Incident Management System.

10. Actions to be taken in the event of a fire or medical emergency while in lockdown.

404.3.3 Maintenance. Shelter-in-place and lockdown plans shall be reviewed by the owner or occupant annually or more often, as necessitated by changes in staff assignments, occupancy, or the physical arrangement of the building.

404.3.4 Availability. Shelter-in-place and lockdown plans shall be available in the workplace for reference and review by employees, and copies shall be furnished to the fire code official for review upon request.

Sections 404.4 and 404.5 are not adopted.

SECTION 405 EMERGENCY DRILLS

405.1 General. Emergency drills shall comply with the requirements of this section.

405.2 Emergency evacuation drills. Emergency evacuation drills complying with the provisions of this section shall be conducted at least annually in the occupancies listed in Section 404.2.1 or when required by the fire code official. Drills shall be designed in cooperation with the local authorities.

405.2.1 Frequency. Required emergency evacuation drills shall be held at the intervals specified in Table 405.2.1 or more frequently where necessary to familiarize all occupants with the drill procedure.

**TABLE 405.2.1
FIRE AND EVACUATION DRILL
FREQUENCY AND PARTICIPATION**

<u>GROUP OR OCCUPANCY</u>	<u>FREQUENCY</u>	<u>PARTICIPATION</u>
<u>Group A</u>	<u>Quarterly</u>	<u>Employees</u>
<u>Group B^c</u>	<u>Annually</u>	<u>Employees</u>
<u>Group E</u>	<u>Monthly^{a,e}</u>	<u>All occupants</u>
<u>Group I</u>	<u>Quarterly on each shift</u>	<u>Employees^b</u>
<u>Group R-1</u>	<u>Quarterly on each shift</u>	<u>Employees</u>
<u>Group R-2^f</u>	<u>Quarterly on each shift</u>	<u>Employees</u>
<u>Group R-2^d</u>	<u>Four annually</u>	<u>All occupants</u>
<u>High-rise buildings</u>	<u>Annually</u>	<u>Employees</u>

a. The frequency shall be allowed to be modified in accordance with Section 408.3.2.

b. Fire and evacuation drills in residential care assisted living facilities shall include complete evacuation of the premises in accordance with Section 408.10.5. Where occupants receive habilitation or rehabilitation training, fire prevention and fire safety practices shall be included as part of the training program.

c. Group B buildings having an occupant load of five hundred or more persons or more than one hundred persons above or below the lowest level of exit discharge.

d. Applicable to Group R-2 college and university buildings in accordance with Section 408.3.

e. Group E and daycares colocated on a Group E campus shall jointly perform at least six fire and evacuation drills per school year.

f. Applicable to boarding homes, group homes, and residential treatment facilities licensed by the state of Washington.

405.2.2 Leadership. Responsibility for the planning and conduct of drills shall be assigned to competent persons designated to exercise leadership.

405.2.3 Time. Drills shall be held at unexpected times and under varying conditions to simulate the unusual conditions that occur in case of fire.

405.2.4 Recordkeeping. Records shall be maintained of required emergency evacuation drills and include the following information:

1. Identity of the person conducting the drill.
2. Date and time of the drill.
3. Notification method used.
4. Staff members on duty and participating.
5. Number of occupants evacuated.
6. Special conditions simulated.
7. Problems encountered and corrective action taken.
8. Weather conditions when occupants were evacuated.
9. Time required to accomplish complete evacuation.

405.2.5 Notification. Where required by the fire code official, prior notification of emergency evacuation drills shall be given to the fire code official.

405.2.6 Initiation. Where a fire alarm system is provided, emergency evacuation drills shall be initiated by activating the fire alarm system. The fire alarm monitoring company shall be notified prior to the activation of the fire alarm system for drill purposes and again at the conclusion of the transmission and restoration of the fire alarm system to normal mode.

EXCEPTION: Drills conducted between the hours of 9:00 p.m. and 6:00 a.m., in Group R-2 boarding homes, group homes and residential treatment facilities licensed by the state of Washington, are allowed to utilize a coded announcement.

405.2.7 Accountability. As building occupants arrive at the assembly point, efforts shall be made to determine if all occupants have been successfully evacuated or have been accounted for.

405.2.8 Recall and reentry. An electrically or mechanically operated signal used to recall occupants after an evacuation shall be separate and distinct from the signal used to initiate the evacuation. The recall signal initiation means shall be manually operated and under the control of the person in charge of the premises or the official in charge of the incident. No one shall reenter the premises until authorized to do so by the official in charge.

405.3 Shelter-in-place and lockdown drills. Shelter-in-place and lockdown drills complying with the provisions of this section shall be conducted in the occupancies listed in Section 404.3.1 or when required by the fire code official. Drills shall be designed in cooperation with local authorities.

405.3.1 Frequency. Shelter-in-place and lockdown drills required by this section shall each be held at least annually to familiarize all occupants with the emergency procedures. Group E and colocated daycares shall drill jointly.

405.3.2 Leadership. Responsibility for the planning and conduct of drills shall be assigned to competent persons designated to exercise leadership.

405.3.3 Time. Drills shall be held at unexpected times and under varying conditions to simulate the unusual conditions that occur in case of an emergency.

405.3.4 Recordkeeping. Records shall be maintained of required shelter-in-place and lockdown drills and include the following information:

1. Identity of the person conducting the drill.
2. Date and time of the drill.
3. Notification method used.
4. Staff members on duty and participating.
5. Number of occupants sheltered and unaccounted for.
6. Special conditions simulated.
7. Problems encountered and corrective actions taken.
8. Time required to accomplish complete sheltering.

405.3.5 Notification. Where required by the fire code official, prior notification of shelter-in-place and lockdown drills shall be given to appropriate emergency response agencies.

405.3.6 Signals. Alerting signals shall be separate and distinct from the fire alarm and other signals.

405.3.7 Accountability. Efforts shall be made to determine if all occupants have been successfully sheltered and accounted for.

SECTION 406 EMPLOYEE TRAINING AND RESPONSE PROCEDURES

406.1 General. Employees in the occupancies listed in Sections 404.2.1 and 404.3.1 shall be trained in the procedures described in their emergency plans. Training shall be based on these plans and as described in Sections 404.2.2 and 404.3.2.

406.3 Employee training program. Employees shall be trained in fire prevention, evacuation, fire safety, shelter-in-place, and lockdown in accordance with Sections 406.3.1 through 406.3.4.

406.3.4 Shelter-in-place and lockdown training. Employees shall be familiarized with the alert and recall signals, their assigned duties in the event of an alarm or emergency, communication system, location of emergency supplies, and the use of the incident notification and alert system.

SECTION 408 USE AND OCCUPANCY-RELATED REQUIREMENTS

408.2.1 Seating plan. The fire safety and evacuation plans for assembly occupancies shall include the information

required by Section 404.2.2 and a detailed seating plan, occupant load, and occupant load limit. Deviations from the approved plans shall be allowed provided the occupant load limit for the occupancy is not exceeded and the aisles and exit accessways remain unobstructed.

408.3.2 Emergency evacuation drill deferral. In severe climates, the fire code official shall have the authority to modify the emergency evacuation drill frequency specified in Section 405.2.1.

408.5.4 Drill frequency. Emergency evacuation drills shall be conducted at least six times per year, two times per year on each shift. Twelve drills shall be conducted in the first year of operation. Drills are not required to comply with the time requirements of Section 405.2.3.

408.6 Group I-2 occupancies. Group I-2 occupancies shall comply with the requirements of Sections 408.6.1 and 408.6.2 and Sections 401 through 406. Drills are not required to comply with the time requirements of Section 405.2.3.

Section 408.10 is not adopted.

408.11.1 Lease plan. A lease plan shall be prepared for each covered mall building. The plan shall include the following information in addition to that required by Section 404.2.2.2:

1. Each occupancy, including identification of tenant.
2. Exits from each tenant space.
3. Fire protection features, including the following:
 - 3.1 Fire department connections.
 - 3.2 Fire command center.
 - 3.3 Smoke management system controls.
 - 3.4 Elevators and elevator controls.
 - 3.5 Hose valves outlets.
 - 3.6 Sprinkler and standpipe control valves.
 - 3.7 Automatic fire-extinguishing system areas.
 - 3.8 Automatic fire detector zones.
 - 3.9 Fire barriers.

408.11.1.1 Submittal. The lease plan shall be submitted to the fire code official, and shall be maintained on-site for immediate reference by responding fire service personnel.

408.11.1.2 Revisions. The lease plan shall be reviewed and revised annually or as often as necessary to keep them current. Modifications or changes in occupancies shall not be made without prior approval of the fire code official and building official.

AMENDATORY SECTION (Amending WSR 08-01-101, filed 12/18/07, effective 4/1/08)

WAC 51-54-0900 Chapter 9—Fire protection systems.

902.1 Definitions.

PORTABLE SCHOOL CLASSROOM. A structure, transportable in one or more sections, which requires a chassis to be transported, and is designed to be used as an educational space with or without a permanent foundation. The structure shall be trailerable and capable of being demounted and relocated to other locations as needs arise.

903.2.2 Group E. An automatic sprinkler system shall be provided for Group E Occupancies.

- EXCEPTIONS:
1. Portable school classrooms, provided aggregate area of any cluster or portion of a cluster of portable school classrooms does not exceed 5,000 square feet (1465 m²); and clusters of portable school classrooms shall be separated as required in Chapter 5 of the building code.
 2. Group E Occupancies with an occupant load of 50 or less.

903.2.7 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area. Sprinkler systems in boarding homes licensed by the state of Washington shall comply with Section 903.3.1.1.

- EXCEPTION:
- Group R-1 if all of the following conditions apply:
1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
 2. The Group R fire area is on only one story.
 3. The Group R fire area does not include a basement.
 4. The Group R fire area is no closer than 30 feet from another structure.
 5. Cooking is not allowed within the Group R fire area.
 6. The Group R fire area has an occupant load of no more than 8.
 7. A hand held (portable) fire extinguisher is in every Group R fire area.

903.6.2 Nightclub. An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code. An existing nightclub constructed prior to July 1, 2006, shall be provided with automatic sprinklers not later than December 1, 2009.

907.2.9.1 Group R-2 boarding homes. A manual fire alarm system shall be installed in Group R-2 occupancies where the building contains a boarding home licensed by the state of Washington.

EXCEPTION: In boarding homes licensed by the state of Washington, manual fire alarm boxes in resident sleeping areas shall not be required at exits if located at all constantly attended staff locations, provided such staff locations are visible, continuously accessible, located on each floor, and positioned so no portion of the story exceeds a horizontal travel distance of 200 feet to a manual fire alarm box.

909.6.3 Elevator shaft pressurization. Where elevator shaft pressurization is required to comply with Exception 6 of IBC Section 707.14.1, the pressurization system shall comply with and be maintained in accordance with IBC 707.14.2.

909.6.3.1 Activation. The elevator shaft pressurization system shall be activated by a fire alarm system which shall include smoke detectors or other approved detectors located near the elevator shaft on each floor as approved by the building official and fire code official. If the building has a fire alarm panel, detectors shall be connected to, with power supplied by, the fire alarm panel.

909.6.3.2 Power system. The power source for the fire alarm system and the elevator shaft pressurization system shall be in accordance with Section 909.11.

AMENDATORY SECTION (Amending WSR 07-01-093, filed 12/19/06, effective 7/1/07)

WAC 51-54-1000 Chapter 10—Means of egress.

1008.1.2 Door swing. Egress doors shall be side-hinged swinging.

EXCEPTIONS: 1. Private garages, office areas, factory and storage areas with an occupant load of 10 or less.
 2. Group I-3 Occupancies used as a place of detention.
 3. Critical or intensive care patient rooms within suites of health care facilities.
 4. Doors within or serving a single dwelling unit in Groups R-2 and R-3 as applicable in Section 101.2.
 5. In other than Group H Occupancies, revolving doors complying with Section 1008.1.3.1.
 6. In other than Group H Occupancies, horizontal sliding doors complying with Section 1008.1.3.3 are permitted in a means of egress.
 7. Power-operated doors in accordance with Section 1008.1.3.2.
 8. Doors serving a bathroom within an individual sleeping unit in Group R-1.
 9. In other than Group H Occupancies, manually operated horizontal sliding doors are permitted in a means of egress from spaces with an occupant load of 10 or less.

Doors shall swing in the direction of egress travel where serving an occupant load of 50 or more persons or a Group H Occupancy.

The opening force for interior side-swinging doors without closers shall not exceed a 5-pound (22 N) force. For other side-swinging, sliding, and folding doors, the door latch shall release when subjected to a 15-pound (67 N) force. The door shall be set in motion when subjected to a 30-pound (133 N) force. The door shall swing to a full-open position when subjected to a 15-pound (67 N) force. Forces shall be applied to the latch side.

1008.1.8.3 Locks and latches. Locks and latches shall be permitted to prevent operation of doors where any of the following exists:

1. Places of detention or restraint.

2. In buildings in occupancy Group A having an occupant load of 300 or less, Group B, F, M and S, and in places of religious worship, the main exterior door or doors are permitted to be equipped with key-operated locking devices from the egress side provided:

2.1 The locking device is readily distinguishable as locked.

2.2 A readily visible durable sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED. The sign shall be in letters 1 inch (25 mm) high on a contrasting background; and

2.3 The use of the key-operated locking device is revocable by the fire code official for due cause.

3. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that the door leaf having the automatic flush bolts has no door-knob or surface-mounted hardware.

4. Doors from individual dwelling or sleeping units of Group R occupancies having an occupant load of 10 or less are permitted to be equipped with a night latch, dead bolt or

security chain, provided such devices are openable from the inside without the use of a key or tool.

5. Approved, listed locks without delayed egress shall be permitted in nursing homes or portions of nursing homes, and boarding homes licensed by the state of Washington, provided that:

5.1 The clinical needs of one or more patients require specialized security measures for their safety;

5.2 The doors unlock upon actuation of the automatic sprinkler systems or automatic fire detection system;

5.3 The doors unlock upon loss of electrical power controlling the lock or lock mechanism;

5.4 The lock shall be capable of being deactivated by a signal from a switch located in an approved location; and

5.5 There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.

1009.12 Stairways in individual dwelling units. Stairs or ladders within an individual dwelling unit used for access to areas of 200 square feet (18.6 m²) or less, and not containing the primary bathroom or kitchen, are exempt from the requirements of Section 1009.

1014.2.2 Group I-2. Habitable rooms or suites in Group I-2 Occupancies shall have an exit access door leading directly to a corridor.

EXCEPTION: Rooms with exit doors opening directly to the outside at ground level.

1014.2.2.1 Definition. For the purposes of this section, a suite is defined as a cluster of rooms or spaces sharing common circulation. Partitions within a suite are not required to have smoke or fire-resistance-rated construction unless required by another section of this Code.

1014.2.3 Suites in patient sleeping areas. Patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites if one of the following conditions is met:

1. The intervening room within the suite is not used as an exit access for more than eight patient beds.

2. The arrangement of the suite allows for direct and constant visual supervision by nursing personnel.

1014.2.3.1 Area. Suites of sleeping rooms shall not exceed 5,000 square feet (465 m²).

1014.2.3.2 Exit access. Any patient sleeping room, or any suite that includes patient sleeping rooms, of more than 1,000 square feet (93 m²) shall have at least two exit access doors remotely located from each other.

1014.2.3.3 Travel distance. The travel distance between any point in a suite of sleeping rooms and an exit access door of that suite shall not exceed 100 feet (30,480 mm).

1014.2.4 Suites in areas other than patient sleeping areas. Areas other than patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites.

1014.2.4.1 Area. Suites of rooms, other than patient rooms, shall not exceed 10,000 square feet (929 m²).

1014.2.4.2 Exit access. Any rooms or suite of rooms, other than patient sleeping rooms, of more than 2,500 square feet (232 m²) shall have at least two exit access doors remotely located from each other.

1014.2.4.3 One intervening room. For rooms other than patient sleeping rooms, suites of rooms are permitted to have one intervening room if the travel distance within the suite is not greater than 100 feet (30,480 mm).

1014.2.4.4 Two intervening rooms. For rooms other than patient sleeping rooms located within a suite, exit access travel from within the suite shall be permitted through two intervening rooms where the travel distance to the exit access door is not greater than 50 feet (15,240 mm).

1014.2.5 Travel distance. The travel distance between any point in a Group I-2 Occupancy patient room and an exit access door in that room shall not exceed 50 feet (15,240 mm).

1014.2.6 Separation. Suites in Group I-2 Occupancies shall be separated from other portions of the building by a smoke partition complying with Section 710.

1015.1 ((~~HFC 1015.1~~)) Exits or exit access doorways from spaces. Two exits or exit access doorways from any space shall be provided where one of the following conditions exists:

1. The occupant load of the space exceeds one of the values in Table 1015.1.

EXCEPTION: One means of egress is permitted within and from dwelling units with a maximum occupant load of 20 where the dwelling unit is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

2. The common path of egress travel exceeds one of the limitations of Section 1014.3.

3. Where required by Sections 1015.3, 1015.4, 1015.5, 1015.6 or 1015.6.1.

EXCEPTION: Group I-2 Occupancies shall comply with Section 1014.2.2.

**TABLE 1015.1 ((~~HFC 1015.1~~))
SPACES WITH ONE MEANS OF EGRESS**

OCCUPANCY	MAXIMUM OCCUPANT LOAD
A, B, E ^a , F, M, U	49
H-1, H-2, H-3	3
H-4, H-5, I-1, I-3, I-4, R	10
S	29

a. Day care maximum occupant load is 10.

1015.1.1 ((~~HFC 1015.1.1~~)) Three or more exits or exit access doorways. Three exits or exit access doorways shall be provided from any space with an occupant load of 501-1,000. Four exits or exit access doorways shall be provided from any space with an occupant load greater than 1,000.

~~(1017.1 Construction. Corridors shall be fire-resistance rated in accordance with Table 1017.1. The corridor walls required to be fire-resistance rated shall comply with Section 708 for fire partitions.~~

- EXCEPTIONS:
1. A fire-resistance rating is not required for corridors in an occupancy in Group E where each room that is used for instruction has at least one door directly to the exterior and rooms for assembly purposes have at least one-half of the required means of egress doors opening directly to the exterior. Exterior doors specified in this exception are required to be at ground level.
 2. A fire-resistance rating is not required for corridors contained within a dwelling or sleeping unit in an occupancy in Group R.
 3. A fire-resistance rating is not required for corridors in open parking garages.
 4. A fire-resistance rating is not required for corridors in an occupancy in Group B which is a space requiring only a single means of egress complying with Section 1015.1.
 5. In Group R-2 boarding homes and residential treatment facilities licensed by Washington state, rest areas constructed as required for corridors shall be allowed to be open to the corridor provided:
 - 5.1 The area does not exceed 150 square feet, excluding the corridor width;
 - 5.2 The floor is separated into at least two compartments complying with Section 407.4;
 - 5.3 Combustible furnishings located within the rest area shall be in accordance with the International Fire Code, Section 805;
 - 5.4 Emergency means of egress lighting is provided as required by Section 1006 to illuminate the area.

~~**1017.6 Subdivision of building spaces—Smoke barriers.** Smoke barriers complying with Section 709 shall be installed on floors other than the level of exit discharge of a Group R-2 boarding home or residential treatment facility licensed by Washington state, where a fire-resistance rated corridor is required by Table 1017.1. The smoke barrier shall subdivide the floor into at least two compartments complying with Section 407.4.~~

1019.1 ((~~HFC 1019.1~~)) Exits from stories. All spaces within each story shall have access to the minimum number of exits as specified in Table 1019.1 based on the occupant load of the story, except as modified in Section 1019.2. For the purposes of this chapter, occupied roofs shall be provided with exits as required for stories. The required number of exits from any story, including basements, shall be maintained until arrival at grade or the public way.

EXCEPTION: One means of egress is permitted within and from dwelling units with a maximum occupant load of 20 where the dwelling unit is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

**TABLE 1019.1 ((~~HFC 1019.1~~))
MINIMUM NUMBER OF EXITS FOR OCCUPANT LOAD**

OCCUPANT LOAD (persons per story)	MINIMUM NUMBER OF EXITS (per story)
1-500	2
501-1,000	3
More than 1,000	4

1019.2 ((~~HFC 1019.2~~)) Buildings with one exit. Only one exit shall be required in buildings as specified below:

1. Buildings meeting the limitations of Table 1019.2, provided the building has not more than one level below the first story above grade plane.
2. Buildings of Group R-3 Occupancy.

3. Single-level buildings with occupied spaces at the level of exit discharge provided each space complies with Section 1015.1 as a space with one exit or exit access doorway.

**TABLE 1019.2 ((~~HFC 1019.2~~))
BUILDINGS WITH ONE EXIT**

OCCUPANCY	MAXIMUM HEIGHT OF BUILDING ABOVE GRADE PLANE	MAXIMUM OCCUPANTS (OR DWELLING UNITS) PER FLOOR AND TRAVEL DISTANCE
A, B ^d , E ^e , F, M, U	1 Story	49 occupants and 75 feet travel distance
H-2, H-3	1 Story	3 occupants and 25 feet travel distance
H-4, H-5, I, R	1 Story	10 occupants and 75 feet travel distance
S ^a	1 Story	29 occupants and 100 feet travel distance
B ^b , F, M, S ^a	2 Stories	30 occupants and 75 feet travel distance
R-2	2 Stories ^e	4 dwelling units and 50 feet travel distance

For SI: 1 foot = 304.8 mm.

a. For the required number of exits for open parking structures, see Section 1019.1.1.

b. For the required number of exits for air traffic control towers, see Section 412.1.

c. Buildings classified as Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 and provided with emergency escape and rescue openings in accordance with Section 1026 shall have a maximum height of three stories above grade plane.

d. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 with an occupancy in Group B shall have a maximum travel distance of 100 feet.

e. Day care maximum occupant load is 10.

**WSR 08-17-095
PROPOSED RULES
INDETERMINATE SENTENCE
REVIEW BOARD**

[Filed August 20, 2008, 8:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-12-022.

Title of Rule and Other Identifying Information: WAC 381-10-170 Victim's rights.

Hearing Location(s): Lacey Timberlane [Timberland] Regional Library, 500 College Street S.E., Lacey, WA 98503, on October 8, 2008, at 5:30-7:00 p.m.

Date of Intended Adoption: November 24, 2008.

Submit Written Comments to: Ellen Hanegan-Cruse, P.O. Box 40907, Olympia, WA 98504-0907, e-mail erhanegancruse@doc1.wa.gov, fax (360) 493-9267, by September 30, 2008, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Ellen Hanegan-Cruse by September 15, 2008, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend the existing indeterminate sentence review board victims' rights WAC in accordance with RCW 9.95.420(4).

Anticipated effects of the amended rule are:

- Specific delineation of victims' right to make statements to the indeterminate sentence review board (ISRB);
- Provision of services to victims;
- Outlines the format for statements;
- Content that statements may encompass;
- Confidentiality limitations of statements;
- Reasonable accommodations ISRB will provide to victims.

Statutory Authority for Adoption: RCW 34.05.220 (1)(b), 42.17.250.

Statute Being Implemented: RCW 9.95.420(4).

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This rule is created per RCW 9.95.420(4) which reads: "(4) In a hearing conducted under subsection (3) of this section, the board shall provide opportunities for the victims of any crimes for which the offender has been convicted to present oral, video, written, or in-person testimony to the board. The procedures for victim input shall be developed by rule. To facilitate victim involvement, county prosecutor's offices shall ensure that any victim impact statements and known contact information for victims of record are forwarded as part of the judgment and sentence."

Name of Proponent: ISRB, governmental.

Name of Agency Personnel Responsible for Drafting: Ellen Hanegan-Cruse, Victim Liaison, 4317 Sixth Avenue S.E., Lacey, WA, (360) 493-9276; Implementation and Enforcement: Margaret McKinney, E.D., 4317 Sixth Avenue S.E., Lacey, WA, (360) 493-9266.

No small business economic impact statement has been prepared under chapter 19.85 RCW. None necessary.

A cost-benefit analysis is not required under RCW 34.05.328. None required.

August 20, 2008
Ellen Hanegan-Cruse
Victim Liaison

AMENDATORY SECTION (Amending WSR 98-19-054, filed 9/15/98, effective 10/16/98)

WAC 381-10-170 Victim's rights. ~~((This rule is provided to ensure the orderly presentation of victim statements so that victims or their representatives may freely exercise their constitutional rights.~~

(1) Written statements. Consistent with prior board practices, the board will continue to encourage victims or their representatives to submit written statements to the board. Prior notification is not required for the submission of written statements.

(2) In person statements. Upon notification either through the prosecuting attorney to the board, or directly to the board that an in-person statement is requested by the victims or their representatives, such person shall be invited to make an in-person statement to the board as a whole at a regularly scheduled board meeting, or through a meeting with the chair prior to a final decision allowing an offender to be released on parole.

(3) Other statements. The board also encourages victims or their representatives to submit audio cassette or video (VHS) tape statements. The statement will be presented at a regularly scheduled meeting before the offender's final parole release decision is made.)

Policy statement

The indeterminate sentence review board (ISRB or board) recognizes the rights afforded victims and survivors in the Washington state Constitution (Article I, Section 35). Among these rights is the right to give statements at hearings where an offender's release is considered. The ISRB is committed to protecting this right by providing:

- Accurate information.
- Timely notification.
- A process for receiving input.

Assistance to victims and survivors

The ISRB victim liaison will help victims and survivors of crimes committed by persons under the authority of the board. The victim liaison may provide:

- Notification of upcoming release hearings.
- Assistance preparing statements to the board.
- Assistance scheduling in-person or telephonic statements to the board.
- Notification of the final release decision made by the board.

Statement format

The ISRB will accept statements from victims or survivors before the inmate's hearing. Statements may be given:

- In person to the entire board or a majority of its members at a board meeting. If there are a number of victims or survivors at a meeting and not enough time for each to speak, the board may ask a representative or representatives to speak on behalf of the others.
- In person, made at the inmate's release hearing within the institution.
- Telephonically with board members.
- Written format.
- Electronically (i.e., via e-mail, videotape, CD or other electronic means).
- Via videoconference (if available).

In cases where statements will be given in a language other than English, the board will arrange and bear the cost for interpreter services (including American sign language). The board must know which language will be used well in

advance of any in-person meetings. Written statements must identify what language was used.

Statement content

Statements may include, but are not limited to:

- Information regarding the impact of the crime upon the victim, survivor or family.
- The physical, emotional, psychological, financial, employment, relational and social impacts of the crime, as well as long-term prognosis of victims and survivors.
- Opinions regarding release decisions.
- Requests that certain conditions be placed upon offenders when released onto community supervision.
- In life photographs, or videotapes of deceased victims.
- Descriptions of the actual offense, history of the relationship between the victim and offender, and other information concerning the offender's personality that will assist the board to make an informed decision.

Limited confidentiality

When the ISRB receives statements or communications from victims, survivors or concerned community members the ISRB shall provide the statements or summaries to inmates and/or their attorneys in accordance with court decisions.

Accommodations

When requested, the ISRB may make reasonable accommodations to help individuals give statements to the ISRB. These accommodations can include, but are not limited to:

- Interpreter services (pursuant to chapters 2.42 and 2.43 RCW).
- TTY or other voice or hearing assistance devices.
- Age-appropriate assistance for child victims or survivors.
- The presence of supportive persons or victim advocates.
- Board member travel to a location of mutual agreement.

WSR 08-17-097

PROPOSED RULES

FOREST PRACTICES BOARD

[Filed August 20, 2008, 8:47 a.m.]

Supplemental Notice to WSR 08-03-009.

Preproposal statement of inquiry was filed as WSR 05-2-097 [05-20-097].

Title of Rule and Other Identifying Information: Achieving desired future conditions in riparian management zones. This rule proposal amends WAC 222-30-021(1) to change timber harvest and leave tree requirements in riparian management zones adjacent to Type S and F Waters as defined in WAC 222-16-030. It pertains to forest lands in western Washington.

Hearing Location(s): Borst Park, Kitchen 1, 902 Johnson Road, Centralia, on Tuesday, December 16, 2008, at 6:00 p.m.; at the Port Townsend Fire Station, 701 Harrison

Street, Port Townsend, on Thursday, December 18, 2008, at 6:00 p.m.; at the DNR Region Office, 713 East Bowers, Ellensburg, on Tuesday, January 6, 2009, at 6:00 p.m.; and at the Mount Vernon Fire Department Station 3, 4701 East Division Street, Mt. Vernon, on Thursday, January 8, 2009, at 6:00 p.m.

Date of Intended Adoption: February 11, 2009.

Submit Written Comments to: Patricia Anderson, DNR Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, e-mail forest.practicesboard@dnr.wa.gov, fax (360) 902-1428, by January 9, 2009.

Assistance for Persons with Disabilities: Contact forest practices division at (360) 902-1400, by December 1, 2008, TTY (360) 902-1125.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 222-30-021 provides prescriptions and options to harvesting trees in forested "riparian management zones" as defined in WAC 222-16-010. Pursuant to RCW 76.09.370, the forest practices board incorporates a scientific-based adaptive management process to determine the effectiveness of forest practices rules in aiding Washington's salmon recovery effort. Under this adaptive management process, a scientific study was completed by the forest practices board's cooperative monitoring, evaluation, and research committee. The study, entitled *Validation of the Western Washington Riparian Desired Future Condition (DFC) Performance Targets in the Washington State Forest Practices Rules with Data From Mature, Unmanaged, Conifer-Dominated Riparian Stands*, found that basal area per acre of mature, unmanaged conifer-dominated riparian stands are greater than the values used in the current rule.

In response to the DFC study findings, the board is considering three alternative rule amendments to WAC 222-30-021(1). The intended effects of all of the alternatives are to increase the basal area retained in riparian management zones thereby decreasing allowable harvests.

- The first alternative would increase the target basal area per acre to three 325 square feet for all site classes that a riparian forest stand is projected to reach at one hundred forty years from the year of harvest in the riparian management zone.
- The second alternative would increase the target basal area per acre the same as the first alternative, and would also:
 - allow landowners to credit the required inner zone leave trees towards meeting the riparian zone basal area target; and
 - expand the table, "Option 2. Leaving trees closest to water," to include site classes IV and V on streams greater than ten feet in width.
- The third would increase the target basal area per acre the same as the first alternative, and will allow landowners to credit the required inner zone leave trees towards meeting the riparian zone basal area target.

Reasons Supporting Proposal: The proposed rule changes are based on recommendations resulting from the scientifically-based adaptive management process outlined in WAC 222-12-045. Through this process, the board has determined that the forest practices rules should be adjusted

to ensure that appropriate riparian buffers are maintained on forest land covered by the Forest Practices Act.

Statutory Authority for Adoption: RCW 76.09.040 and 76.09.370(6).

Statute Being Implemented: Not applicable.

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

Name of Proponent: Forest practices board, governmental.

Name of Agency Personnel Responsible for Drafting: Marc Engel, 1111 Washington Street S.E., Olympia, (360) 902-1390; Implementation: Gary Graves, 1111 Washington Street S.E., Olympia, (360) 902-1483; and Enforcement: Lenny Young, 1111 Washington Street S.E., Olympia, (360) 902-1744.

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

Small Business Economic Impact Statement

See WSR 08-13-087.

A copy of the statement may be obtained by contacting Gretchen Robinson, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1705, fax (360) 902-1428, e-mail gretchen.robinson@dnr.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Gretchen Robinson, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1705, fax (360) 902-1428, e-mail gretchen.robinson@dnr.wa.gov.

Note: The small business economic impact statement and the preliminary cost-benefit analysis are combined in the document, *Preliminary Economic Analysis, Forest Practices Rule Making, Affecting Timber Harvest in Riparian Zones in Western Washington*.

August 19, 2008
Victoria Christiansen
Chair

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-30-021 *Western Washington riparian management zones. These rules apply to all typed waters on forest land in Western Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in this section. See ((the)) board manual section 7 for riparian design and layout guidelines.

***(1) Western Washington RMZs for Type S and F Waters** have three zones: The core zone is nearest to the water, the inner zone is the middle zone, and the outer zone is furthest from the water. (See definitions in WAC 222-16-010.) RMZ dimensions vary depending on the site class of the land, the management harvest option, and the bankfull width of the stream. See tables for management options 1 and 2 below.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in

WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the inner zone RMZ rules. See the board manual section 1.

(a) **Core zones.** No timber harvest or construction is allowed in the core zone except operations related to forest roads as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors in the core zone must be left on the site. Any trees cut as a result of road construction to cross a stream may be removed from the site, unless used as part of a large woody debris placement strategy or as needed to reach stand requirements.

(b) **Inner zones.** Forest practices in the inner zone must be conducted in such a way as to meet or exceed stand requirements to achieve the goal in WAC 222-30-010(2). The width of the inner zone is determined by site class, bankfull width, and management option. Timber harvest in this zone must be consistent with the stand requirements in order to reach the desired future condition targets.

"**Stand requirement**" means a number of trees per acre, the basal area and the proportion of conifer in the combined inner zone and adjacent core zone so that the growth of the trees would meet desired future conditions. The following table defines basal area targets when the stand is 140 years old.

Site Class	Desired future condition target basal area per acre (at 140 years)
I	((285)) 325 sq. ft.
II	((275)) 325 sq. ft.
III	((258)) 325 sq. ft.
IV	((224)) 325 sq. ft.
V	((190)) 325 sq. ft.

Growth modeling is necessary to calculate whether a particular stand meets stand requirement and is on a trajectory towards these desired future condition basal area target. The appropriate growth model will be based on stand characteristics and will include at a minimum, the following components: The number of trees by diameter class, the percent of conifer and hardwood, and the age of the stand. See the board manual section 7.

(i) **Hardwood conversion in the inner zone.** When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone, except in connection with hardwood conversion.

(A) The landowner may elect to convert hardwood-dominated stands in the **inner zone** to conifer-dominated stands. Harvesting and replanting shall be in accordance with the following limits:

(I) Conversion activities in the **inner zone** of any harvest unit are only allowed where all of the following are present:

- Existing stands in the combined core and inner zone do not meet stand requirements (WAC 222-30-021 (1)(b));
- There are fewer than 57 conifer trees per acre 8 inches or larger dbh in the conversion area;
- There are fewer than 100 conifer trees per acre larger than 4 inches dbh in the conversion area;

- There is evidence (such as conifer stumps, historical photos, or a conifer understory) that the conversion area can be successfully reforested with conifer and support the development of conifer stands;

- The landowner owns 500 feet upstream and 500 feet downstream of the harvest unit;

- The core and inner zones contain no stream adjacent parallel roads;

- Riparian areas contiguous to the proposed harvest unit are owned by the landowner proposing to conduct the conversion activities, and meet shade requirements of WAC 222-30-040 or have a 75-foot buffer with trees at least 40 feet tall on both sides of the stream for 500 feet upstream and 500 feet downstream of the proposed harvest unit (or the length of the stream, if less);

- If the landowner has previously converted hardwood-dominated stands, then post-harvest treatments must have been performed to the satisfaction of the department.

(II) In addition to the conditions set forth above, permitted conversion activities in the **inner zone** of any harvest unit are limited by the following:

- Each continuous conversion area is not more than 500 feet in length; two conversion areas will be considered "continuous" unless the no-harvest area separating the two conversion areas is at least half the length of the larger of the two conversion areas.

- Type S and F (Type 1, 2, or 3) Water: Up to 50% of the inner zone area of the harvest unit on one side of the stream may be converted provided that:

- ◆ The landowner owns the opposite side of the stream and the landowner's riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a 75-foot buffer of trees at least 40 feet tall or:

- ◆ The landowner does not own land on the opposite side of the stream but the riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a 75-foot buffer of trees at least 40 feet tall.

- Not more than 25% of the inner zone of the harvest unit on both sides of a Type S or F Water may be converted if the landowner owns both sides.

(III) Where conversion is allowed in the **inner zone**, trees within the conversion area may be harvested except that:

- Conifer trees larger than 20 inches dbh shall not be harvested;

- Not more than 10% of the conifer stems greater than 8 inches dbh, exclusive of the conifer noted above, within the conversion area may be harvested; and

- The landowner must exercise reasonable care in the conduct of harvest activities to minimize damage to all residual conifer trees within the conversion area including conifer trees less than 8 inches dbh.

(IV) Following harvest in conversion areas, the landowner must:

- Reforest the conversion area with **conifer** tree species suitable to the site in accordance with the requirements of WAC 222-34-010; and

- Conduct post-harvest treatment of the site until the conifer trees necessary to meet acceptable stocking levels in WAC 222-34-010(2) have crowns above the brush or until

the conversion area contains a minimum of 150 conifer trees greater than 8 inches dbh per acre.

- Notify the department in writing within three years of the approval of the forest practices application for hardwood conversion, if the hardwood conversion has been completed.

(V) **Tracking hardwood conversion.** The purpose of tracking hardwood conversion is to determine if hardwood conversion is resulting in adequate enhancement of riparian functions toward the desired future condition while minimizing the short term impacts on functions. The department will use existing or updated data bases developed in cooperation with the Washington Hardwoods Commission to identify watershed administrative units (WAUs) with a high percentage of hardwood-dominated riparian areas and, thus have the

potential for excessive hardwood conversion under these rules. The department will track the rate of conversion of hardwoods in the riparian zone: (1) Through the application process on an annual basis; and (2) at a WAU scale on a biennial basis as per WAC 222-30-120 through the adaptive management process which will develop thresholds of impact for hardwood conversion at the watershed scale.

(ii) **Harvest options.**

(A) No inner zone management. When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone. When no harvest is permitted in the inner zone or the landowner chooses not to enter the inner zone, the width of core, inner and outer zones are as provided in the following table:

No inner zone management RMZ widths for Western Washington

Site Class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
I	200'	50'	83'	100'	67'	50'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(B) Inner zone management. If trees can be harvested and removed from the inner zone because of surplus basal area consistent with the stand requirement, the harvest and removal of the trees must be undertaken consistent with one of two options:

(I) **Option 1. Thinning from below.** The objective of thinning is to distribute stand requirement trees in such a way as to shorten the time required to meet large wood, fish habitat and water quality needs. This is achieved by increasing the potential for leave trees to grow larger than they otherwise would without thinning. Thinning harvest under option 1 must comply with the following:

- Residual trees left in the combined core and inner zones must meet stand requirements necessary to be on a trajectory

to desired future condition. See board manual section 7 for guidelines.

- Thinning must be from below, meaning the smallest dbh trees are selected for harvest first, then progressing to successively larger diameters.

- Thinning cannot decrease the proportion of conifer in the stand.

- Shade retention to meet the shade rule must be confirmed by the landowner for any harvest inside of 75 feet from the outer edge of bankfull width or outer edge of CMZ, whichever is greater.

- The number of residual conifer trees per acre in the inner zone will equal or exceed 57.

Option 1. Thinning from below.

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
I	200'	50'	83'	100'	67'	50'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(II) **Option 2. Leaving trees closest to the water.** Management option 2 applies only to riparian management zones for site class I, II, and III on streams that are less than or equal to 10 feet wide and RMZs in site class I and II for streams greater than 10 feet wide. Harvest must comply with the following:

- Harvest is not permitted within 30 feet of the core zone for streams less than or equal to 10 feet wide and harvest is not permitted within 50 feet of the core zone for streams greater than 10 feet wide;

- Residual leave trees in the combined core and inner zone must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for calculating stand requirements;

- A minimum of 20 conifers per acre, with a minimum 12-inch dbh, will be retained in any portion of the inner zone where harvest occurs. These riparian leave trees will not be counted or considered towards meeting applicable stand requirements nor can the number be reduced below 20 for any reason.

- Trees are selected for harvest starting from the outer most portion of the inner zone first then progressively closer to the stream.

- If (II) of this subsection results in surplus basal area per the stand requirement, the landowner may take credit for the surplus by harvesting additional riparian leave trees required to be left in the adjacent outer zone on a basal area-for-basal area basis. The number of leave trees in the outer zone can be reduced only to a minimum of 10 trees per acre.

Option 2. Leaving trees closest to water.

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width				Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width ≤10'	stream width >10'	stream width >10'	stream width ≤10'	stream width >10'
				minimum floor distance		minimum floor distance		
			(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)		
I	200'	50'	84'	30'	84'	50'	66'	66'
II	170'	50'	64'	30'	70'	50'	56'	50'
III	140'	50'	44'	30'	**	**	46'	**

**Option 2 for site class III on streams >10' is not permitted because of the minimum floor (100') constraint.

(iii) **Where the basal area components of the stand requirement cannot be met** within the sum of the areas in the inner and core zone due to the presence of a stream-adjacent parallel road in the inner or core zone, a determination must be made of the approximate basal area that would have been present in the inner and core zones if the road was not occupying space in the core or inner zone and the shortfall in the basal area component of the stand requirement. See definition of "stream-adjacent parallel road" in WAC 222-16-010.

(A) Trees containing basal area equal to the amount determined in (iii) of this subsection will be left elsewhere in the inner or outer zone, or if the zones contain insufficient riparian leave trees, substitute riparian leave trees will be left within the RMZ width of other Type S or F Waters in the same unit or along Type Np or Ns Waters in the same unit in addition to all other RMZ requirements on those same Type S, F, Np or Ns Waters.

(B) When the stream-adjacent road basal area calculated in (iii) of this subsection results in an excess in basal area (above stand requirement) then the landowner may receive credit for such excess which can be applied on a basal area-by-basal area basis against the landowner's obligation to leave trees in the outer zone of the RMZ of such stream or other waters within the same unit, provided that the number

of trees per acre in the outer zone is not reduced to less than 10 trees per acre.

(C) When the basal area requirement cannot be met, as explained in (iii) of this subsection, the shortfall may be reduced through the implementation of an acceptable large woody debris placement plan. See board manual section 26 for guidelines.

(iv) If a harvest operation includes both yarding and harvest activities within the RMZ, all calculations of basal area for stand requirements will be determined as if the yarding corridors were constructed prior to any other harvest activities. If trees cut or damaged by yarding are taken from excess basal area, these trees may be removed from the inner zone. Trees cut or damaged by yarding in a unit which does not meet the basal area target of the stand requirements cannot be removed from the inner zone. Any trees cut or damaged by yarding in the core zone may not be removed.

(c) **Outer zones.** Timber harvest in the outer zone must leave 20 riparian leave trees per acre after harvest. **"Outer zone riparian leave trees"** are trees that must be left after harvest in the outer zone in Western Washington. Riparian leave trees must be left uncut throughout all future harvests:

Outer zone riparian leave tree requirements

Application	Leave tree spacing	Tree species	Minimum dbh required
Outer zone	Dispersed	Conifer	12" dbh or greater
Outer zone	Clumped	Conifer	12" dbh or greater
Protection of sensitive features	Clumped	Trees representative of the overstory including both hardwood and conifer	8" dbh or greater

The 20 riparian leave trees to be left can be reduced in number under the circumstances delineated in (c)(iv) of this subsection. The riparian leave trees must be left on the landscape according to one of the following two strategies. A third strategy is available to landowners who agree to a LWD placement plan.

(i) **Dispersal strategy.** Riparian leave trees, which means conifer species with a diameter measured at breast height (dbh) of 12 inches or greater, must be left dispersed approximately evenly throughout the outer zone. If riparian leave trees of 12" dbh or greater are not available, then the next largest conifers must be left. If conifers are not present, riparian leave trees must be left according to the clumping strategy in subsection (ii) below.

(ii) **Clumping strategy.** Riparian leave trees must be left clumped in the following way:

(A) Clump trees in or around one or more of the following **sensitive features** to the extent available within the outer zone. When clumping around sensitive features, riparian leave trees must be 8 inches dbh or greater and representative of the overstory canopy trees in or around the sensitive feature and may include both hardwood and conifer species. Sensitive features are:

- (I) Seeps and springs;
- (II) Forested wetlands;
- (III) Topographic locations (and orientation) from which leave trees currently on the site will be delivered to the water;
- (IV) Areas where riparian leave trees may provide windthrow protection;
- (V) Small unstable, or potentially unstable, slopes not of sufficient area to be detected by other site evaluations. See WAC 222-16-050 (1)(d).
- (VI) ~~((Archeological))~~ Archaeological or historical sites registered with the Washington state ~~((office))~~ department of ~~((archeology))~~ archaeology and historic preservation. See WAC 222-16-050 (1)(g); or
- (VII) Sites containing evidence of Native American cairns, graves or glyptic records. See WAC 222-16-050 (1)(f).

(B) If sensitive features are not present, then clumps must be well distributed throughout the outer zone and the leave trees must be of conifer species with a dbh of 12 inches or greater. When placing clumps, the applicant will consider operational and biological concerns. Tree counts must be satisfied regardless of the presence of stream-adjacent parallel roads in the outer zone.

(iii) **Large woody debris in-channel placement strategy.** A landowner may design a LWD placement plan in cooperation with the department of fish and wildlife. The

plan must be consistent with guidelines in the board manual section 26. The landowner may reduce the number of trees required to be left in the outer zone to the extent provided in the approved LWD placement plan. Reduction of trees in the outer zone must not go below a minimum of 10 trees per acre. If this strategy is chosen, a complete forest practices application must include a copy of the WDFW approved hydraulics project approval (HPA) permit.

(iv) **Twenty riparian leave trees must be left after harvest** with the exception of the following:

(A) If a landowner agrees to implement a placement strategy, see (iii) of this subsection.

(B) If trees are left in an associated channel migration zone, the landowner may reduce the number of trees required to be left according to the following:

(I) Offsets will be measured on a basal area-for-basal area basis.

(II) Conifer in a CMZ equal to or greater than 6" dbh will offset conifer in the outer zone at a one-to-one ratio.

(III) Hardwood in a CMZ equal to or greater than 10" dbh will offset hardwood in the outer zone at a one-to-one ratio.

(IV) Hardwood in a CMZ equal to or greater than 10" dbh will offset conifer in the outer zone at a three-to-one ratio.

*** (2) Western Washington protection for Type Np and Ns Waters.**

(a) An **equipment limitation zone** is a 30-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water where equipment use and other forest practices that are specifically limited by these rules. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil on more than 10% of the surface area of the zone:

- (A) Ground based equipment;
- (B) Skid trails;
- (C) Stream crossings (other than existing roads); or
- (D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection (2) reduces or eliminates the department's authority to prevent actual or potential material damage to public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

(b) **Sensitive site and RMZs protection along Type Np Waters.** Forest practices must be conducted to protect Type Np RMZs and sensitive sites as detailed below:

(i) A 50-foot, no-harvest buffer, measured horizontally from the outer edge of bankfull width, will be established along each side of the Type Np Water as follows:

Required no-harvest, 50-foot buffers on Type Np Waters.

Length of Type Np Water from the confluence of Type S or F Water	Length of 50' buffer required on Type Np Water (starting at the confluence of the Type Np and connecting water)
Greater than 1000'	500'
Greater than 300' but less than 1000'	Distance of the greater of 300' or 50% of the entire length of the Type Np Water
Less than or equal to 300'	The entire length of Type Np Water

(ii) No timber harvest is permitted in an area within 50 feet of the outer perimeter of a soil zone perennially saturated from a headwall seep.

(iii) No timber harvest is permitted in an area within 50 feet of the outer perimeter of a soil zone perennially saturated from a side-slope seep.

(iv) No timber harvest is permitted within a 56-foot radius buffer patch centered on the point of intersection of two or more Type Np Waters.

(v) No timber harvest is permitted within a 56-foot radius buffer patch centered on a headwater spring or, in the absence of a headwater spring, on a point at the upper most extent of a Type Np Water as defined in WAC 222-16-030(3) and 222-16-031.

(vi) No timber harvest is permitted within an alluvial fan.

(vii) At least 50% of a Type Np Waters' length must be protected by buffers on both sides of the stream (2-sided buffers). Buffered segments must be a minimum of 100 feet in length. If an operating area is located more than 500 feet upstream from the confluence of a Type S or F Water and the Type Np Water is more than 1,000 feet in length, then buffer the Type Np Water according to the following table. If the percentage is not met by protecting sensitive sites listed in (b)(i) through (vii) of this subsection, then additional buffers are required on the Type Np Water to meet the requirements listed in the table.

Minimum percent of length of Type Np Waters to be buffered when more than 500 feet upstream from the confluence of a Type S or F Water

Total length of a Type Np Water upstream from the confluence of a Type S or F Water	Percent of length of Type Np Water that must be protected with a 50 foot no harvest buffer more than 500 feet upstream from the confluence of a Type S or F Water
1000 feet or less	Refer to table in this subsection (i) above
1001 - 1300 feet	19%
1301 - 1600 feet	27%
1601 - 2000 feet	33%
2001 - 2500 feet	38%

Total length of a Type Np Water upstream from the confluence of a Type S or F Water	Percent of length of Type Np Water that must be protected with a 50 foot no harvest buffer more than 500 feet upstream from the confluence of a Type S or F Water
2501 - 3500 feet	42%
3501 - 5000 feet	44%
Greater than 5000 feet	45%

The landowner must select the necessary priority areas for additional 2-sided buffers according to the following priorities:

(A) Low gradient areas;

(B) Perennial water reaches of nonsedimentary rock with gradients greater than 20% in the tailed frog habitat range;

(C) Hyporheic and ground water influence zones; and

(D) Areas downstream from other buffered areas.

Except for the construction and maintenance of road crossings and the creation and use of yarding corridors, no timber harvest will be allowed in the designated priority areas. Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a designated priority area buffer.

(c) None of the limitations on harvest in or around Type Np Water RMZs or sensitive sites listed in (b) of this subsection will preclude or limit:

(i) The construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050.

(ii) The creation and use of yarding corridors in WAC 222-30-060(1).

To the extent reasonably practical, the operation will both avoid creating yarding corridors or road crossings through Type Np Water RMZ or sensitive sites and associated buffers, and avoid management activities which would result in soil compaction, the loss of protective vegetation or sedimentation in perennially moist areas.

Where yarding corridors or road crossings through Type Np Water RMZs or sensitive sites and their buffers cannot reasonably be avoided, the buffer area must be expanded to protect the sensitive site by an area equivalent to the disturbed area or by providing comparable functions through other management initiated efforts.

Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a Type Np Water RMZs or sensitive site buffer.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-30-021 *Western Washington riparian management zones. These rules apply to all typed waters on forest land in Western Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in

this section. See the board manual section 7 for riparian design and layout guidelines.

*(1) **Western Washington RMZs for Type S and F Waters** have three zones: The core zone is nearest to the water, the inner zone is the middle zone, and the outer zone is furthest from the water. (See definitions in WAC 222-16-010.) RMZ dimensions vary depending on the site class of the land, the management harvest option, and the bankfull width of the stream. See tables for management options 1 and 2 below.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the inner zone RMZ rules. See the board manual section 1.

(a) **Core zones.** No timber harvest or construction is allowed in the core zone except operations related to forest roads as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors in the core zone must be left on the site. Any trees cut as a result of road construction to cross a stream may be removed from the site, unless used as part of a large woody debris placement strategy or as needed to reach stand requirements.

(b) **Inner zones.** Forest practices in the inner zone must be conducted in such a way as to meet or exceed stand requirements to achieve the goal in WAC 222-30-010(2). The width of the inner zone is determined by site class, bankfull width, and management option. Timber harvest in this zone must be consistent with the stand requirements in order to reach the desired future condition targets.

"Stand requirement" means a number of trees per acre, the basal area and the proportion of conifer in the combined inner zone and adjacent core zone so that the growth of the trees would meet desired future conditions. The following table defines basal area targets when the stand is 140 years old.

Site Class	Desired future condition target basal area per acre (at 140 years)
I	((285)) <u>325</u> sq. ft.
II	((275)) <u>325</u> sq. ft.
III	((258)) <u>325</u> sq. ft.
IV	((224)) <u>325</u> sq. ft.
V	((190)) <u>325</u> sq. ft.

Growth modeling is necessary to calculate whether a particular stand meets stand requirement and is on a trajectory towards these desired future condition basal area target. The appropriate growth model will be based on stand characteristics and will include at a minimum, the following components: The number of trees by diameter class, the percent of conifer and hardwood, and the age of the stand. See the board manual section 7.

(i) **Hardwood conversion in the inner zone.** When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone, except in connection with hardwood conversion.

(A) The landowner may elect to convert hardwood-dominated stands in the **inner zone** to conifer-dominated stands. Harvesting and replanting shall be in accordance with the following limits:

(I) Conversion activities in the **inner zone** of any harvest unit are only allowed where all of the following are present:

- Existing stands in the combined core and inner zone do not meet stand requirements (WAC 222-30-021 (1)(b));
- There are fewer than 57 conifer trees per acre 8 inches or larger dbh in the conversion area;
- There are fewer than 100 conifer trees per acre larger than 4 inches dbh in the conversion area;
- There is evidence (such as conifer stumps, historical photos, or a conifer understory) that the conversion area can be successfully reforested with conifer and support the development of conifer stands;
- The landowner owns 500 feet upstream and 500 feet downstream of the harvest unit;
- The core and inner zones contain no stream adjacent parallel roads;
- Riparian areas contiguous to the proposed harvest unit are owned by the landowner proposing to conduct the conversion activities, and meet shade requirements of WAC 222-30-040 or have a 75-foot buffer with trees at least 40 feet tall on both sides of the stream for 500 feet upstream and 500 feet downstream of the proposed harvest unit (or the length of the stream, if less);
- If the landowner has previously converted hardwood-dominated stands, then post-harvest treatments must have been performed to the satisfaction of the department.

(II) In addition to the conditions set forth above, permitted conversion activities in the **inner zone** of any harvest unit are limited by the following:

- Each continuous conversion area is not more than 500 feet in length; two conversion areas will be considered "continuous" unless the no-harvest area separating the two conversion areas is at least half the length of the larger of the two conversion areas.
- Type S and F (Type 1, 2, or 3) Water: Up to 50% of the inner zone area of the harvest unit on one side of the stream may be converted provided that:
 - ◆ The landowner owns the opposite side of the stream and the landowner's riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a 75-foot buffer of trees at least 40 feet tall or;
 - ◆ The landowner does not own land on the opposite side of the stream but the riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a 75-foot buffer of trees at least 40 feet tall.

• Not more than 25% of the inner zone of the harvest unit on both sides of a Type S or F Water may be converted if the landowner owns both sides.

(III) Where conversion is allowed in the **inner zone**, trees within the conversion area may be harvested except that:

- Conifer trees larger than 20 inches dbh shall not be harvested;
- Not more than 10% of the conifer stems greater than 8 inches dbh, exclusive of the conifer noted above, within the conversion area may be harvested; and

- The landowner must exercise reasonable care in the conduct of harvest activities to minimize damage to all residual conifer trees within the conversion area including conifer trees less than 8 inches dbh.

(IV) Following harvest in conversion areas, the landowner must:

- Reforest the conversion area with **conifer** tree species suitable to the site in accordance with the requirements of WAC 222-34-010; and

- Conduct post-harvest treatment of the site until the conifer trees necessary to meet acceptable stocking levels in WAC 222-34-010(2) have crowns above the brush or until the conversion area contains a minimum of 150 conifer trees greater than 8 inches dbh per acre.

- Notify the department in writing within three years of the approval of the forest practices application for hardwood conversion, if the hardwood conversion has been completed.

(V) **Tracking hardwood conversion.** The purpose of tracking hardwood conversion is to determine if hardwood conversion is resulting in adequate enhancement of riparian

functions toward the desired future condition while minimizing the short term impacts on functions. The department will use existing or updated data bases developed in cooperation with the Washington Hardwoods Commission to identify watershed administrative units (WAUs) with a high percentage of hardwood-dominated riparian areas and, thus have the potential for excessive hardwood conversion under these rules. The department will track the rate of conversion of hardwoods in the riparian zone: (1) Through the application process on an annual basis; and (2) at a WAU scale on a biennial basis as per WAC 222-30-120 through the adaptive management process which will develop thresholds of impact for hardwood conversion at the watershed scale.

(ii) **Harvest options.**

(A) No inner zone management. When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone. When no harvest is permitted in the inner zone or the landowner chooses not to enter the inner zone, the width of core, inner and outer zones are as provided in the following table:

No inner zone management RMZ widths for Western Washington

Site Class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			I	200'	50'	83'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(B) Inner zone management. If trees can be harvested and removed from the inner zone because of surplus basal area consistent with the stand requirement, the harvest and removal of the trees must be undertaken consistent with one of two options:

(I) **Option 1. Thinning from below.** The objective of thinning is to distribute stand requirement trees in such a way as to shorten the time required to meet large wood, fish habitat and water quality needs. This is achieved by increasing the potential for leave trees to grow larger than they otherwise would without thinning. Thinning harvest under option 1 must comply with the following:

- Residual trees left in the combined core and inner zones must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for guidelines.

- Thinning must be from below, meaning the smallest dbh trees are selected for harvest first, then progressing to successively larger diameters.

- Thinning cannot decrease the proportion of conifer in the stand.

- Shade retention to meet the shade rule must be confirmed by the landowner for any harvest inside of 75 feet

from the outer edge of bankfull width or outer edge of CMZ, whichever is greater.

- The number of residual conifer trees per acre in the inner zone will equal or exceed 57.

Option 1. Thinning from below.

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			I	200'	50'	83'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(II) **Option 2. Leaving trees closest to the water.** Management option 2 applies only to riparian management zones for site class I, II, and III on streams that are less than or equal to 10 feet wide and RMZs in site class I and II for streams greater than 10 feet wide. Harvest must comply with the following:

- Harvest is not permitted within 30 feet of the core zone for streams less than or equal to 10 feet wide and harvest is not permitted within 50 feet of the core zone for streams greater than 10 feet wide;
- Residual leave trees in the combined core and inner zone must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for calculating stand requirements;
- A minimum of 20 conifers per acre, with a minimum 12-inch dbh, will be retained in any portion of the inner zone

where even-age harvest occurs. These riparian leave trees will ~~((not))~~ be counted ~~((or considered))~~ towards meeting applicable stand requirements ~~((or can))~~. The number of riparian leave trees cannot be reduced below 20 for any reason.

- Trees are selected for harvest starting from the outer most portion of the inner zone first then progressively closer to the stream.
- If (II) of this subsection results in surplus basal area per the stand requirement, the landowner may take credit for the surplus by harvesting additional riparian leave trees required to be left in the adjacent outer zone on a basal area-for-basal area basis. The number of leave trees in the outer zone can be reduced only to a minimum of 10 trees per acre.

Option 2. Leaving trees closest to water.

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width				Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width ≤10'	stream width >10'	stream width >10'	stream width ≤10'	stream width >10'
				minimum floor distance		minimum floor distance		
			(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)		
I	200'	50'	84'	30'	84'	50'	66'	66'
II	170'	50'	64'	30'	70'	50'	56'	50'
III	140'	50'	44'	30'	**	**	46'	**

**Option 2 for site class III on streams >10' is not permitted because of the minimum floor (100') constraint.

(iii) **Where the basal area components of the stand requirement cannot be met** within the sum of the areas in the inner and core zone due to the presence of a stream-adjacent parallel road in the inner or core zone, a determination must be made of the approximate basal area that would have been present in the inner and core zones if the road was not occupying space in the core or inner zone and the shortfall in the basal area component of the stand requirement. See defi-

inition of "stream-adjacent parallel road" in WAC 222-16-010.

(A) Trees containing basal area equal to the amount determined in (iii) of this subsection will be left elsewhere in the inner or outer zone, or if the zones contain insufficient riparian leave trees, substitute riparian leave trees will be left within the RMZ width of other Type S or F Waters in the same unit or along Type Np or Ns Waters in the same unit in

addition to all other RMZ requirements on those same Type S, F, Np or Ns Waters.

(B) When the stream-adjacent road basal area calculated in (iii) of this subsection results in an excess in basal area (above stand requirement) then the landowner may receive credit for such excess which can be applied on a basal area-by-basal area basis against the landowner's obligation to leave trees in the outer zone of the RMZ of such stream or other waters within the same unit, provided that the number of trees per acre in the outer zone is not reduced to less than 10 trees per acre.

(C) When the basal area requirement cannot be met, as explained in (iii) of this subsection, the shortfall may be reduced through the implementation of an acceptable large woody debris placement plan. See board manual section 26 for guidelines.

(iv) If a harvest operation includes both yarding and harvest activities within the RMZ, all calculations of basal area for stand requirements will be determined as if the yarding corridors were constructed prior to any other harvest activities. If trees cut or damaged by yarding are taken from excess basal area, these trees may be removed from the inner zone. Trees cut or damaged by yarding in a unit which does not meet the basal area target of the stand requirements cannot be removed from the inner zone. Any trees cut or damaged by yarding in the core zone may not be removed.

(c) **Outer zones.** Timber harvest in the outer zone must leave 20 riparian leave trees per acre after harvest. "**Outer zone riparian leave trees**" are trees that must be left after harvest in the outer zone in Western Washington. Riparian leave trees must be left uncut throughout all future harvests:

Outer zone riparian leave tree requirements

Application	Leave tree spacing	Tree species	Minimum dbh required
Outer zone	Dispersed	Conifer	12" dbh or greater
Outer zone	Clumped	Conifer	12" dbh or greater
Protection of sensitive features	Clumped	Trees representative of the overstory including both hardwood and conifer	8" dbh or greater

The 20 riparian leave trees to be left can be reduced in number under the circumstances delineated in (c)(iv) of this subsection. The riparian leave trees must be left on the landscape according to one of the following two strategies. A third strategy is available to landowners who agree to a LWD placement plan.

(i) **Dispersal strategy.** Riparian leave trees, which means conifer species with a diameter measured at breast height (dbh) of 12 inches or greater, must be left dispersed approximately evenly throughout the outer zone. If riparian leave trees of 12" dbh or greater are not available, then the next largest conifers must be left. If conifers are not present, riparian leave trees must be left according to the clumping strategy in subsection (ii) below.

(ii) **Clumping strategy.** Riparian leave trees must be left clumped in the following way:

(A) Clump trees in or around one or more of the following **sensitive features** to the extent available within the outer zone. When clumping around sensitive features, riparian leave trees must be 8 inches dbh or greater and representative of the overstory canopy trees in or around the sensitive feature and may include both hardwood and conifer species. Sensitive features are:

- (I) Seeps and springs;
- (II) Forested wetlands;
- (III) Topographic locations (and orientation) from which leave trees currently on the site will be delivered to the water;
- (IV) Areas where riparian leave trees may provide windthrow protection;
- (V) Small unstable, or potentially unstable, slopes not of sufficient area to be detected by other site evaluations. See WAC 222-16-050 (1)(d).
- (VI) ~~((Archeological))~~ Archaeological or historical sites registered with the Washington state ~~((office))~~ department of ((archeology)) archaeology and historic preservation. See WAC 222-16-050 (1)(g); or
- (VII) Sites containing evidence of Native American cairns, graves or glyptic records. See WAC 222-16-050 (1)(f).

(B) If sensitive features are not present, then clumps must be well distributed throughout the outer zone and the leave trees must be of conifer species with a dbh of 12 inches or greater. When placing clumps, the applicant will consider operational and biological concerns. Tree counts must be satisfied regardless of the presence of stream-adjacent parallel roads in the outer zone.

(ii) **Large woody debris in-channel placement strategy.** A landowner may design a LWD placement plan in cooperation with the department of fish and wildlife. The plan must be consistent with guidelines in the board manual section 26. The landowner may reduce the number of trees required to be left in the outer zone to the extent provided in the approved LWD placement plan. Reduction of trees in the outer zone must not go below a minimum of 10 trees per acre. If this strategy is chosen, a complete forest practices application must include a copy of the WDFW approved hydraulics project approval (HPA) permit.

(iv) **Twenty riparian leave trees must be left after harvest** with the exception of the following:

- (A) If a landowner agrees to implement a placement strategy, see (iii) of this subsection.
- (B) If trees are left in an associated channel migration zone, the landowner may reduce the number of trees required to be left according to the following:
 - (I) Offsets will be measured on a basal area-for-basal area basis.
 - (II) Conifer in a CMZ equal to or greater than 6" dbh will offset conifer in the outer zone at a one-to-one ratio.
 - (III) Hardwood in a CMZ equal to or greater than 10" dbh will offset hardwood in the outer zone at a one-to-one ratio.
 - (IV) Hardwood in a CMZ equal to or greater than 10" dbh will offset conifer in the outer zone at a three-to-one ratio.

***(2) Western Washington protection for Type Np and Ns Waters.**

(a) An **equipment limitation zone** is a 30-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water where equipment use and other forest practices that are specifically limited by these rules. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil on more than 10% of the surface area of the zone:

- (A) Ground based equipment;
- (B) Skid trails;
- (C) Stream crossings (other than existing roads); or
- (D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection (2) reduces or eliminates the department's authority to prevent actual or potential material damage to public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

(b) **Sensitive site and RMZs protection along Type Np Waters.** Forest practices must be conducted to protect Type Np RMZs and sensitive sites as detailed below:

(i) A 50-foot, no-harvest buffer, measured horizontally from the outer edge of bankfull width, will be established along each side of the Type Np Water as follows:

Required no-harvest, 50-foot buffers on Type Np Waters.

Length of Type Np Water from the confluence of Type S or F Water	Length of 50' buffer required on Type Np Water (starting at the confluence of the Type Np and connecting water)
Greater than 1000'	500'
Greater than 300' but less than 1000'	Distance of the greater of 300' or 50% of the entire length of the Type Np Water
Less than or equal to 300'	The entire length of Type Np Water

(ii) No timber harvest is permitted in an area within 50 feet of the outer perimeter of a soil zone perennially saturated from a headwall seep.

(iii) No timber harvest is permitted in an area within 50 feet of the outer perimeter of a soil zone perennially saturated from a side-slope seep.

(iv) No timber harvest is permitted within a 56-foot radius buffer patch centered on the point of intersection of two or more Type Np Waters.

(v) No timber harvest is permitted within a 56-foot radius buffer patch centered on a headwater spring or, in the absence of a headwater spring, on a point at the upper most extent of a Type Np Water as defined in WAC 222-16-030(3) and 222-16-031.

(vi) No timber harvest is permitted within an alluvial fan.

(vii) At least 50% of a Type Np Waters' length must be protected by buffers on both sides of the stream (2-sided buffers). Buffered segments must be a minimum of 100 feet in length. If an operating area is located more than 500 feet upstream from the confluence of a Type S or F Water and the Type Np Water is more than 1,000 feet in length, then buffer the Type Np Water according to the following table. If the percentage is not met by protecting sensitive sites listed in (b)(i) through (vii) of this subsection, then additional buffers are required on the Type Np Water to meet the requirements listed in the table.

Minimum percent of length of Type Np Waters to be buffered when more than 500 feet upstream from the confluence of a Type S or F Water

Total length of a Type Np Water upstream from the confluence of a Type S or F Water	Percent of length of Type Np Water that must be protected with a 50 foot no harvest buffer more than 500 feet upstream from the confluence of a Type S or F Water
1000 feet or less	Refer to table in this subsection (i) above
1001 - 1300 feet	19%
1301 - 1600 feet	27%
1601 - 2000 feet	33%
2001 - 2500 feet	38%
2501 - 3500 feet	42%
3501 - 5000 feet	44%
Greater than 5000 feet	45%

The landowner must select the necessary priority areas for additional 2-sided buffers according to the following priorities:

- (A) Low gradient areas;
- (B) Perennial water reaches of nonsedimentary rock with gradients greater than 20% in the tailed frog habitat range;
- (C) Hyporheic and ground water influence zones; and
- (D) Areas downstream from other buffered areas.

Except for the construction and maintenance of road crossings and the creation and use of yarding corridors, no timber harvest will be allowed in the designated priority areas. Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a designated priority area buffer.

(c) None of the limitations on harvest in or around Type Np Water RMZs or sensitive sites listed in (b) of this subsection will preclude or limit:

(i) The construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050.

(ii) The creation and use of yarding corridors in WAC 222-30-060(1).

To the extent reasonably practical, the operation will both avoid creating yarding corridors or road crossings through Type Np Water RMZ or sensitive sites and associ-

ated buffers, and avoid management activities which would result in soil compaction, the loss of protective vegetation or sedimentation in perennially moist areas.

Where yarding corridors or road crossings through Type Np Water RMZs or sensitive sites and their buffers cannot reasonably be avoided, the buffer area must be expanded to protect the sensitive site by an area equivalent to the disturbed area or by providing comparable functions through other management initiated efforts.

Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a Type Np Water RMZs or sensitive site buffer.

WSR 08-17-101

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-19—Filed August 20, 2008, 9:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-12-098.

Title of Rule and Other Identifying Information: Accelerated life insurance benefits.

Hearing Location(s): Insurance Commissioner's Office, Room TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on October 1, 2008, at 9:00 a.m.

Date of Intended Adoption: October 13, 2008.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail KacyS@oic.wa.gov, fax (360) 586-3109, by September 30, 2008.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by September 30, 2008, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Recently enacted SHB 2666, codified at chapter 48.83 RCW, creates conflict with existing Washington accelerated life insurance benefit rules, specifically WAC 284-23-600 through 284-23-730. Chapter 48.83 RCW which relates to long-term care insurance now includes definitions for long-term care that include definitions previously characterized as accelerated benefits under WAC 284-23-600 through 284-23-730. These proposed rules bring WAC 284-23-600 through 284-23-730 into compliance with the provisions of chapter 48.83 RCW.

Reasons Supporting Proposal: Chapter 48.83 RCW creates conflicts with existing Washington accelerated life insurance benefit rules, specifically WAC 284-23-600 through 284-23-730.

Statutory Authority for Adoption: RCW 48.02.060 (3)(a).

Statute Being Implemented: RCW 48.11.020.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Melodie Bankers, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7039; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The office of the insurance commissioner (OIC) maintains a list of companies that have approved long-term care insurance coverage in Washington state. Of the seventy-five companies on the most recent (April 2008) version of this list only thirty three are currently marketing insurance coverage in this state. Of these thirty-three, only one was not either a subsidiary of a larger company or a significantly larger company than the statute's definition of a small business (fifty employees or less). The only insurer who met the definition of a small insurer did not report selling any long-term care insurance coverage in its most recent annual report (2007).

This analysis confirmed observations by OIC regulatory staff that the long-term care insurance market, due to the size and complexity of the product, does not have a functional small business component and, therefore, the proposed rules will not have a disproportionate cost impact on small businesses. As a result, no small business economic impact statement is required.

A cost-benefit analysis is not required under RCW 34.05.328. These proposed amendments to chapter 284-23 WAC are required in order to implement newly passed legislation (SHB 2666) as codified in chapter 48.83 RCW. The proposed amendments do not represent a significant change in rules but rather: (A) Change RCW citations as appropriate to refer to the new law and remove references to laws no longer in existence; (B) remove conflicts in chapter 284-23 WAC with other rules that will implement SHB 2666 and permit life insurance that accelerates benefits for long-term care coverage; and (C) repeal WAC 284-23-645 because it is no longer needed as a result of the new law.

Given that these rule changes are editing only and because the changes are the explicit result of newly passed legislation, a cost-benefit analysis is not required.

August 20, 2008

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 96-13, filed 2/6/98, effective 3/9/98)

WAC 284-23-610 Authority, finding, purpose, and scope. (1) The purpose of this regulation, WAC 284-23-600 through 284-23-730, is to define certain minimum standards for the regulation of accelerated benefit provisions of individual and group life insurance policies, a single violation of which will be deemed to constitute an unfair claims settlement practice. The commissioner finds and hereby defines it to be an unfair act or practice and an unfair method of competition for any insurer to provide accelerated benefits except as provided in this regulation.

(2) The commissioner finds that accelerated benefits in life insurance policies are primarily mortality risks rather

than morbidity risks. The commissioner further finds that accelerated benefits are optional modes of settlement of proceeds under life insurance proceeds under RCW 48.11.020. No qualifying event as defined under WAC 284-23-620(3) changes the nature of the underlying life insurance policy. No accelerated benefits provision shall be called or marketed as long-term care as defined under RCW ((48.84.020(1))) 48.83.020(5).

(3) This regulation applies to all accelerated benefit provisions of individual and group life insurance policies and riders which are issued or delivered to a resident of this state, on or after the effective date of this regulation. The regulation applies to both policies and riders. It also applies to solicitations for the sale of accelerated benefits, whether in the form of policies or riders.

(4) This regulation does not require inclusion or offering of any accelerated benefit in a life insurance policy. This regulation regulates those accelerated benefits which individual and group life insurers choose to advertise, offer, or market on or after the effective date of this regulation.

AMENDATORY SECTION (Amending Matter No. R 96-13, filed 2/6/98, effective 3/9/98)

WAC 284-23-620 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this regulation.

(1) "Accelerated benefits" means benefits payable under an individual or group life insurance policy. They are primarily mortality risks, rather than morbidity risks. Accelerated benefits may also mean optional modes of settlement of proceeds under life insurance policies. Accelerated benefits are benefits:

(a) Payable to either the policyholder of an individual life policy or to the certificate holder of a group life policy, during the lifetime of the insured, in anticipation of death, or upon the occurrence of certain specified life-threatening, terminal, or catastrophic conditions defined by the policy or rider as described in subsection (3) of this section; and

(b) Which reduce or eliminate the death benefit otherwise payable under the life insurance policy or rider; and

(c) Which are payable upon the occurrence of a single qualifying event which results in the payment of a benefit amount fixed at the time the accelerated benefit is paid.

(2) "Qualified actuary" means a person who is a qualified actuary as defined in WAC 284-05-060.

(3) "Qualifying event" means one or more of the following:

(a) A medical condition which a physician has certified is reasonably expected to result in death twenty-four months or less after the date of certification;

(b) A medical condition which has required or requires extraordinary medical intervention; for example, major organ transplants or the use of continuous life support, without which the insured would die;

(c) Any condition which usually requires continuous confinement in any eligible institution as defined in the policy or rider, if the insured is expected to remain there for the rest of his or her life;

(d) Any medical condition which, in the absence of extensive or extraordinary medical treatment, would result in a drastically limited life span of the insured. Such medical conditions may include, for example:

(i) Coronary artery disease resulting in an acute infarction or requiring surgery;

(ii) Permanent neurological deficit resulting from cerebral vascular accident;

(iii) End stage renal failure;

(iv) Acquired immune deficiency syndrome; or

(v) Other medical conditions which the insurance commissioner approves for any particular filing;

(e) Any condition which requires either community-based care or institutional care((~~or~~

~~(f) A medical condition that results in an insured being certified by a licensed health care practitioner as chronically ill by meeting either or both of the following standards within the preceding twelve-month period:~~

~~(i) The insured is expected to be unable to perform (without substantial assistance from another individual) at least two activities of daily living without a deficiency for a period of at least ninety days due to a loss of functional capacity; or~~

~~(ii) The insured requires substantial supervision to protect himself or herself from threats to health and safety due to severe cognitive impairment)).~~

(4) "Community based care" means services including, but not limited to: (a) Home delivered nursing services or therapy; (b) custodial or personal care; (c) day care; (d) home and chore aid services; (e) nutritional services, both in-home and in a communal dining setting; (f) respite care; (g) adult day health care services; or (h) other similar services furnished in a home-like or residential setting that does not provide overnight care. Such services shall be provided at any level of care.

(5) "Institutional care" means care provided in a hospital, nursing home, or other facility certified or licensed by the state primarily affording diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal care services. Such a facility provides twenty-four-hour nursing services on its premises or in facilities available to the institution on a formal prearranged basis.

~~((6) "Activities of daily living" on which an insurer intends to rely as a measure of functional incapacity shall be defined in the policy, and shall include all of the following:~~

~~(a) Bathing: The ability of the insured to wash himself or herself either in the tub or shower or by sponge bath, including the task of getting into or out of a tub or shower.~~

~~(b) Continence: The ability of the insured to control bowel and bladder functions; or in the event of incontinence, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag).~~

~~(c) Dressing: The ability of the insured to put on and take off all items of clothing, and necessary braces, fasteners, or artificial limbs.~~

~~(d) Eating: The ability of the insured to feed himself or herself by getting food and drink from a receptacle (such as a plate, cup, or table) into the body.~~

~~(e) Toileting: The ability of the insured to get to and from the toilet, get on and off the toilet, and perform associated personal hygiene.~~

(f) ~~Transferring: The ability of the insured to move in and out of a chair, bed, or wheelchair.~~

(7) ~~"Licensed health care practitioner" means any physician, any registered professional nurse, or registered social worker.~~

(8) ~~"Substantial assistance" means:~~

(a) ~~"Hands-on assistance" — the physical assistance of another person without which the insured would be unable to perform the activity of daily living; and~~

(b) ~~"Standby assistance" — the physical presence of another person within arm's reach of the insured that is necessary to prevent, by physical intervention, injury to the insured while the insured is performing the activity of daily living.~~

(9) ~~"Severe cognitive impairment" means a loss or deterioration in intellectual capacity that is:~~

(a) ~~Comparable to (and includes) Alzheimer's disease and similar forms of irreversible dementia; and~~

(b) ~~Measured by clinical evidence and standardized tests that reliably measure impairment in the insured's (i) short-term or long-term memory, (ii) orientation as to people, places, or time, and (iii) deductive or abstract reasoning.~~

(10) ~~"Substantial supervision" means continual supervision (which may include cueing by verbal prompting, gestures, or other demonstrations) by another person that is necessary to protect the insured from threats to his or her health or safety.)~~

AMENDATORY SECTION (Amending Matter No. R 96-13, filed 2/6/98, effective 3/9/98)

WAC 284-23-650 Disclosure statement. (1) The words "accelerated benefit" must be included in the required title of every life insurance policy or rider that includes a provision for accelerated benefits. Accelerated benefits shall not be described, advertised, marketed, or sold as either long-term care insurance or as providing long-term care benefits.

(2) Possible tax consequences and possible consequences on eligibility for receipt of Medicare, Medicaid, Social Security, Supplemental Security Income (SSI), or other sources of public funding shall be included in every disclosure statement.

(a) The disclosure form shall include a disclosure statement. The disclosure statement shall be prominently displayed on the first page of the policy, rider, or certificate. The disclosure statement shall contain substantially the following: "If you receive payment of accelerated benefits from a life insurance policy, you may lose your right to receive certain public funds, such as Medicare, Medicaid, Social Security, Supplemental Security, Supplemental Security Income (SSI), and possibly others. Also, receiving accelerated benefits from a life insurance policy may have tax consequences for you. We cannot give you advice about this. You may wish to obtain advice from a tax professional or an attorney before you decide to receive accelerated benefits from a life insurance policy."

(b) ~~((i) The disclosure statement shall state whether or not the accelerated life is intended to qualify under section 101(g) (26 U.S.C. 101(g)) or section 7702B (26 U.S.C. 7702B) of the Internal Revenue Code of 1986 as amended by Public Law 104-191.~~

~~((ii) If the accelerated life insurance benefit is intended to comply with section 7702B,)) The disclosure statement must begin with the following statement: "This accelerated life benefit does not and is not intended to qualify as long-term care under Washington state law. ((It may not provide all of the benefits or meet all of the standards required of long-term care under Washington law and regulations.)) Washington state law prevents this accelerated life benefit from being marketed or sold as long-term care. ((For the purposes of federal tax law only, it is intended to be a 'qualified long-term care product.'"))~~

(c) The disclosure form must be provided (i) to the applicant for an individual or group life insurance policy at the time application is made for the policy or rider; and (ii)(A) to the individual insured at the time the owner of an individual life insurance policy submits a request for payment of the accelerated benefit, and before the accelerated benefit is paid, or (B) to the individual certificateholder at the time an individual certificateholder of a group life insurance policy submits a request for payment of the accelerated benefit, and before the accelerated benefit is paid. It is not sufficient to provide this required disclosure statement only to the holder of a group policy.

(3) The disclosure form shall give a brief and clear description of the accelerated benefit. It shall define all qualifying events which can trigger payment of the accelerated benefit. It shall also describe any effect of payment of accelerated benefits upon the policy's cash value, accumulation account, death benefit, premium, policy loans, and policy liens.

(a) In the case of ~~((agent solicited))~~ insurance solicited by an insurance producer, the ~~((agent))~~ insurance producer shall provide the disclosure form to the applicant before or at the time the application is signed. Written acknowledgement of receipt of the disclosure statement shall be signed by the applicant and the ~~((agent))~~ insurance producer.

(b) In the case of a solicitation by direct response methods, the insurer shall provide the disclosure form to the applicant at the time the policy is delivered, with a written notice that a full premium refund shall be made if the policy is returned to the insurer within the free look period.

(c) In the case of group life insurance policies, the disclosure form shall be contained in the certificate of coverage, and may be contained in any other related document furnished by the insurer to the certificateholder.

(4) If there is a premium or cost of insurance charge for the accelerated benefit, the insurer shall give the applicant a generic illustration numerically demonstrating any effect of the payment of an accelerated benefit upon the policy's cash value, accumulation account, death benefit, premium, policy loans, or policy liens.

(a) In the case of agent solicited insurance, the agent shall provide the illustration to the applicant either before or at the time the application is signed.

(b) In the case of a solicitation by direct response methods, the insurer shall provide the illustration to the applicant concurrently with delivery of the policy to the applicant.

(c) In the case of group life insurance policies, the disclosure form shall be included in the certificate of insurance or

any related document furnished by the insurer to the certificateholder.

(5)(a) Insurers with financing options other than as described in WAC 284-23-690 (1)(b) and (c) of this regulation, shall disclose to the policyowner any premium or cost of insurance charge for the accelerated benefit. Insurers shall make a reasonable effort to assure that the certificateholder on a group policy is made aware of any premium or cost of insurance charge for the accelerated benefits, if he or she is required to pay all or any part of such a premium or cost of insurance charge.

(b) Insurers shall furnish an actuarial demonstration to the Insurance Commissioner when filing an individual or group life insurance policy or rider form that provides accelerated benefits, showing the method used to calculate the cost for the accelerated benefit.

(6) Insurers shall disclose to the policyholder any administrative expense charge. The insurer shall make a reasonable effort to assure that the certificateholder on a group policy is made aware of any administrative expense charge if he or she is required to pay all or any part of any such charge.

(7) When the owner of an individual policy or the certificateholder of a group policy requests payment of an accelerated benefit, within 20 days of receiving the request the insurer shall send a statement to that person, and to any irrevocable beneficiary, showing any effect that payment of an accelerated benefit will have on the policy's cash value, accumulation account, death benefit, premium, policy loans, and policy liens. This statement shall disclose that receipt of accelerated benefit payments may adversely affect the recipient's eligibility for Medicaid or other government benefits or entitlements. When the insurer pays the accelerated benefit, it shall issue an amended schedule page to the owner of an individual policy, or to the certificateholder of a group policy, showing any new, reduced in-force amount of the policy. When more than one payment of accelerated benefit is permitted under the policy or rider, the insurer shall send a revised statement to the owner of an individual policy, or to the certificateholder of a group policy, when a previous statement has become invalid due to payment of accelerated benefits.

AMENDATORY SECTION (Amending Matter No. R 96-13, filed 2/6/98, effective 3/9/98)

WAC 284-23-730 Resolution of disputes regarding occurrence of qualifying events. In the event the insured's health care provider and a health care provider appointed by the insurer disagree on whether a qualifying event has occurred, the opinion of the health care provider appointed by the insurer is not binding on the claimant. The parties shall attempt to resolve the matter promptly and amicably. The policy or rider providing the accelerated benefit shall provide that in case the disagreement is not so resolved, the claimant has the right to mediation or binding arbitration conducted by a disinterested third party who has no ongoing relationship with either party. ~~((Any such arbitration shall be conducted in accordance with chapter 7.04 RCW.))~~ As part of the final decision, the arbitrator or mediator shall award the costs of

arbitration to one party or the other or may divide the costs equally or otherwise.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 284-23-645 Tax qualified accelerated benefit provisions.

WSR 08-17-102
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed August 20, 2008, 9:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-16-107.

Title of Rule and Other Identifying Information: The department is amending WAC 388-550-2570 LTAC program definitions, 388-550-2580 Requirements for becoming an LTAC hospital, and 388-550-2590 Department prior authorization requirements for Level 1 and Level 2 LTAC services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on September 23, 2008, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 24, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 23, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by September 16, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In chapter 388-550 WAC, Hospital services, the proposed rule updates and clarifies sections pertaining to the department's long-term acute care (LTAC) program definitions, requirements, and processes.

Reasons Supporting Proposal: Updating and clarifying the rules will result in better understanding and compliance by providers.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.500.

Statute Being Implemented: RCW 74.08.090 and 74.09.500.

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

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

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Bev Atteridge, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1575.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Health and recovery services administration has analyzed the proposed rule and concluded that no new costs will be imposed on small businesses affected by them. The preparation of a comprehensive small business economic impact statement is not required under RCW 19.85.030.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Bev Atteridge, 626 8th Avenue S.E., Olympia, WA 98504-5506, phone (360) 725-1575, fax (360) 586-1471, e-mail atterbj@dshs.wa.gov.

August 14, 2008
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-11-129, filed 5/22/07, effective 8/1/07)

WAC 388-550-2570 LTAC program definitions. The following definitions and abbreviations and those found in WAC 388-500-0005 and 388-550-1050 apply to the long-term acute-care (LTAC) program.

"Level 1 services" means long-term acute-care (LTAC) services provided to a client(s) who requires ~~((more than))~~ eight or more hours of direct skilled nursing care per day and the client's medical needs cannot be met at a lower level of care due to clinical complexity. Level 1 services include one ~~((or both))~~ of the following:

(1) ~~((Active))~~ Ventilator weaning care ~~((and any specialized therapy services, such as physical, occupational, and speech therapies));~~ or

(2) ~~((Complex medical care that may include: Care for complex draining wounds, care for central lines, multiple medications, frequent assessments and close monitoring, third-degree burns that may involve grafts and/or frequent transfusions, and specialized therapy services, such as physical, occupational, and speech therapies))~~ Care for a client who has:

(a) Chronic open wounds that require on-site wound care specialty services and daily assessments and/or interventions; and

(b) At least one comorbid condition (such as chronic renal failure requiring hemodialysis).

"Level 2 services" means long-term acute-care (LTAC) services provided to a client(s) who requires four ~~((to eight))~~ or more hours of direct skilled nursing care per day, and the clients' medical needs cannot be met at a lower level of care due to clinical complexity. Level 2 services include at least ~~((two))~~ one of the following:

(1) Ventilator care for a client(s) who ~~((are stable, dependent on a))~~ is ventilator-dependent and is not weanable(;) and ((have)) has complex medical needs; or

~~((2) Care for ((clients who have tracheostomies, complex airway management and medical needs, and the potential for decannulation; and)) a client who:~~

~~((a) Has a tracheostomy;~~

~~((b) Requires frequent respiratory therapy services for complex airway management and has the potential for decannulation; and~~

~~((c) Has at least one comorbid condition (such as quadriplegia).~~

~~((3) Specialized therapy services, such as physical, occupational, and speech therapies;))~~

"Long-term acute-care" means inpatient intensive long-term care services provided in department-approved LTAC hospitals to eligible medical assistance clients who require Level 1 or Level 2 services.

"Survey" or "review" means an inspection conducted by a federal, state, or private agency to evaluate and monitor a facility's compliance with LTAC program requirements.

~~(("Transportation company" means either a department-approved transportation broker or a transportation company doing business with the department.))~~

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

AMENDATORY SECTION (Amending WSR 07-11-129, filed 5/22/07, effective 8/1/07)

WAC 388-550-2580 Requirements for becoming an LTAC hospital. (1) To apply to become a department-approved long-term acute-care (LTAC) hospital, the department requires a hospital to:

(a) Submit a letter of request to:

LTAC Program Manager
Division of Healthcare Services
Health and Recovery Services Administration
P.O. Box 45506
Olympia WA 98504-5506; and

(b) Include in the letter required under (a) of this subsection, documentation that confirms the ~~((facility))~~ hospital is:

(i) Medicare-certified for LTAC;

(ii) Accredited by the joint commission on accreditation of healthcare organizations (JCAHO);

(iii) ~~((For an in-state hospital))~~ Licensed as an acute care hospital by the department of health (DOH) under ((WAC 246-310-010)) chapter 246-320 WAC (if an in-state hospital), or by the state in which the hospital is located (if an out-of-state hospital); and

~~((iv) ((For a hospital located out-of-state, licensed as an acute care hospital by that state; and~~

~~((v) Contracted))~~ Enrolled with the department ((to provide LTAC services if the LTAC hospital is located outside the state of Washington)) as a Medicaid participating provider.

(2) ~~((The))~~ A hospital qualifies as a department-approved LTAC hospital when:

(a) The hospital meets all the requirements in this section;

(b) The department's clinical staff has conducted an on-site visit and recommended approval of the hospital's request for LTAC designation; and

(c) The department provides written notification ~~((that))~~ to the hospital that it qualifies ~~((to be paid))~~ for payment when providing LTAC services to eligible medical assistance clients.

(3) Department-approved LTAC hospitals must meet the general requirements in chapter 388-502 WAC.

(4) The department may, in its sole discretion, approve a hospital located in Idaho or Oregon that is not in a designated bordering city as an LTAC hospital if:

(a) The hospital meets the requirements of this section; and

(b) The hospital provider signs a contract with the department agreeing to the payment rates established for LTAC services in accordance with WAC 388-550-2595.

(5) The department does not have any legal obligation to approve any hospital or other entity as an LTAC hospital.

AMENDATORY SECTION (Amending WSR 07-11-129, filed 5/22/07, effective 8/1/07)

WAC 388-550-2590 Department prior authorization requirements for Level 1 and Level 2 LTAC services. (1) The department requires prior authorization for Level 1 and Level 2 long-term acute-care (LTAC) inpatient stays. The prior authorization process includes all of the following:

(a) For an initial thirty-day stay:

(i) The client must:

(A) Be eligible under one of the programs listed in WAC 388-550-2575; and

(B) ~~((Meet the high cost outlier or high outlier status, respectively, at the transferring hospital as described in WAC 388-550-3700. Exception: If the claim is paid under a payment method other than the DRG or per diem payment method, the claim must meet the same outlier threshold described in WAC 388-550-3700.~~

~~((C))~~ Require Level 1 or Level 2 LTAC services as defined in WAC 388-550-2570.

(ii) The LTAC provider of services must:

(A) Before admitting the client to the LTAC hospital, submit a request for prior authorization to the ~~((the department's clinical consultation team))~~ department by fax, electronic mail, or telephone, as published in the department's LTAC billing instructions;

(B) Include sufficient medical information to justify the requested initial stay~~((:))~~ ;

(C) ~~((Receive))~~ Obtain prior authorization from the department's medical director or designee, ~~((based on clinical quality review by the department's clinical consultation team to determine the client's circumstances and the medical justification for transfer))~~ when accepting the client from the transferring hospital; and

(D) Meet all the requirements in WAC 388-550-2580.

(b) For any extension~~((s))~~ of stay~~((:))~~

~~((i))~~ The client must:

~~((A))~~ Be eligible under one of the programs listed in WAC 388-550-2575; and

~~((B))~~ Require Level 1 or Level 2 LTAC services as defined in WAC 388-550-2570-

~~((ii))~~, the criteria in (a) of this subsection must be met, and the LTAC provider of services must~~((:~~

~~((A))~~ Before the client's current authorized period of stay expires,) submit a request for the extension of stay to the department~~((s clinical consultation team by fax, electronic mail, or telephone; and~~

~~((B))~~ Include) with sufficient medical ~~((information to justify the requested extension of stay))~~ justification.

(2) The department~~((s clinical consultation team))~~ authorizes Level 1 or Level 2 LTAC services for initial stays or extensions of stay based on the client's circumstances and the medical justification received.

(3) A client who does not agree with a decision regarding a length of stay has a right to a fair hearing under chapter 388-02 WAC. After receiving a request for a fair hearing, the department may request additional information from the client and the facility, or both. After the department reviews the available information, the result may be:

(a) A reversal of the initial department decision;

(b) Resolution of the client's issue(s); or

(c) A fair hearing conducted per chapter 388-02 WAC.

~~((3))~~ (4) The department may authorize an administrative day rate payment for a client who meets one or more of the following. The client:

(a) Does not meet the requirements ~~((described in this section))~~ for Level 1 or Level 2 LTAC services;

(b) Is waiting for placement in another hospital or other facility; or

(c) If appropriate, is waiting to be discharged to the client's residence.

WSR 08-17-103

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-09—Filed August 20, 2008, 9:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-09-131.

Title of Rule and Other Identifying Information: Long-term care insurance.

Hearing Location(s): Insurance Commissioner's Office, Room TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on October 1, 2008, at 9:00 a.m.

Date of Intended Adoption: October 15, 2008.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail KacyS@oic.wa.gov, fax (360) 586-3109, by September 30, 2008.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by September 30, 2008, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rules are based on the NAIC long-term care model regulation; include provisions required by recent legislation; and

would continue several Washington-specific requirements that are part of chapter 284-54 WAC (governing the sale, solicitation or negotiation of long-term care insurance until December 31, 2008). The proposed rules would establish standards for long-term care insurance and would:

- Establish loss ratio standards for long-term care insurance policies.
- Prescribe a standard format including style, arrangement, overall appearance, and the content of an outline of coverage.
- Establish minimum standards for inflation protection features.
- Specify the type or types of nonforfeiture benefits to be offered as part of long-term care insurance policies and certificates, the standards for nonforfeiture benefits, and the rules regarding contingent benefit upon lapse, including a determination of the specified period of time during which a contingent benefit upon lapse will be available and the substantial premium rate increase that triggers a contingent benefit upon lapse.
- Promote premium adequacy and to protect policyholders in the event of proposed substantial rate increases, and to establish minimum standards for producer education, marketing practices, producer compensation, producer testing, penalties, and reporting practices for long-term care insurance.
- Establish standards to protect patient privacy rights, rights to receive confidential health care services, and standards for an issuer's timely review of a claim denial upon request of a covered person.
- Establish standards for full and fair disclosure setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation or conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms.
- Provide details about the education and training required of long-term care insurance producers.
- Continue the current rule that "mental and nervous disorders" is not a permitted exclusion.
- Continue the current WA requirement that insurance producers must not complete the medical history portion of an application for long-term care insurance.
- Continue the current WA requirement that long-term care insurers report Washington experience separately.
- Provide that if there is a discrepancy in the way any terms or conditions of long-term care insurance are described or explained between the master [master] policy and a certificate issued under that master policy, whichever explanation or description is more favorable to the insured will govern the transaction or claim.

Reasons Supporting Proposal: These proposed rules implement recently enacted SHB 2666, codified in chapter 48.83 RCW, establishing standards for long-term care insurance sold, solicited, or negotiated on or after January 1, 2009.

Statutory Authority for Adoption: RCW 48.83.070, 48.83.110, 48.83.120, 48.83.130(1), 48.83.140 (4)(a), and 48.02.060.

Statute Being Implemented: Chapter 48.83 RCW.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Melodie Bankers, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7039; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The office of the insurance commissioner (OIC) maintains a list of companies that have approved long-term care insurance coverage in Washington state. Of the seventy-five companies on the most recent (April 2008) version of this list only thirty-three are currently marketing insurance coverage in this state. Of these thirty-three, only one was not either a subsidiary of a larger company or a significantly larger company than the statute's definition of a small business (fifty employees or less). The only insurer who met the definition of a small insurer did not report selling any long-term care insurance coverage in its most recent annual report (2007).

This analysis confirmed observations by OIC regulatory staff that the long-term care insurance market, due to the size and complexity of the product, does not have a functional small business component and, therefore, the proposed rules will not have a disproportionate cost impact on small businesses. As a result, no small business economic impact statement is required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, e-mail KacyS@oic.wa.gov, fax (360) 586-3109.

August 20, 2008

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-258 ((What is the)) Long-term care ((LTC special)) education requirement((?)), (1)(a) Resident and nonresident agents engaged in the transaction of ((LTC)) long-term care insurance or long-term care partnership ((LTCP)) insurance are required to take an approved six-hour course on ((LTC)) long-term care or ((LTCP)) long-term care partnership before soliciting, selling, or otherwise transacting these types of insurance business as to such products with consumers. The four-hour refresher ((LTC)) long-term care special education course must be taken every two-

year renewal period subsequent to the initial six-hour course. The ~~((OIC))~~ commissioner prescribes the content of the course. Each course must be approved by the ~~((OIC))~~ commissioner in advance.

(b) This requirement does not apply to licensees receiving override commissions on ~~((LTC))~~ long-term care transactions if the licensee has had no contact with the consumer.

(2) This section is effective until December 31, 2008. Long-term care education requirements effective on and after January 1, 2009, are set forth in RCW 48.83.130 and WAC 284-17-264.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-260 ~~((Who is))~~ Resident and nonresident agents required to complete the ~~((LTC special))~~ long-term care education requirement~~((?))~~. (1) Until December 31, 2008, both resident and nonresident agents who transact ~~((LTC))~~ long-term care business must complete the six-hour ~~((LTC))~~ long-term care special education course and must complete the four-hour refresher course per renewal period.

(2) The requirements for resident and nonresident long-term care insurance education beginning January 1, 2009, are set forth in RCW 48.83.130 and WAC 284-17-264.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-262 ~~((Who must certify))~~ Certification by insurer of completion of ~~((the LTC special))~~ long-term care insurance education ~~((and when is the certification due?))~~ due date. Beginning January 1, 2009:

(1) Each insurer that has ~~((approved LTC))~~ long-term care policies approved for sale in this state must certify ~~((yearly))~~ annually that all ~~((agents))~~ of its insurance producers engaged in the sale, solicitation or negotiation of long-term care insurance coverage in this state have:

(a) Completed the ~~((LTC special education))~~ eight-hour, one-time long-term care education and training course required by RCW 48.83.130 (2)(a)(i) prior to selling, soliciting, or negotiating the ~~((LTC product))~~ company's long-term care insurance coverage in this state; or

(b) Completed the required long-term care continuing education requirement imposed by RCW 48.83.130 (2)(b).

~~((This))~~ (2) The certification ~~((is to))~~ must be ~~((delivered))~~ provided to the ~~((OIC yearly))~~ commissioner by the insurer annually on or before March 31st. The certification must be sent to the licensing and education program manager in the commissioner's office. A form for this purpose is available on the commissioner's web site: www.insurance.wa.gov.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-264 ~~((May I use the LTC special education course for continuing education?))~~ Reciprocity—Application of long-term care credits to continuing education requirement. (If you are a resident agent and you

take an LTC special education course that has also been approved for continuing education, you may use the hours toward your required twenty-four hours.) Beginning January 1, 2009, all insurance producers are subject to the eight-hour one-time long-term care training and the four-hour long-term care education requirements of RCW 48.83.130.

(1) Successful completion of approved training in this or any other state by a resident insurance producer, may be used to satisfy the long-term care training requirements of this state.

(2) Resident insurance producers that complete long-term care insurance courses approved in this state to fulfill the required long-term care training may count those course credits toward fulfillment of their Washington continuing education requirement.

(3) If an insurance producer wishes to apply course credits for the required long-term care training offered in another state and the course is not otherwise approved for continuing education credit in this state, the training may qualify for individual course credit subject to WAC 284-17-244.

AMENDATORY SECTION (Amending Order R 87-7, filed 7/9/87)

WAC 284-54-010 Purpose and authority. The purpose of this chapter, is to effectuate chapter 48.84 RCW, the Long-Term Care Insurance Act, by establishing minimum standards and disclosure requirements to be met by insurers, health care service contractors, health maintenance organizations, and fraternal benefit societies with respect to long-term care insurance and long-term care benefit policies and contracts issued for delivery in this state before January 1, 2009.

AMENDATORY SECTION (Amending Order R 87-7, filed 7/9/87)

WAC 284-54-015 Applicability and scope. (1) Except as otherwise specifically provided, this chapter shall apply to every policy, contract, or certificate, and riders pertaining thereto, of an insurer, fraternal benefit society, health care service contractor, or health maintenance organization, if such contract is primarily advertised, marketed, or designed to provide long-term care services over a prolonged period of time, which services may range from direct skilled medical care performed by trained medical professionals as prescribed by a physician or qualified case manager in consultation with the patient's attending physician to rehabilitative services and assistance with the basic necessary functions of daily living for people who have lost some or complete capacity to function on their own. Such contract is "long-term care insurance" or a "long-term care contract," and is subject to this chapter.

(2) Pursuant to RCW 48.84.020, this chapter shall not apply to Medicare supplement insurance; nor shall it apply to a contract between a continuing care retirement community and its residents.

(3) Long-term care contracts not meeting the requirements of this chapter, may not be issued or delivered in this state after December 31, 1987.

(4) This chapter is applicable only to long-term care policies, contracts, or certificates issued prior to January 1, 2009.

Long-term care policies, contracts, or certificates issued on or after January 1, 2009, are governed by chapters 48.83 RCW and 284-83 WAC.

Chapter 284-83 WAC

LONG-TERM CARE INSURANCE RULES

NEW SECTION

WAC 284-83-005 Applicability and scope. (1) Except as otherwise specifically provided, this chapter applies to all long-term care insurance policies delivered or issued for delivery in this state on or after January 1, 2009, including qualified long-term care policies and life insurance policies that accelerate benefits for long-term care. This chapter applies to insurance companies, fraternal benefit societies, health care service contractors, health maintenance organizations and all similar entities (collectively called "issuers" in this chapter).

(2) Some sections of this chapter apply only to qualified long-term care insurance policies, as provided for by the Health Insurance Portability and Accountability Act of 1996 and by Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

(3) This chapter applies to policies delivered or issued for delivery in this state having indemnity benefits that are triggered by activities of daily living and sold as disability income insurance, if:

(a) The benefits of the disability income policy are dependent upon or vary in amount based on the receipt of long-term care services;

(b) The disability income policy is advertised, marketed or offered as insurance for long-term care services; or

(c) Benefits under the policy commence after the policyholder has reached Social Security's normal retirement age, unless the benefits are designed to replace lost income or pay for specific expenses other than long-term care services.

NEW SECTION

WAC 284-83-010 Definitions and standards. For the purpose of this chapter, the following definitions and standards apply, unless the context clearly requires otherwise.

(1) "Certificate" has the meaning set forth in RCW 48.83.020(2).

(2) "Exceptional increase" means only those increases filed by the issuer as exceptional for which the commissioner determines the need for the premium rate increase is justified due to changes in laws or regulations applicable to long-term care coverage in this state; or due to increased and unexpected utilization that affects the majority of issuers of similar products. Except as provided in WAC 284-83-090, exceptional increases are subject to the same requirements as other premium rate schedule increases. The commissioner may request a review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase. The commissioner, in determining that the necessary basis for an exceptional increase exists, must also determine any potential offsets to higher claims costs.

(3) "Incidental," as used in WAC 284-83-090, means a value of the long-term care benefits provided that is less than ten percent of the total value of the benefits provided over the life of the policy. These values must be measured as of the date of issue. In simple cases where the base policy and the long-term care benefits have separately identifiable premiums, the premiums can be directly compared. In other cases, annual cost of insurance charges might be available for comparison. Some cases may involve comparison of present value of benefits.

(4) "Group long-term care insurance" has the meaning set forth in RCW 48.83.020(6).

(5) "Guaranteed renewable" means that renewal of a long-term care insurance policy cannot be declined by the issuer for any reason except nonpayment of premiums, but the issuer can revise rates on a class basis.

(6) "Insured" means any beneficiary or owner of a long-term care policy regardless of the type of issuer.

(7) "Issuer" has the meaning set forth in RCW 48.83-020(4).

(8) "Noncancellable" means that renewal of a long-term care insurance policy cannot be declined and rates cannot be revised by the issuer.

(9) "Policy" has the meaning set forth in RCW 48.83-020(7), unless the context clearly indicates otherwise, and includes certificates issued under a group policy.

(10) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

(11) "Qualified long-term care insurance" has the meaning set forth in RCW 48.83.020(8).

(12) "Similar policy forms" means all of the long-term care insurance policies and certificates issued by the issuer in the same long-term care benefit classification as the policy form being considered. Certificates of groups that meet the definition in RCW 48.83.020 (6)(a) are not considered similar to certificates or policies otherwise issued as long-term care insurance, but are similar to other comparable certificates with the same long-term care benefit classifications. For purposes of determining similar policy forms, long-term care benefit classifications are defined as follows: Institutional long-term care benefits only, noninstitutional long-term care benefits only, or comprehensive long-term care benefits.

NEW SECTION

WAC 284-83-015 Standards for policy definitions and terms. A long-term care insurance policy or certificate delivered or issued for delivery in this state must not use the following terms unless the terms are defined in the policy or certificate and the definitions satisfy the following standards. This section specifies minimum standards for several terms commonly found in long-term care insurance policies, while allowing some flexibility in the definitions themselves.

(1) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting and transferring.

(2) "Acute condition" means that the individual is medically unstable. An individual with an acute condition requires frequent monitoring by medical professionals, such

as physicians and registered nurses, in order to maintain his or her health status.

(3) "Adult day care" or "adult day health care" means a program of social or health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

(4) "Bathing" means washing oneself by sponge bath or in either a tub or shower, including the task of getting into or out of the tub or shower.

(5) "Cognitive impairment" means a deficiency in a person's short or long-term memory; orientation as to person, place and time; deductive or abstract reasoning; or judgment as it relates to safety awareness.

(6) "Continence" means the ability to maintain control of bowel and bladder function; or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag).

(7) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners or artificial limbs.

(8) "Eating" means feeding oneself by getting food into the body from a receptacle (such as a plate, cup or table) or by a feeding tube or intravenously.

(9) "Hands-on assistance" means physical assistance (minimal, moderate or maximal) without which the individual would not be able to perform the activity of daily living.

(10) "Home health care services" means medical and nonmedical services, provided to ill, disabled or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living and respite care services.

(11) "Managed-care plan" or "plan of care" means a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

(12) "Medicare" means "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

(13) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living.

(14) "Skilled nursing care," "personal care," "home care," "specialized care," "assisted living care" and other services must be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

(15) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(16) "Transferring" means moving into or out of a bed, chair or wheelchair.

(17) "Skilled nursing facility," "nursing facility," "extended care facility," "convalescent nursing home," "personal care facility," "specialized care providers," "assisted

living facility," "home care agency" and terms used to identify other providers of services must be defined in relation to the services and facilities required to be available and the licensure, certification, registration or degree status of those providing or supervising the services. When the definition requires that the provider be appropriately licensed, certified or registered, it must also state what requirements a provider must meet in lieu of licensure, certification or registration if the state in which the service is to be furnished does not require a provider of these services to be licensed, certified or registered, or if the state licenses, certifies or registers the provider of services under another name.

NEW SECTION

WAC 284-83-020 Standards for policy provisions.

The following standards for policy provisions apply to all long-term care insurance policies delivered or issued for delivery in this state.

(1) Renewability. The terms "guaranteed renewable" and "noncancellable" must not be used in any individual long-term care insurance policy or certificate without further explanatory language in accordance with the disclosure requirements of WAC 284-83-035.

(a) A policy or certificate issued to an individual must not contain renewal provisions other than "guaranteed renewable" or "noncancellable."

(b) The term "guaranteed renewable" may be used only if the insured has the right to continue the long-term care insurance in force by the timely payment of premiums, if the issuer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and the issuer cannot decline to renew, except that rates may be revised by the issuer on a class basis.

(c) The term "noncancellable" may be used only if the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the issuer has no right to unilaterally make any change in any provision of the insurance and has no right to unilaterally make any change in the premium rate.

(d) The term "level premium" may be used only if the issuer does not have the right to change the premium.

(e) In addition to the other requirements of this subsection, a qualified long-term care insurance policy or certificate must be guaranteed renewable, within the meaning of Section 7702B (b)(1)(C) of the Internal Revenue Code of 1986, as amended.

(2) Limitations and exclusions. A long-term care policy or certificate shall not be delivered or issued for delivery in this state as long-term care insurance if it limits or excludes coverage by type of illness, treatment, medical condition or accident, except for the following permitted exclusions:

(a) Preexisting conditions or diseases;

(b) Alcoholism and drug addiction;

(c) Illness, treatment or medical condition arising out of war or act of:

(i) War (whether declared or undeclared);

(ii) Participation in a felony, riot or insurrection;

(iii) Service in the armed forces or units auxiliary thereto;

(iv) Suicide (while sane or insane), attempted suicide, or intentionally self-inflicted injury; or

(v) Aviation (this exclusion applies only to nonfare-paying passengers);

(d) Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance;

(e) Expenses for services or items available or paid under another long-term care insurance or health insurance policy;

(f) In the case of a qualified long-term care insurance policy only, expenses for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount;

(g) Issuers may not prohibit, exclude or limit services based on type of provider or limit a coverage if services are provided in a state other than the state where the policy was originally issued, except:

(i) When the state other than the state of policy issue does not have the provider licensing, certification, or registration required in the policy, unless the provider satisfies the policy requirements outlined for providers in lieu of licensure certificate or registration; or

(ii) When the state other than the state of policy issue licenses, certifies or registers the provider under another name.

(iii) Issuers may exclude or limit payment for services provided outside the United States or permit or limit benefit levels to reflect legitimate variations or differences in provider rates, but issuers must cover services that would be covered in the state of issue irrespective of any licensing, registration or certification requirements for providers in the other state. In other words, if the claim would be approved but for the licensing issue, the claim must be approved for payment.

(3) Extension of benefits. Termination of long-term care insurance must be without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination. The extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

(4) Continuation or conversion. Group long-term care insurance issued in this state on or after January 1, 2009, must provide covered individuals with a basis for continuation or conversion of coverage.

(a) For the purposes of this section, "a basis for continuation of coverage" means a policy provision that maintains coverage under the existing group policy when the coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due.

(i) Group policies that restrict provision of benefits and services to, or contain incentives to use certain providers or facilities, may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy.

(ii) The commissioner will make a determination as to the substantial equivalency of benefits, and in doing so, will take into consideration the differences between managed care and nonmanaged care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(b) For the purposes of this section, "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six months immediately prior to termination, is entitled to the issuance of a converted policy by the issuer under whose group policy he or she is covered, without evidence of insurability.

(c) For the purposes of this section, "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. If the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities the commissioner, in making a determination as to the substantial equivalency of benefits, will take into consideration the differences between managed care and nonmanaged care plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.

(d) Written application for the converted policy must be made and the first premium due, if any, must be paid as directed by the issuer not later than thirty-one days after termination of coverage under the group policy. The converted policy must be issued effective on the day following the termination of coverage under the group policy, and must be renewable annually.

(e) Except where the group policy from which conversion is made replaces previous group coverage, the premium for the converted policy must be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. If the group policy from which conversion is made replaces previous group coverage, the premium for the converted policy must be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(f) Continuation of coverage or issuance of a converted policy is mandatory, except where:

(i) Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(ii) The terminating coverage is replaced not later than thirty-one days after termination by group coverage effective on the day following the termination of coverage and the replacement coverage provides benefits identical to or bene-

fits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and the premium is calculated in a manner consistent with the requirements of (e) of this subsection.

(g) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy that provides benefits on the basis of incurred expenses, may contain a provision that results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than one hundred percent of incurred expenses. The provision may only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(h) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, do not exceed those that would have been payable had the individual's coverage under the group policy remained in full force and effect.

(i) Notwithstanding any other provision of this section, the insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person must be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(5) Discontinuance and replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding issuer must offer coverage to all insured persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the issuer and premiums charged to persons under the new group policy:

(a) Must not result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

(b) Must not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.

(6)(a) The premium charged to the insured must not increase due to either the increasing age of the insured at ages beyond sixty-five or the duration the insured has been covered under the policy.

(b) The purchase of additional coverage shall not be considered a premium rate increase; but for purposes of the calculation required under WAC 284-83-090, the portion of the premium attributable to the additional coverage must be added to and considered part of the initial annual premium.

(c) A reduction in benefits shall not be considered a premium change; but for purposes of the calculation required under WAC 284-83-090, the initial annual premium must be based on the reduced benefits.

(7) Electronic enrollment for group policies.

(a) In the case of a group, as defined in RCW 48.83.020 (6)(a), any requirement that a signature of the insured be obtained by an insurance producer or issuer will be deemed satisfied only if:

(i) The consent is obtained by telephonic or electronic enrollment by the group policyholder or issuer and verification of enrollment information is provided to the insured;

(ii) The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention and prompt retrieval of records; and

(iii) The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure that the confidentiality of individually identifiable information is maintained.

(b) Upon request of the commissioner, the issuer must make available records that demonstrate the issuer's ability to confirm enrollment and coverage amounts.

(8) Each long-term care policy delivered or issued for delivery to any person in this state must clearly indicate on its first page that it is a "long-term care insurance" policy.

NEW SECTION

WAC 284-83-025 Unintentional lapse. As a protection against unintentional lapse, each issuer offering long-term care insurance must comply with all of the following:

(1)(a) Notice before lapse or termination. No individual long-term care policy or certificate may be issued until the issuer has received from the applicant either a written designation of at least one person in addition to the applicant who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice.

(i) The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured.

(ii) Designation does not constitute acceptance of any liability on the third party for services provided to the insured.

(iii) The form used for the written designation must provide space clearly designated for listing at least one person.

(iv) The designation must include each person's full name and home address.

(v) If the applicant elects not to designate an additional person, the waiver must state: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until thirty days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."

(vi) No less frequently than once every two years the issuer must notify the insured of the right to change this written designation.

(b) When the policyholder or certificateholder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in (a) of this subsection need not be met until sixty days after the policyholder or certificateholder is no longer on the payment plan. The application or enrollment form for such policies or certificates must clearly show the payment plan selected by the applicant.

(c) Lapse or termination for nonpayment of premium. No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the issuer, at least thirty days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to (a) of this subsection, at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice must be given by first class United States mail, postage prepaid, and notice may not be given until thirty days after a premium is due and unpaid. Notice is deemed to have been given as of five days after the date of mailing.

(2) Reinstatement. In addition to the requirements in subsection (1) of this section, a long-term care insurance policy or certificate must include a provision that provides for reinstatement of coverage in the event of lapse if the issuer is provided proof that the policyholder or certificateholder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired.

(a) Reinstatement must be available to the insured if requested within five months after lapse and may allow for the collection of past due premium, where appropriate.

(b) The standard of proof of cognitive impairment or loss of functional capacity must not be more stringent than the benefit eligibility criteria for cognitive impairment or the loss of functional capacity contained in the policy or certificate.

NEW SECTION

WAC 284-83-030 Required disclosure provisions. (1) Renewability. Long-term care insurance policies must contain a renewability provision.

(a) The renewability provision must be appropriately captioned, must appear on the first page of the policy, and must clearly state that the coverage is guaranteed renewable or noncancellable. This provision does not apply to policies that do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder, such as long-term care policies which are part of or combined with life insurance policies because life insurance policies generally do not contain renewability provisions.

(b) A long-term care insurance policy or certificate, other than one where the issuer does not have the right to change the premium, must include a statement that premium rates may change.

(2) Riders and endorsements.

(a) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after the date of issue, or at reinstatement or renewal, that reduce or eliminate benefits or coverage in the policy must require signed acceptance by the individual insured.

(b) After the date of policy issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in a writing signed by the insured, except when the increase in benefits or coverage is required by law.

(c) If a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge must be set forth in the policy, rider or endorsement.

(3) Payment of benefits. A long-term care insurance policy that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import, must include a definition and explanation of the terms in its accompanying outline of coverage, as set forth in WAC 284-83-145.

(4) Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations must appear as a separate paragraph of the policy or certificate and must be labeled as "pre-existing condition limitations."

(5) Other limitations or conditions on eligibility for benefits. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited under chapter 48.83 RCW, must set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and must label that paragraph "limitations or conditions on eligibility for benefits."

(6) Disclosure of tax consequences. At the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted, a life insurance policy or certificate that provides an accelerated benefit for long-term care must disclose that receipt of the accelerated benefits may be taxable and that assistance should be sought from a personal tax advisor. The disclosure statement must be prominently displayed on the first page of the policy, certificate or rider and any other related documents. This subsection does not apply to qualified long-term care insurance policies.

(7) Benefit triggers. Activities of daily living and cognitive impairment shall be used to measure the insured's need for long-term care and must be described in the policy or certificate in a separate paragraph labeled "eligibility for the payment of benefits." Any additional benefit triggers must be explained in the same section.

(a) If benefit triggers differ for different benefits, a clear explanation of the benefit trigger must accompany each benefit description.

(b) If an attending physician or other specified person is required to certify a certain level of functional dependency in order for the insured to be eligible for benefits, this must be specified.

(8) A qualified long-term care insurance policy must include a disclosure statement in the policy and in the outline of coverage, as set forth in WAC 284-83-145, that the policy is intended to be a qualified long-term care insurance policy under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

(9) A nonqualified long-term care insurance policy must include a disclosure statement in the policy and in the outline of coverage, as set forth in WAC 284-83-145, that the policy is not intended to be a qualified long-term care insurance policy.

NEW SECTION

WAC 284-83-035 Required disclosure of rating practices to consumers. (1)(a) Except as provided in (b) of this subsection, this section applies to any long-term care policy or certificate issued for delivery in this state on or after January 1, 2009.

(b) Certificates issued on or after January 1, 2009, under a group long-term care insurance policy as defined in RCW 48.83.020 (6)(a), that were in force prior to January 1, 2009, the provisions of this section apply on the policy anniversary first following January 1, 2009.

(2) Except for policies for which no applicable premium rate or rate schedule increases can be made, the issuer must provide all of the information listed in this subsection to the applicant at the time of application or enrollment. If the method of application does not allow for delivery at that time, the issuer must provide all of the information listed in this section to the applicant no later than at the time of delivery of the policy or certificate. For example, a method of delivery that does not allow for all listed information to be provided at time of application or enrollment is an application by mail.

(a) A statement that the policy may be subject to rate increases in the future;

(b) An explanation of potential future premium rate revisions, and the policyholder's or certificateholder's option in the event of a premium rate revision;

(c) The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;

(d) A general explanation for applying premium rate or rate schedule including:

(i) A description of when premium rate or rate schedule adjustments will be effective (for example, next anniversary date or next billing date); and

(ii) The right to a revised premium rate or rate schedule as provided for in (c) of this subsection if the premium rate or rate schedule is changed;

(e)(i) Information regarding each premium rate increase on this policy form or similar policy forms over the past ten years for this state or any other state that, at a minimum, identifies:

(A) The policy forms for which premium rates have been increased;

(B) The calendar years when the form was available for purchase; and

(C) The amount or percent of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase, and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

(ii) The issuer, in a fair manner, may provide additional explanatory information related to the rate increases.

(iii) The issuer may exclude from the disclosure, premium rate increases that only apply to blocks of business acquired from other nonaffiliated issuers or the long-term care policies acquired from other nonaffiliated issuers when those increases occurred prior to the acquisition.

(iv) If the acquiring issuer files for a rate increase on a long-term care policy form acquired from a nonaffiliated issuer or a block of policy forms acquired from a nonaffili-

ated issuer on or before the later of January 1, 2009, or the end of a twenty-four-month period following the acquisition of the block or policies, the acquiring issuer may exclude that rate increase from the disclosure; however, the nonaffiliated selling issuer must include the disclosure of that rate increase in accordance with (e)(i) of this subsection.

(v) If the acquiring issuer in (e)(iv) of this subsection files for a subsequent rate increase at any time (including during the twenty-four-month period following the acquisition of the block or policies) on the same policy form acquired from a nonaffiliated issuer or block of policy forms acquired from a nonaffiliated issuer referenced in (e)(iv) of this subsection, the acquiring issuer must make all disclosures required by (e) of this subsection, including disclosure of the earlier rate increase.

(vi) If the policy is for employer-group coverage, the disclosures in this subsection need to be made only to the employer if the employer is paying the entire premium and no contributions or coverage elections are made by individual employees.

(3) The applicant must sign an acknowledgement at the time of application, unless the method of application does not allow for signature at that time, that the issuer made the disclosure required under subsection (2)(a) and (e) of this section. If due to the method of application the applicant cannot sign an acknowledgement at the time of application, the applicant must sign no later than at the time of delivery of the policy or certificate.

(4) The forms provided in WAC 284-83-170 and 284-83-190 must be used by the issuer to comply with the requirements of subsections (2) and (3) of this section.

(5) The issuer must provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, as applicable, at least forty-five days prior to the implementation of any premium rate schedule increase by the issuer. The notice must include the information required by subsection (2) of this section when the rate increase is implemented.

NEW SECTION**WAC 284-83-040 Initial rate filing requirements.**

The issuer must provide the following information to the commissioner no fewer than thirty days prior to making a long-term care insurance form available for sale in this state:

(1) A copy of each disclosure document required in WAC 284-83-035; and

(2) An actuarial certification consisting of at least the following:

(a) A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

(b) A statement that the policy design and coverage provided have been reviewed and taken into consideration;

(c) A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;

(d) A complete description of the basis for policy reserves that are anticipated to be held under the form, including:

(i) Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;

(ii) A statement that the assumptions used for reserves contain reasonable margins for adverse experience;

(iii) A statement that the net valuation premium for renewal years does not increase (except for attained-age rating, where permitted); and

(iv) A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or, if such a statement cannot be made, a complete description of the situations where this does not occur;

(A) An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship;

(B) If the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration based on a standard age distribution; and

(e)(i) A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the issuer except for reasonable differences attributable to benefits; or

(ii) A comparison of the premium schedules for similar policy forms that are currently available from the issuer with an explanation of the differences.

(3)(a) The commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums. The actuarial demonstration must include:

(i) Premium and claim experience on similar policy forms, adjusted for any premium or benefit differences;

(ii) Relevant and credible data from other studies; or

(iii) Both (a)(i) and (ii) of this subsection.

(b) In the event the commissioner asks for additional information, the period in subsection (2) of this section does not include the period during which the issuer is preparing the requested information.

NEW SECTION

WAC 284-83-045 Prohibition against post-claims underwriting. (1) All applications for long-term care insurance policies or certificates except those that are guaranteed issue must contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(2)(a) If an application for long-term care insurance includes a question that asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the prescribed medications.

(b) If the medications listed in the application were known by the issuer, or should have been known by the issuer at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate cannot be rescinded based on that condition.

(3) Except for policies or certificates which are guaranteed issue:

(a) The following language must be set out conspicuously and in close conjunction with the applicant's signature block on the application for a long-term care insurance policy or certificate:

"Caution: If your answers on this application are incorrect or untrue, [company] has the right to deny benefits or rescind your policy."

(b) The following language, or language substantially similar to the following, must be set out conspicuously on every long-term care insurance policy or certificate at the time of delivery:

"Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [Insert address]"

(c) Prior to issuance of a long-term care policy or certificate to an applicant age eighty or older, the issuer must obtain one of the following:

(i) A report of a physical examination;

(ii) An assessment of functional capacity;

(iii) An attending physician's statement; or

(iv) Copies of the applicant's medical records.

(4) A copy of the completed application or enrollment form (whichever is applicable) must be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

(5) Every issuer or other entity selling or issuing long-term care insurance benefits must maintain a record of all policy or certificate rescissions, both state and countrywide, except those that the insured voluntarily requested, and must annually furnish this information to the commissioner. The format is prescribed by the National Association Of Insurance Commissioners, and is set forth in WAC 284-83-165.

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

NEW SECTION

WAC 284-83-050 Minimum standards for home health and community care benefits in long-term care insurance policies. (1) If a long-term care insurance policy or certificate provides benefits for home health care or community care services, it must not limit or exclude benefits:

(a) By requiring that the insured or claimant would need care in a nursing facility if home health care services were not provided;

(b) By requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services, or both, in a home, community, or institutional setting before home health care services are covered;

(c) By limiting eligible services to services provided by registered nurses or licensed practical nurses;

(d) By requiring that a nurse or therapist provide services covered under the policy that can be provided by a home health aide or other licensed or certified home care worker acting within the scope of his or her licensure or certification;

(e) By excluding coverage for personal care services provided by a home health aide;

(f) By requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;

(g) By requiring that the insured or claimant have an acute condition before home health care services are covered;

(h) By limiting benefits to services provided by Medicare-certified agencies or providers; or

(i) By excluding coverage for adult day care services.

(2) If a long-term care insurance policy or certificate provides for home health or community care services, it must provide total home health or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing home benefits under the policy or certificate, at the time covered home health or community care services are being received. This requirement does not apply to policies or certificates issued to residents of continuing care retirement communities.

(3) Home health care coverage may be applied to the nonhome health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

(a) This permits the home health care benefits to be counted toward the maximum length of long-term care coverage under the policy.

(b) Home health care benefits must not be restricted to a period of time which would make the benefit illusory. For example, fewer than three hundred sixty-five benefit days and less than a twenty-five dollar daily maximum benefit are considered illusory home health care benefits.

NEW SECTION

WAC 284-83-055 Requirement to offer inflation protection. (1) No issuer may offer a long-term care insurance policy in this state unless the issuer also offers to the policyholder, in addition to any other inflation protection, the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Issuers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

(a) Increases benefit levels annually in a manner so that the increases are compounded annually at a rate of not less than five percent.

(b) Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of the additional benefit must be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five percent for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made.

(c) Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(2) If the policy is issued to a group, the required offer in subsection (1) of this section must be made to the group policyholder; however, if the policy is issued to a group defined in RCW 48.83.020 (6)(a), other than to a continuing care retirement community, the offering must be made to each proposed certificateholder.

(3) The offer in subsection (1) of this section is not required of life insurance policies or riders containing accelerated long-term care benefits.

(4)(a) Issuers must include the following information in or with the outline of coverage:

(i) A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison must show benefit levels over at least a twenty-year period; and

(ii) Any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

(b) The issuer may use a reasonable hypothetical or a graphic demonstration for the purposes of this disclosure. For example, meaningful benefit minimums or durations could be demonstrated by showing increases to attained age, for a period such as at least twenty years, for some multiple of the policy's maximum benefit, or throughout the period of coverage.

(5) Inflation protection benefit increases under a policy that includes these benefits must continue without regard to the insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

(6) An offer of inflation protection that provides for automatic benefit increases must include an offer of a premium which the issuer expects to remain constant. Unless the premium is guaranteed to remain constant, the offer must disclose in a conspicuous manner that the premium may change in the future.

(7)(a) Inflation protection as provided in subsection (1)(a) of this section must be included in any long-term care insurance policy unless the issuer obtains a rejection of inflation protection signed by the policyholder. The rejection may be either part of the application or on a separate form.

(b) The rejection is considered a part of the application.

(c) The following language, or language substantially similar to the following, must be set out conspicuously on the rejection:

"I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans _____, and I reject inflation protection."

NEW SECTION

WAC 284-83-060 Requirements for application forms and replacement coverage. (1) Application forms must include questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other health or long-term care policy or certificate presently in force.

(a) A supplementary application or other form, signed by the applicant and insurance producer, except where the coverage is sold without an insurance producer, containing the questions may be used. With regard to a replacement policy issued to a group defined by RCW 48.83.020 (6)(a), the required questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced, provided that the certificateholder has been notified of the replacement.

(b) The following questions, or words substantially similar to the following, must be used:

(i) "Do you have another long-term care insurance policy or certificate in force (including health care service contract, health maintenance organization contract)?"

(ii) Did you have another long-term care insurance policy or certificate in force during the last twelve months? If so, with which company? If that policy lapsed, when did it lapse?

(iii) Are you covered by Medicaid?

(iv) Do you intend to replace any of your medical or health insurance coverage with this policy [certificate]?"

(2) Insurance producers must list any other health insurance policies they have sold to the applicant that are still in force and any similar policies sold in the past five years that are no longer in force.

(3) Solicitations other than direct response. Upon determining that a sale will involve replacement, the issuer, other than an issuer using direct response solicitation methods, or

its insurance producer, must furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of health care or long-term care coverage. One copy of the notice must be retained by the applicant and an additional copy must be signed by the applicant and must be retained by the issuer. The notice set forth in WAC 284-83-063 must be used.

(4) Direct response solicitations. Issuers using direct response solicitation methods must deliver a notice regarding replacement of health or long-term care coverage to the applicant upon issuance of the policy. The required notice set forth in WAC 284-83-067 must be used.

(5) If replacement is intended, the replacing issuer must notify the existing issuer of the proposed replacement in writing. The existing policy must be identified by the issuer, including the name of the insured and policy number or address plus zip code. Notice must be made within five working days after the date the application is received by the issuer or the date the policy is issued, whichever is sooner.

(6) Life insurance policies that accelerate benefits for long-term care must comply with this section if the policy being replaced is a long-term care insurance policy.

(a) If the policy being replaced is a life insurance policy, the issuer must comply with the replacement requirements of WAC 284-23-400 through 284-23-485.

(b) If a life insurance policy that accelerates benefits for long-term care is replaced by another such policy, the replacing issuer must comply with both the long-term care and the life insurance replacement requirements.

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

NEW SECTION

WAC 284-83-063 Notice to applicant regarding replacement of individual accident and sickness or long-term care insurance marketed by an insurance producer. The following notice is required in WAC 284-83-060(3):

NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL
[ACCIDENT AND SICKNESS] [HEALTH] OR LONG-TERM CARE INSURANCE

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing [accident and sickness] [health] or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by [company name] insurance company. Your new policy provides thirty days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all [accident and sickness] [health] or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

STATEMENT TO APPLICANT BY [AGENT, BROKER, INSURANCE PRODUCER OR OTHER REPRESENTATIVE]:

(Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

- (1) Health conditions that you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
- (2) State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.
- (3) If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its [agent] [insurance producer] regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
- (4) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

(Signature of [Agent, Broker] [Insurance Producer] or Other Representative)

[Typed Name and Address of [Agent or Broker] [Insurance Producer]]

The above "Notice to Applicant" was delivered to me on:

(Applicant's Signature)

(Date)

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

NEW SECTION

WAC 284-83-067 Notice to applicant regarding replacement of direct-marketed individual accident and sickness or long-term care insurance. The following notice is required by WAC 284-83-060(4):

NOTICE TO APPLICANT REGARDING REPLACEMENT OF [ACCIDENT AND SICKNESS] [HEALTH] OR LONG-TERM CARE INSURANCE
 [Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing [accident and sickness] [health] or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by [company name] insurance company. Your new policy provides thirty days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all [accident and sickness] [health] or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

- (1) Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
- (2) State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.
- (3) If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its [agent] [insurance producer] regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

- (4) [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

[Company Name]

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

NEW SECTION

WAC 284-83-070 Reporting requirements. (1) Every issuer must maintain records for each insurance producer of that producer's amount of replacement sales as a percent of the insurance producer's total annual sales and the amount of lapses of long-term care insurance policies sold by the insurance producer as a percent of the insurance producer's total annual sales.

(2) Every issuer must report annually by June 30 the ten percent of its insurance producers with the highest percentages of lapses and replacements as measured by subsection (1) of this section on the form set forth in WAC 284-83-195.

(3) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely insurance producer activities regarding the sale of long-term care insurance.

(4) Every issuer must report annually by June 30 the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year on the form set forth in WAC 284-83-195.

(5) Every issuer must report annually by June 30 the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year on the form set forth in WAC 284-83-195.

(6) Every issuer must report annually by June 30, for qualified long-term care insurance policies, the number of claims denied for each class of business, expressed as a percentage of claims denied on the form set forth in WAC 284-83-185.

(7) As used in this section:

(a) "Policy" refers only to long-term care insurance policies;

(b) "Claim" means a request for payment of benefits under an in-force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;

(c) "Denied" means that the issuer refuses to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition; and

(d) "Report" means on a statewide basis.

(8) Reports required under this section must be filed with the commissioner.

NEW SECTION

WAC 284-83-075 Discretionary powers of commissioner. Upon written request and after an administrative hearing, the commissioner may enter an order to modify or suspend a specific provision or provisions of this chapter with respect to a specific long-term care insurance policy or certificate upon a written finding that:

(1) The modification or suspension would be in the best interest of the insureds;

(2) The purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and

(3)(a) The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or

(b) The policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of such a community; or

(c) The modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

NEW SECTION

WAC 284-83-080 Reserve standards. (1) If long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to such policies, policy reserves for the benefits must be determined in accordance with RCW 48.74.030 (1)(g). Claim reserves must also be established in the case when the policy or rider is in claim status. Reserves for policies and riders subject to this subsection should be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits; however, in no event shall the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit. In the development and calculation of reserves for policies and riders subject to this subsection, due regard must be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on pro-

jected claim costs, including, but not limited to, the following:

- (a) Definition of insured events;
- (b) Covered long-term care facilities;
- (c) Existence of home convalescence care coverage;
- (d) Definition of facilities;
- (e) Existence or absence of barriers to eligibility;
- (f) Premium waiver provision;
- (g) Renewability;
- (h) Ability to raise premiums;
- (i) Marketing method;
- (j) Underwriting procedures;
- (k) Claims adjustment procedures;
- (l) Waiting period;
- (m) Maximum benefit;
- (n) Availability of eligible facilities;
- (o) Margins in claim costs;
- (p) Optional nature of benefit;
- (q) Delay in eligibility for benefit;
- (r) Inflation protection provisions; and
- (s) Guaranteed insurability option.

(2) If long-term care benefits are provided other than as provided in subsection (1) of this section, reserves must be determined in accordance with the accounting practices and procedures manuals adopted by the National Association Of Insurance Commissioners, unless otherwise provided by law, as required by RCW 48.05.073.

(3) Any applicable valuation morbidity table must be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

NEW SECTION

WAC 284-83-090 Premium rate schedule increases.

(1)(a) Except as provided in (b) of this subsection, this section applies to any long-term care policy or certificate issued in this state on or after January 1, 2009.

(b) For certificates issued on or after January 1, 2009, under a group long-term care insurance policy as defined in RCW 48.83.020 (6)(a), which policy was in force before January 1, 2009, the provisions of this section apply on the first policy anniversary following January 1, 2009.

(2) The issuer must provide notice of a pending premium rate schedule increase, including an exceptional increase, to the commissioner at least thirty days prior to giving the notice to the policyholders and must include:

- (a) Information required by WAC 284-83-035;
- (b) Certification by a qualified actuary that:

(i) If the requested premium rate schedule increase is implemented and the underlying assumptions which reflect moderately adverse conditions are realized, no further premium rate schedule increases are anticipated;

(ii) The premium rate filing is in compliance with the provisions of this section;

(c) An actuarial memorandum justifying the rate schedule change request that includes:

(i) Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase, and the method and assumptions used in determining the projected values, including reflection of any assumptions that

deviate from those used for pricing other forms currently available for sale.

(A) Annual values for the five years preceding and the three years following the valuation date must be provided separately.

(B) The projections must include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase.

(C) The projections must demonstrate compliance with subsection (3) of this section.

(D) For exceptional increases:

(I) The projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

(II) In the event the commissioner determines that offsets may exist, the issuer must use appropriate net projected experience;

(ii) Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

(iii) Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the issuer have been relied on by the actuary;

(iv) A statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and

(v) Composite rates reflecting projections of new certificates, if it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase;

(d) A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and

(e) Sufficient information for review of the premium rate schedule increase by the commissioner.

(3) All premium rate schedule increases must be determined in accordance with the following requirements:

(a) Exceptional increases must provide that seventy percent of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

(b) Premium rate schedule increases must be calculated so that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

(i) The accumulated value of the initial earned premium times fifty-eight percent;

(ii) Eighty-five percent of the accumulated value of prior premium rate schedule increases on an earned basis;

(iii) The present value of future projected initial earned premiums times fifty-eight percent; and

(iv) Eighty-five percent of the present value of future projected premiums not in (b)(iii) of this subsection on an earned basis;

(c) In the event that a policy form has both exceptional and other increases, the values in (b)(ii) and (iv) of this sub-

section will also include seventy percent for exceptional rate increase amounts; and

(d) All present and accumulated values used to determine rate increases must use the maximum valuation interest rate for policy reserves as specified in the accounting practices and procedures manuals adopted by the National Association Of Insurance Commissioners, except as otherwise provided by RCW 48.05.073. The actuary must disclose as part of the actuarial memorandum the use of any appropriate averages.

(4) For each rate increase that is implemented, the issuer must file for review by the commissioner updated projections, as defined in subsection (2)(c)(i) of this section, annually for the next three years and include a comparison of actual results to projected values. The commissioner may extend the period to greater than three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions set forth in subsection (11) of this section, the projections required by this subsection may be provided to the policyholder in lieu of filing with the commissioner.

(5) If any premium rate in the revised premium rate schedule is greater than two hundred percent of the comparable rate in the initial premium schedule, lifetime projections, as defined in subsection (2)(c)(i) of this section, must be filed for review by the commissioner every five years following the end of the required period in subsection (4) of this section. For group insurance policies that meet the conditions in subsection (11) of this section, the projections required by this subsection may be provided to the policyholder in lieu of filing with the commissioner.

(6)(a) If the commissioner determines that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subsection (3) of this section, the commissioner may require the issuer to implement either premium rate schedule adjustments or other measures to reduce the difference between the projected and actual experience.

(b) In determining whether the actual experience adequately matches the projected experience, consideration should be given to subsection (2)(c)(v) of this section, as applicable.

(c) For purposes of this section:

(i) The term "adequately match the projected experience" requires more than a comparison between actual and projected incurred claims. Other assumptions should be taken into consideration, including lapse rates (including mortality), interest rates, margins for moderately adverse conditions, or any other assumptions used in the pricing of the product.

(ii) It is to be expected that the actual experience will not exactly match the issuer's projections. During the period that projections are monitored, the commissioner will determine whether there is an adequate match if the differences in earned premiums and incurred claims are not in the same direction (both actual values higher or lower than projections) or the difference as a percentage of the projected is not of the same order.

(7) If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the issuer must file:

(a) A plan, subject to commissioner approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form, requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the commissioner may impose the condition in subsection (8) of this section; and

(b) The original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to subsection (8) of this section, had the greater of the original anticipated lifetime loss ratio or fifty-eight percent been used in the calculations described in subsection (3)(b)(i) and (iii) of this section.

(8)(a) For a rate increase filing that meets the following criteria for all policies included in the filing, the commissioner must review the projected lapse rates and past lapse rates during the twelve months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

(i) The rate increase is not the first rate increase requested for the specific policy form or forms;

(ii) The rate increase is not an exceptional increase; and

(iii) The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

(b) If significant adverse lapsation has occurred, is anticipated in the filing, or is evidenced in the actual results as presented in the updated projections provided by the issuer following the requested rate increase, the commissioner may determine that a rate spiral exists. Following the determination that a rate spiral exists, the commissioner may require the issuer to offer all in-force insureds subject to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the issuer or its affiliates without underwriting.

(i) The offer shall:

(A) Be subject to the approval of the commissioner;

(B) Be based on actuarially sound principles, but not be based on attained age; and

(C) Provide that maximum benefits under any new policy accepted by the insured must be reduced by comparable benefits already paid under the existing policy.

(ii) The issuer must maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase will be limited to the lesser of:

(A) The maximum rate increase determined based on the combined experience; and

(B) The maximum rate increase determined based only on the experience of the insureds originally issued the form plus ten percent.

(9) If the commissioner determines that the issuer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, in addition to the

provisions of subsection (8) of this section, the commissioner may prohibit the issuer from either of the following:

(a) Filing and marketing comparable coverage for a period of up to five years; or

(b) Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

(10) Subsections (1) through (9) of this section do not apply to policies for which the long-term care benefits provided by the policy are incidental, as defined in WAC 284-83-010, if the policy complies with all of the following provisions:

(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

(b) The portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements (as applicable) in any of the following:

(i) Chapter 48.76 RCW;

(ii) RCW 48.23.420 through 48.23.450; and

(iii) RCW 48.18A.050;

(c) The policy meets the disclosure requirements of RCW 48.83.070(2) and 48.83.080;

(d) The portion of the policy that provides insurance benefits other than long-term care coverage meets the applicable requirements in the following:

(i) Policy illustrations as required by chapter 48.23A RCW;

(ii) Disclosure requirements in WAC 284-23-300 through 284-23-370; and

(iii) Disclosure requirements in RCW 48.18A.030;

(e) An actuarial memorandum is filed with the insurance department that includes:

(i) A description of the basis on which the long-term care rates were determined;

(ii) A description of the basis for the reserves;

(iii) A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

(iv) A description and a table of each actuarial assumption used. For expenses, the issuer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

(v) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

(vi) The estimated average annual premium per policy and the average issue age;

(vii) A statement as to whether underwriting is performed at the time of application. The statement must indicate whether underwriting is used and, if used, the statement must include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement must indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

(viii) A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture val-

ues and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

(11) Subsections (6) and (8) of this section do not apply to group insurance policies as defined in RCW 48.83.020 (6)(a), if:

(a) The policies insure two hundred fifty or more persons and the policyholder has five thousand or more eligible employees of a single employer; or

(b) The policyholder, and not the certificateholder, pays a material portion of the premium, which must not be less than twenty percent of the total premium for the group in the calendar year prior to the year a rate increase is filed.

NEW SECTION

WAC 284-83-095 Filing requirements. Prior to offering group long-term care insurance to a resident of this state pursuant to RCW 48.83.030, the issuer or similar organization must file with the commissioner evidence that the group policy or certificate has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those of this state.

NEW SECTION

WAC 284-83-100 Filing requirements for advertising. (1) Every issuer or other entity issuing long-term care insurance in this state must provide a copy of any long-term care insurance advertisement intended for use in this state whether through written, radio or television medium for review by the commissioner. In addition, a copy of all advertisements must be retained by the issuer for at least three years after the date the advertisement was first used.

(2) The commissioner may exempt from these requirements any advertising form or material when, in the commissioner's opinion, this requirement may not be reasonably applied.

NEW SECTION

WAC 284-83-105 Standards for marketing. (1) Every issuer or entity marketing long-term care insurance coverage in this state, directly or through its insurance producers, must:

(a) Establish marketing procedures and insurance producer training requirements to ensure that:

(i) Any marketing activities, including any comparison of policies, by its insurance producers, other representatives, or employees are fair and accurate; and

(ii) Excessive insurance is not sold or issued.

(b) Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following notice:

"Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

(c) Provide copies of the disclosure forms required in WAC 284-83-035(3), 284-83-170 and 284-83-190 to the applicant.

(d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has health or long-term care insurance and the types and amounts of any such insurance. For qualified long-term care insurance policies, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has health care coverage is not required.

(e) Every issuer or other entity marketing long-term care insurance must establish auditable procedures for verifying compliance with this subsection.

(f) If the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by its commissioner, at time of solicitation for long-term care insurance the issuer must provide written notice to the prospective policyholder and certificateholder that the counseling program is available and provide its name, address and telephone number.

(g) For long-term care insurance policies, use the terms "noncancellable" or "level premium" only when the policy or certificate conforms to WAC 284-83-020 (1)(c).

(h) Provide an explanation of contingent benefit upon lapse provided for in WAC 284-83-130 (4)(c) and, if applicable, the additional contingent benefit upon lapse provided to policies with fixed or limited premium paying periods in WAC 284-83-130 (4)(d).

(2) In addition to the practices prohibited in chapters 48.30 RCW and 284-30 WAC, the following acts and practices are prohibited:

(a) Twisting, as defined in RCW 48.30.180.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance producer or insurance company.

(d) Misrepresentation. Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.

(3)(a) With respect to the obligations set forth in this subsection, the primary responsibility of an association, as defined in RCW 48.83.020 (6)(b), when endorsing or selling long-term care insurance must be to educate its members concerning long-term care issues in general so that its members can make informed decisions. Associations must provide objective information regarding long-term care insurance policies or certificates endorsed or sold by the associations to ensure that members of the associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold.

(b) The issuer must file with the commissioner the following material:

- (i) The policy and certificate;
- (ii) A corresponding outline of coverage; and
- (iii) All advertisements requested by the commissioner.

(c) The association must disclose in any long-term care insurance solicitation:

(i) The specific nature and amount of the compensation arrangements (including all fees, commissions, administrative fees and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members; and

(ii) A brief description of the process under which the policies and the issuer issuing the policies were selected.

(d) If the association and the issuer have interlocking directorates or trustee arrangements, the association must disclose that fact to its members.

(e) The board of directors of associations selling or endorsing long-term care insurance policies or certificates must review and approve the insurance policies as well as the compensation arrangements made with the issuer.

(f) The association must also:

(i) At the time of the association's decision to endorse the selling of long-term care insurance policies or certificates, engage the services of a person with expertise in long-term care insurance not affiliated with the issuer to conduct an examination of the policies (including its benefits, features, and rates) and update the examination thereafter in the event of material change;

(ii) Actively monitor the marketing efforts of the issuer and its producers; and

(iii) Review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies or certificates.

Subsections (3)(f)(i) through (f)(iii) of this section do not apply to qualified long-term care insurance policies.

(g) No group long-term care insurance policy or certificate may be issued to an association unless the issuer files with the commissioner the information required in this subsection.

(h) The issuer must not issue a long-term care policy or certificate to an association or continue to market such a policy or certificate unless the issuer certifies annually that the association has complied with the requirements set forth in this section.

(i) Failure to comply with the filing and certification requirements of this section constitutes an unfair trade practice.

NEW SECTION

WAC 284-83-110 Suitability. (1) This section does not apply to life insurance policies that accelerate benefits for long-term care.

(2) Every issuer or other entity marketing long-term care insurance must:

(a) Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

(b) Train its insurance producers in the use of its suitability standards; and

(c) Maintain a copy of its suitability standards and make it available for inspection upon request by the commissioner.

(3)(a) To determine whether the applicant meets the standards developed by the issuer, the insurance producer and the issuer must develop procedures that take the following into consideration:

(i) The ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

(ii) The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

(iii) The values, benefits and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement.

(b) The issuer, and if an insurance producer is involved, the insurance producer must make reasonable efforts to obtain the information set out in subsection (2)(a) of this section. The efforts must include presentation to the applicant, at or prior to application, the "long-term care insurance personal worksheet." The personal worksheet used by the issuer must contain, at a minimum, the information in the format set forth in WAC 284-83-170, in not less than twelve point type. The issuer may request the applicant to provide additional information to comply with its suitability standards. A copy of the form of the issuer's personal worksheet must be filed with the commissioner.

(c) Except for sales of employer-group long-term care insurance to employees and their spouses, a completed personal worksheet must be returned to the issuer prior to the issuer's consideration of the applicant for coverage.

(d) The sale, distribution, use or dissemination in any way by the issuer or insurance producer of information obtained through the personal worksheet is prohibited.

(4) The issuer must use the suitability standards it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to the applicant is appropriate.

(5) Insurance producers must use the suitability standards developed by the issuer in all marketing or solicitation of long-term care insurance.

(6) At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "things you should know before you buy long-term care insurance" must be provided. The form must be in the format set forth in WAC 284-83-175, in not less than twelve point type.

(7) If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. In the alternative, the issuer may send the applicant a letter similar to the form set forth in WAC 284-83-180. If the applicant declines to provide financial information, the issuer may use another method to verify the applicant's intent. The applicant's returned letter or a record of the alternative method of verification must be made part of the applicant's file.

(8) The issuer must report annually to the commissioner the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of applicants who chose to confirm after receiving a suitability letter.

NEW SECTION

WAC 284-83-115 Prohibition against preexisting conditions and probationary periods in replacement policies or certificates. If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing issuer must waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

NEW SECTION

WAC 284-83-120 Availability of new services or providers. (1) The issuer must notify policyholders of the availability of a new long-term policy series that provides coverage for new long-term care services or providers material in nature and not previously available through the issuer to the general public. The notice must be provided within twelve months after the date the new policy series is made available for sale in this state. Changes to policy structure or benefits or provisions that are minor in nature are not "new long-term care services or providers material in nature." Examples of when notification need not be provided include changes in elimination periods, benefit periods or benefit amounts.

(2) Notwithstanding subsection (1) of this section, notification is not required for any long-term care insurance policy issued prior to January 1, 2009, or to any policyholder or certificateholder who is currently eligible for benefits, within an elimination period or on a claim, previously had been in claim status, or who would not be eligible to apply for coverage due to issue age limitations under the new policy series. The issuer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium in order to add the new services or providers.

(3) The issuer must make the new coverage available in one of the following ways:

(a) By adding a rider to the existing policy and charging a separate premium for the new rider based on the insured's attained age;

(b) By exchanging the existing policy or certificate for one with an issue age based on the attained age of the insured and recognizing past insured status by granting premium credits toward the premiums for the new policy or certificate. The premium credits must be based on premiums paid or reserves held for the prior policy or certificate;

(c) By exchanging the existing policy or certificate for a new policy or certificate in which consideration for past insured status is recognized by setting the premium for the new policy or certificate at the issue age of the policy or certificate being exchanged. The cost for the new policy or certificate may recognize the difference in reserves between the new policy or certificate and the original policy or certificate; or

(d) By an alternative program developed by the issuer that meets the intent of this section if the program is filed with and approved by the commissioner.

(4) The issuer is not required to notify its policyholders of a new proprietary policy series created and filed for use in

a limited distribution channel. For purposes of this subsection, "limited distribution channel" means distribution through a discrete entity, such as a financial institution or brokerage, through which specialized products are made available that are not available for sale to the general public. Policyholders that purchase a new proprietary policy must be notified when a new long-term care policy series that provides coverage for new long-term care services or providers material in nature is made available to that limited distribution channel.

(5) Policies issued pursuant to this section will be considered exchanges and not replacements. These exchanges are not subject to WAC 284-83-060 and 284-83-110, and the reporting requirements of WAC 284-83-065 (1) through (5).

(6)(a) If the policy is offered through an employer, labor organization, professional, trade or occupational association, the required notification in subsection (1) of this section must be made to the offering entity.

(b) If the policy is issued to a group defined in RCW 48.83.020 (6)(d), the notification must be made to each certificateholder.

(7) Nothing in this section prohibits the issuer from offering any policy, rider, certificate or coverage change to any policyholder or certificateholder. Upon request, any policyholder may apply for currently available coverage that includes the new services or providers. The issuer may require the policyholder to meet all eligibility requirements, including underwriting and payment of the required premium to add new services or providers.

(8) This section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

NEW SECTION

WAC 284-83-125 Right to reduce coverage and lower premiums. (1)(a) Every long-term care insurance policy and certificate must include a provision that allows the policyholder or certificateholder to reduce coverage and lower the policy or certificate premium in at least one of the following ways:

- (i) Reducing the maximum benefit; or
- (ii) Reducing the daily, weekly or monthly benefit amount.

(b) The issuer may also offer other reduction options that are consistent with the policy or certificate design or the issuer's administrative processes.

(2) The provision must include a description of the ways in which coverage may be reduced and the process for requesting and implementing a reduction in coverage.

(3) The age to determine the premium for the reduced coverage must be based on the age used to determine the premiums for the coverage currently in force.

(4) The issuer may limit any reduction in coverage to plans or options available for that policy form and to those for which benefits will be available after consideration of claims paid or payable.

(5) If a policy or certificate is about to lapse, the issuer must provide a written reminder to the policyholder or certificateholder of his or her right to reduce coverage and premiums in the notice required by WAC 284-83-025 (1)(c).

(6) Compliance with this section may be accomplished by policy replacement, exchange or by adding the required provision via amendment or endorsement to the policy.

(7) This section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

NEW SECTION

WAC 284-83-130 Nonforfeiture benefit requirement.

(1) This section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

(2) To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of RCW 48.83.120:

(a) A policy or certificate offered with nonforfeiture benefits must have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage issued by the issuer without nonforfeiture benefits. The nonforfeiture benefit included in the offer must be the benefit described in subsection (5) of this section; and

(b) The offer must be in writing if the nonforfeiture benefit is not otherwise described in the outline of coverage or other materials given to the prospective policyholder.

(3) If the offer required to be made under RCW 48.83.120 is rejected, the issuer must provide the contingent benefit upon lapse described in this section. The contingent benefit on lapse in subsection (4)(d) of this section applies even if this offer is accepted for a policy with a fixed or limited premium paying period.

(4)(a) After rejection of the offer required under RCW 48.83.120, for individual and group policies without nonforfeiture benefits issued after the effective date of this section, the issuer must provide a contingent benefit upon lapse.

(b) If a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate must provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(c) A contingent benefit on lapse must be triggered every time the issuer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in the following table based on the insured's issue age, and the policy or certificate lapses within one hundred twenty days after the due date of the premium so increased. Unless otherwise required, policyholders must be notified at least thirty days prior to the date the premium reflecting the rate increase is due.

Triggers for a Substantial Premium Increase

Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%

Issue Age	Percent Increase Over Initial Premium
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%

Triggers for a Substantial Premium Increase

Issue Age	Percent Increase Over Initial Premium
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

(d) A contingent benefit on lapse must also be triggered for policies with a fixed or limited premium paying period every time the issuer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in the following table based on the insured's issue age, the policy or certificate lapses within one hundred twenty days after the due date of the premium so increased, and the ratio in (f)(ii) of this subsection is forty percent or more. Unless otherwise required, policyholders must be notified at least thirty days prior to the date the premium reflecting the rate increase is due. This requirement is in addition to the contingent benefit provided by subsection

(3) of this section and if both are triggered, the benefit provided must be at the option of the insured.

Triggers for a Substantial Premium Increase

Issue Age	Percent Increase Over Initial Premium
Under 65	50%
65-80	30%
Over 80	10%

(e) On or before the effective date of a substantial premium increase as defined in (c) of this subsection, the issuer must:

(i) Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

(ii) Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of subsection (5) of this section. This option may be elected at any time during the one hundred twenty-day period provided for in (c) of this subsection; and

(iii) Notify the policyholder or certificateholder that a default or lapse at any time during the one hundred twenty-day period provided for in (c) of this subsection will be deemed to be the election of the offer to convert in (e)(ii) of this subsection unless the automatic option in (f)(iii) of this subsection applies.

(f) On or before the effective date of a substantial premium increase as defined in (d) of this subsection, the issuer must:

(i) Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

(ii) Offer to convert the coverage to a paid-up status where the amount payable for each benefit is ninety percent of the amount payable in effect immediately prior to lapse times the ratio of the number of completed months of paid premiums divided by the number of months in the premium paying period. This option may be elected at any time during the one hundred twenty-day period provided for in (d) of this subsection; and

(iii) Notify the policyholder or certificateholder that a default or lapse at any time during the one hundred twenty-day period provided for in (d) of this subsection will be deemed to be the election of the offer to convert in (f)(ii) of this subsection if the ratio is forty percent or more.

(5) Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse in accordance with subsection (4)(c) but not (d) of this subsection, are described in this subsection:

(a) For purposes of this subsection, "attained age rating" is defined as a schedule of premiums starting from the issue date which increases age at least one percent per year prior to age fifty, and at least three percent per year beyond age fifty.

(b) For purposes of this subsection, the nonforfeiture benefit must be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying

claim, but the lifetime maximum dollars or days of benefits must be determined as specified in (c) of this subsection.

(c) The standard nonforfeiture credit will be equal to one hundred percent of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The issuer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration; however, the minimum nonforfeiture credit must not be less than thirty times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of subsection (6) of this section.

(d)(i) The nonforfeiture benefit must begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse must be effective during the first three years as well as thereafter.

(ii) Notwithstanding (d)(i) of this subsection, for a policy or certificate with attained age rating, the nonforfeiture benefit must begin on the earlier of:

(A) The end of the tenth year following the policy or certificate issue date; or

(B) The end of the second year following the date the policy or certificate is no longer subject to attained age rating.

(e) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

(6) All benefits paid by the issuer while the policy or certificate is in premium-paying status or in paid-up status must not exceed the maximum benefits that would be payable if the policy or certificate had remained in premium-paying status.

(7) No difference in the minimum nonforfeiture benefits as required under this section for group and individual policies is permitted.

(8) The requirements set forth in this section must become effective twelve months after adoption of this provision and must apply as follows:

(a) Except as provided in (b) and (c) of this subsection, this section applies to any long-term care policy issued in this state on or after January 1, 2009.

(b) This section does not apply to certificates issued on or after the effective date of this section under a group long-term care insurance policy as defined in RCW 48.83.020 (6)(a), if policy was in force on January 1, 2009.

(c) The last sentence in subsection (3) of this section and subsection (4)(d) and (f) of this section apply to any long-term care insurance policy or certificate issued in this state six months after their adoption, except as to new certificates on a group policy as defined in RCW 48.83.020 (6)(a), those sentences apply to any long-term care insurance policy or certificate issued in this state one year after adoption.

(9) Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse is subject to the loss ratio requirements of WAC 284-83-085 or 284-83-090, whichever is applicable, treating the policy as a whole.

(10) To determine whether contingent nonforfeiture upon lapse provisions are triggered under subsection (4)(c) or (d) of this section, a replacing issuer that purchased or other-

wise assumed a block or blocks of long-term care insurance policies from another issuer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original issuer.

(11) A nonforfeiture benefit for qualified long-term care insurance policies that are level premium policies must be offered and must meet the following requirements:

(a) The nonforfeiture provision must be appropriately captioned;

(b) The nonforfeiture provision must provide a benefit available in the event of a default in the payment of any premiums and must state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in rates for premium paying policies approved by the commissioner for the same policy form; and

(c) The nonforfeiture provision must provide at least one of the following:

(i) Reduced paid-up insurance;

(ii) Extended term insurance;

(iii) Shortened benefit period; or

(iv) Other similar offerings approved by the commissioner.

NEW SECTION

WAC 284-83-135 Standards for benefit triggers. (1)

A long-term care insurance policy must condition the payment of benefits on a determination of the insured's ability to perform activities of daily living or on cognitive impairment of the insured. Eligibility for the payment of benefits must not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment.

(2)(a) Activities of daily living must include at least the following, as defined in WAC 284-83-015, and must be defined in the policy:

(i) Bathing;

(ii) Continence;

(iii) Dressing;

(iv) Eating;

(v) Toileting; and

(vi) Transferring;

(b) Issuers may use activities of daily living to trigger covered benefits in addition to those contained in subsection (1)(a) of this section only if they are defined in the policy.

(3) The issuer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however the provisions must not restrict, and must not be in lieu of, the requirements contained in subsections (1) and (2) of this section.

(4) For purposes of this section the determination of a deficiency must not be more restrictive than:

(a) Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

(b) If the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

(5) Assessments of activities of daily living and cognitive impairment must be performed by licensed or certified professionals, such as physicians, nurses or social workers.

(6) Long-term care insurance policies must include a clear description of the process for appealing and resolving benefit determinations.

(7)(a) Except as provided in (b) of this subsection, the provisions of this section apply to a long-term care policy issued in this state on or after January 1, 2009.

(b) The provisions of this section do not apply to certificates issued on or after the effective date of this section under a group long-term care insurance policy as defined in RCW 48.83.020 (6)(a) that were in force on January 1, 2009.

NEW SECTION

WAC 284-83-140 Qualified long-term care insurance policies—Additional standards for benefit triggers. (1) For purposes of this section the following definitions apply:

(a) "Qualified long-term care services" means services that meet the requirements of Section 7702 (c)(1) of the Internal Revenue Code of 1986, as amended, including: Necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(b)(i) "Chronically ill individual" has the meaning of Section 7702B (c)(2) of the Internal Revenue Code of 1986, as amended. Under this provision, a chronically ill individual means any individual who has been certified by a licensed health care practitioner as:

(A) Being unable to perform (without substantial assistance from another individual) at least two activities of daily living for a period of at least ninety days due to a loss of functional capacity; or

(B) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

(ii) The term "chronically ill individual" does not include an individual otherwise meeting these requirements unless within the preceding twelve-month period a licensed health care practitioner certified that the individual meets these requirements.

(c) "Licensed health care practitioner" means a physician, as defined in Section 1861 (r)(1) of the Social Security Act, a registered professional nurse, licensed social worker or other individual who meets requirements prescribed by the federal Secretary of the Treasury.

(d) "Maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

(2) A qualified long-term care insurance policy must pay only for qualified long-term care services received by a chronically ill individual provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(3) A qualified long-term care insurance policy must condition the payment of benefits on a determination of the insured's inability to perform activities of daily living for an expected period of at least ninety days due to a loss of functional capacity or to severe cognitive impairment.

(4) Certifications regarding activities of daily living and cognitive impairment required pursuant to subsection (3) of this section must be performed by a licensed or certified physician, registered professional nurse, licensed social worker, or other individual who meet requirements prescribed by the federal Secretary of the Treasury.

(5) Certifications required pursuant to subsection (3) of this section may be performed by a licensed health care professional at the direction of the issuer as is reasonably necessary with respect to a specific claim; except that when a licensed health care practitioner has certified that the insured is unable to perform activities of daily living for an expected period of at least ninety days due to a loss of functional capacity and the insured is in claim status, the certification may not be rescinded and additional certifications may not be performed until after the expiration of the ninety-day period.

(6) Qualified long-term care insurance policies must include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.

NEW SECTION

WAC 284-83-145 Standard format outline of coverage. The following standards apply to the format and outline of coverage to be used in this state.

(1) The outline of coverage must be a free-standing document, using no smaller than ten-point type.

(2) The outline of coverage must contain no material of an advertising nature.

(3) Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that provide prominence equivalent to the capitalization or underscoring.

(4) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

(5) The following format for outline of coverage must be used in this state:

[COMPANY NAME]

[ADDRESS - CITY & STATE]

[TELEPHONE NUMBER]

LONG-TERM CARE INSURANCE

OUTLINE OF COVERAGE

[Policy Number or Group Master Policy and Certificate Number]

[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage.]

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when

you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [Insert address].

1. This policy is [an individual policy of insurance] [a group policy] which was issued in the [indicate jurisdiction in which group policy was issued].

2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance policy, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY [OR CERTIFICATE] CAREFULLY!

3. FEDERAL TAX CONSEQUENCES.

This [POLICY] [CERTIFICATE] is intended to be a federally tax-qualified long-term care insurance policy under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

OR

Federal Tax Implications of this [POLICY] [CERTIFICATE]. This [POLICY] [CERTIFICATE] is not intended to be a federally tax-qualified long-term care insurance policy under Section 7702B(b) of the Internal Revenue Code of 1986 as amended. Benefits received under the [POLICY] [CERTIFICATE] may be taxable as income.

4. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE CONTINUED IN FORCE OR DISCONTINUED.

(a) [For long-term care health insurance policies or certificates describe one of the following permissible policy renewability provisions:

(1) Policies and certificates that are guaranteed renewable must contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your policy [certificate], to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own, except that, in the future, IT MAY INCREASE THE PREMIUM YOU PAY.

(2) [Policies and certificates that are noncancellable must contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS NONCANCELLABLE. This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, [Company Name] may increase your premium at that time for those additional benefits.

(b) [For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy;]

(c) [Describe waiver of premium provisions or state that there are not such provisions.]

5. TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.

[In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, state whether or not the company has a right to change the premium, and if a right exists, describe clearly and concisely each circumstance under which the premium may change.]

6. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

(a) [Provide a brief description of the right to return - "free look" provision of the policy.]

(b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

7. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.

(a) [For insurance producers] neither [insert company name] nor its [agents] [insurance producers] represent Medicare, the federal government or any state government.

(b) [For direct response] [insert company name] is not representing Medicare, the federal government or any state government.

8. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

9. BENEFITS PROVIDED BY THIS POLICY.

(a) [Covered services, related deductibles, waiting periods, elimination periods and benefit maximums.]

(b) [Institutional benefits, by skill level.]

(c) [Noninstitutional benefits, by skill level.]

(d) Eligibility for Payment of Benefits

[Activities of daily living and cognitive impairment must be used to measure an insured's need for long-term care and must be defined and described as part of the outline of coverage.]

[Any additional benefit triggers must also be explained. If these triggers differ for different benefits, explanation of the triggers must accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]

10. LIMITATIONS AND EXCLUSIONS.

[Describe:

- (a) Preexisting conditions;
- (b) Noneligible facilities and provider;
- (c) Noneligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);
- (d) Exclusions and exceptions;
- (e) Limitations.]

[This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in Number 6 above.]

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

11. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

- (a) That the benefit level will not increase over time;
- (b) Any automatic benefit adjustment provisions;
- (c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
- (d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;
- (e) And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

12. ALZHEIMER'S DISEASE AND OTHER BRAIN DISORDERS.

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

13. PREMIUM.

- (a) State the total annual premium for the policy;
- (b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

14. ADDITIONAL FEATURES.

- (a) Indicate if medical underwriting is used;
- (b) Describe other important features.]

15. CONTACT THE STATE SENIOR HEALTH INSURANCE ASSISTANCE PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.

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

NEW SECTION

WAC 284-83-150 Requirement to deliver shopper's guide. (1) A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or a guide developed or approved by the commissioner, must be provided to all prospective applicants of a long-term care insurance policy or certificate.

(a) In the case of solicitations by an insurance producer, the insurance producer must deliver the shopper's guide prior to the presentation of an application or enrollment form.

(b) In the case of direct response solicitations, the shopper's guide must be presented in conjunction with any application or enrollment form.

(2) Issuers or insurance producers of life insurance policies or riders containing accelerated long-term care benefits are not required to furnish the shopper's guide, but must furnish the policy summary required by RCW 48.83.070(2).

NEW SECTION

WAC 284-83-155 Prohibited practices. The following practices are prohibited:

(1) No insurance producer or other representative of the issuer may complete the medical history portion of any form or application, including electronic application, for the purchase of a long-term care policy.

(2) No issuer or insurance producer or other representative of the issuer may knowingly sell a long-term care policy to any person who is receiving Medicaid.

(3) No issuer or insurance producer or other representative of the issuer may use or engage in any unfair or deceptive act or practice in the advertising, sale or marketing of long-term care policies.

NEW SECTION

WAC 284-83-160 Permitted compensation arrangements. (1) The issuer or other entity may provide commission or other compensation to an insurance producer or other representative for the sale of a long-term care insurance policy or certificate only if the first year commission or other first year compensation is no more than two hundred percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(2) The commission or other compensation provided in subsequent (renewal) years must be the same as that provided

in the second year or period and must be provided for a reasonable number of renewal years.

(3) An issuer or other entity must not provide compensation to its insurance producers or other representatives and an insurance producer or other representative must not receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies.

(4) For purposes of this section, "compensation" includes pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate

including but not limited to bonuses, gifts, prizes, awards and finders fees.

NEW SECTION

WAC 284-83-165 Form for reporting rescission of long-term care policies. The following form must be used by issuers to annually report rescission of long-term care policies.

RESCISSION REPORTING FORM FOR LONG-TERM CARE POLICIES FOR THE STATE OF _____ FOR THE REPORTING YEAR 20[]

Company Name: _____

Address: _____

Phone Number: _____

Due: March 1, annually

Instructions: The purpose of this form is to report all rescissions of long-term care insurance policies or certificates. Those rescissions voluntarily effectuated by an insured are not required to be included in this report. Please furnish one form per rescission.

Policy Form #	Policy and Certificate #	Name of Insured	Date of Policy Issuance	Date/s Claim/s Submitted	Date of Rescission

Detailed reason for rescission: _____

Signature _____

Name and Title (please type) _____

Date _____

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

NEW SECTION

WAC 284-83-170 Form of personal worksheet. The following form of personal worksheet must be used by issuers in the sale of long-term care insurance policies.

Long-Term Care Insurance Personal Worksheet

People buy long-term care insurance for many reasons. Some don't want to use their own assets to pay for long-term care. Some buy insurance to make sure they can choose the type of care they get. Others don't want their family to have to pay for care or don't want to go on Medicaid. But long-term care insurance may be expensive, and may not be right for everyone.

By state law, the insurance company must fill out part of the information on this worksheet and **ask** you to fill out the rest to help you and the company decide if you should buy this policy.

Premium Information

Policy Form Numbers _____

The premium for the coverage you are considering will be [\$_____ per month, or \$_____ per year,] [a one-time single premium of \$_____.]

Type of Policy (noncancellable or guaranteed renewable): _____

The Company's Right to Increase Premiums: _____

[The company cannot raise your rates on this policy.] [The company has a right to increase premiums on this policy form in the future, provided it raises rates for all policies in the same class in this state.] [Issuers must use appropriate bracketed statement. Rate guarantees must not be shown on this form.]

Rate Increase History

The company has sold long-term care insurance since [year] and has sold this policy since [year]. [The company has never raised its rates for any long-term care policy it has sold in this state or any other state.] [The company has not raised its rates for this policy form or similar policy forms in this state or any other state in the last ten years.] [The company has raised its premium rates on this policy form or similar policy forms in the last ten years. Following is a summary of the rate increases.]

Questions Related to Your Income

How will you pay each year's premium?

From my Income From my Savings/Investments My Family will Pay

Have you considered whether you could afford to keep this policy if the premiums went up, for example, by 20%?

Note: The issuer is not required to use the bracketed sentence if the policy is fully paid up or is a noncancellable policy.

What is your annual income? (check one) Under \$10,000 \$[10-20,000] \$[20-30,000] \$[30-50,000] Over \$50,000

Note: The issuer may choose the numbers to put in the brackets to fit its suitability standards.

How do you expect your income to change over the next 10 years? (check one)

No change Increase Decrease

If you will be paying premiums with money received only from your own income, a rule of thumb is that you may not be able to afford this policy if the premiums will be more than 7% of your income.

Will you buy inflation protection? (check one) Yes No

If not, have you considered how you will pay for the difference between future costs and your daily benefit amount? From my Income From my Savings/Investments My Family will Pay

The national average annual cost of care in [insert year] was [insert \$ amount], but this figure varies across the country. In ten years the national average annual cost would be about [insert \$ amount] if costs increase 5% annually.

Note: The projected cost can be based on federal estimates in a current year. In the above statement, the second figure equals 163% of the first figure.

What elimination period are you considering? Number of days _____ Approximate cost \$_____ for that period of care.

How are you planning to pay for your care during the elimination period? (check one)

From my Income From my Savings/Investments My Family will Pay

Questions Related to Your Savings and Investments

Not counting your home, about how much are all of your assets (your savings and investments) worth? (check one)

Under \$20,000 \$20,000-\$30,000 \$30,000-\$50,000 Over \$50,000

How do you expect your assets to change over the next ten years? (check one)

Stay about the same Increase Decrease

If you are buying this policy to protect your assets and your assets are less than \$30,000, you may wish to consider other options for financing your long-term care.

Disclosure Statement

The answers to the questions above describe my financial situation.

OR

I choose not to complete this information.
(Check one.)

I acknowledge that the issuer and/or its [agent] [insurance producer] (below) has reviewed this form with me including the premium, premium rate increase history and potential for premium increases in the future. [For direct mail situations, use the following: I acknowledge that I have reviewed this form including the premium, premium rate increase history and potential for premium increases in the future.] I understand the above disclosures. **I understand that the rates for this policy may increase in the future.** (This box must be checked).

Signed: _____
(Applicant) (Date)

I explained to the applicant the importance of completing this information.

Signed: _____
[(Agent)] [(Insurance Producer)] (Date)

[Agent's] [Insurance Producer's] Printed Name: _____]

[In order for us to process your application, please return this signed statement to [name of company], along with your application.]

[My [agent] [insurance producer] has advised me that this policy does not seem to be suitable for me. However, I still want the company to consider my application.

Signed: _____]
(Applicant) (Date)

Drafting Note: Choose the appropriate sentences depending on whether this is a direct mail or [agent] [insurance producer] sale.

The company may contact you to verify your answers.

Note: When the Long-Term Care Insurance Personal Worksheet is furnished to employees and their spouses under employer group policies, the text from the heading "Disclosure Statement" to the end of the page may be removed.

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

NEW SECTION

WAC 284-83-175 Disclosure form. The following form of disclosure must be used in this state.

Things You Should Know Before You Buy

Long-Term Care Insurance

Long-Term Care Insurance A long-term care insurance policy may pay most of the costs for your care in a nursing home. Many policies also pay for care at home or other community settings. Since policies can vary in coverage, you should read this policy and make sure you understand what it covers before you buy it.

[You should **not** buy this insurance policy unless you can afford to pay the premiums every year.]
[Remember that the company can increase premiums in the future.]

Note: For single premium policies, delete this bullet; for noncancellable policies, delete the second sentence only.

The personal worksheet includes questions designed to help you and the company determine whether this policy is suitable for your needs.

Medicare Medicare does **not** pay for most long-term care.

Medicaid Medicaid will generally pay for long-term care if you have very little income and few assets. You probably should **not** buy this policy if you are now eligible for Medicaid.

Many people become eligible for Medicaid after they have used up their own financial resources by paying for long-term care services.

When Medicaid pays your spouse's nursing home bills, you are allowed to keep your house and furniture, a living allowance, and some of your joint assets.

Your choice of long-term care services may be limited if you are receiving Medicaid. To learn more about Medicaid, contact your local or state Medicaid agency.

- Shopper's Guide** Make sure the insurance company or agent gives you a copy of a book called the National Association of Insurance Commissioners' "Shopper's Guide to Long-Term Care Insurance." Read it carefully. If you have decided to apply for long-term care insurance, you have the right to return the policy within 30 days and get back any premium you have paid if you are dissatisfied for any reason or choose not to purchase the policy.
- Counseling** Free counseling and additional information about long-term care insurance are available through your state's insurance counseling program. Contact your state insurance department or department on aging for more information about the senior health insurance counseling program in your state.
- Facilities** Some long-term care insurance policies provide for benefit payments in certain facilities only if they are licensed or certified, such as in assisted living centers. However, not all states regulate these facilities in the same way. Also, many people move into a different state from where they purchased their long-term care insurance policy. Read the policy carefully to determine what types of facilities qualify for benefit payments, and to determine that payment for a covered service will be made if you move to a state that has a different licensing scheme for facilities than the one in which you purchased the policy.

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

NEW SECTION

WAC 284-83-180 Response letter. The following form of response letter must be used in this state.

Long-Term Care Insurance Suitability Letter

Dear [Applicant]:

Your recent application for long-term care insurance included a "personal worksheet," which asked questions about your finances and your reasons for buying long-term care insurance. For your protection, state law requires us to consider this information when we review your application, to avoid selling a policy to those who may not need coverage.

[Your answers indicate that long-term care insurance may not meet your financial needs. We suggest that you review the information provided along with your application, including the booklet "Shopper's Guide to Long-Term Care Insurance" and the page titled "Things You Should Know Before Buying Long-Term Care Insurance." Your state insurance department also has information about long-term care insurance and may be able to refer you to a counselor free of charge who can help you decide whether to buy this policy.]

[You chose not to provide any financial information for us to review.]

Note: Choose the paragraph that applies.

We have suspended our final review of your application. If, after careful consideration, you still believe this policy is what you want, check the appropriate box below and return this letter to us within the next 60 days. We will then continue reviewing your application and issue a policy if you meet our medical standards.

If we do not hear from you within the next 60 days, we will close your file and not issue you a policy. You should understand that you will not have any coverage until we hear back from you, approve your application and issue you a policy.

Please check one box and return in the enclosed envelope.

Yes, [although my worksheet indicates that long-term care insurance may not be a suitable purchase,] I wish to purchase this coverage. Please resume review of my application.

Note: Delete the phrase in brackets if the applicant did not answer the questions about income.

No. I have decided not to buy a policy at this time.

APPLICANT'S SIGNATURE _____

DATE _____

Please return to [issuer] at [address] by [date].

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

NEW SECTION

WAC 284-83-185 Sample claims denial reporting form. The following form for reporting claims denials must be used in this state.

Claims Denial Reporting Form

Long-Term Care Insurance

For the State of _____

For the Reporting Year of _____

Company Name: _____

Due: June 30, annually

Company Address: _____

Company NAIC Number: _____

Contact Person: _____

Phone Number: _____

Line of Business: Individual Group

Instructions

The purpose of this form is to report all long-term care claim denials under in-force long-term care insurance policies. "Denied" means a claim that is not paid for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition.

		State Data	Nationwide Data ¹
1	Total Number of Long-Term Care Claims Reported		
2	Total Number of Long-Term Care Claims Denied/Not Paid		
3	Number of Claims Not Paid Due to Preexisting Condition Exclusion		
4	Number of Claims Not Paid Due to Waiting (Elimination) Period Not Met		
5	Net Number of Long-Term Care Claims Denied for Reporting Purposes (Line 2 Minus Line 3 Minus Line 4)		
6	Percentage of Long-Term Care Claims Denied of Those Reported (Line 5 Divided By Line 1)		
7	Number of Long-Term Care Claim Denied Due to:		
8	• Long-Term Care Services Not Covered Under the Policy ²		
9	• Provider/Facility Not Qualified Under the Policy ³		
10	• Benefit Eligibility Criteria Not Met ⁴		
11	• Other		

Footnotes:

1. The nationwide data may be viewed as a more representative and credible indicator where the data for claims reported and denied for your state are small in number.
2. Example—Home health care claim filed under a nursing home only policy.
3. Example—A facility that does not meet the minimum level of care requirements or the licensing requirements as outlined in the policy.
4. Examples—A benefit trigger not met, certification by a licensed health care practitioner not provided, no plan of care.

NEW SECTION

WAC 284-83-190 Potential rate increase disclosure form. The following form must be used in this state to disclose a potential rate increase.

Instructions:

This form provides information to the applicant regarding premium rate schedules, rate schedule adjustments, potential rate revisions, and policyholder options in the event of a rate increase.

Issuers must provide all of the following information to the applicant:

Long-Term Care Insurance

Potential Rate Increase Disclosure Form

1. **[Premium Rate] [Premium Rate Schedules]:** [Premium rate] [Premium rate schedules] that [is][are] applicable to you and that will be in effect until a request is made and [filed] for an increase [is][are] [on the application][\$_____]

2. **The [premium] [premium rate schedule] for this policy [will be shown on the schedule page of] [will be attached to] your policy.**

3. Rate Schedule Adjustments:

The company will provide a description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.) (fill in the blank): _____.

4. Potential Rate Revisions:

This Policy is Guaranteed Renewable. This means that the rates for this product may be increased in the future. Your rates CANNOT be increased due to your increasing age or declining health, but your rates may go up based on the experience of all policyholders with a policy similar to yours.

If you receive a premium rate or premium rate schedule increase in the future, you will be notified of the new premium amount and you will be able to exercise at least one of the following options:

- Pay the increased premium and continue your policy in force as is.
- Reduce your policy benefits to a level such that your premiums will not increase. (Subject to state law minimum standards.)
- Exercise your nonforfeiture option if purchased. (This option is available for purchase for an additional premium.)
- Exercise your contingent nonforfeiture rights.* (This option may be available if you do not purchase a separate nonforfeiture option.)

***Contingent Nonforfeiture**

If the premium rate for your policy goes up in the future and you didn't buy a nonforfeiture option, you may be eligible for contingent nonforfeiture. Here's how to tell if you are eligible:

You will keep some long-term care insurance coverage, if:

- Your premium after the increase exceeds your original premium by the percentage shown (or more) in the following table; and
- You lapse (not pay more premiums) within 120 days of the increase.

The amount of coverage (i.e., new lifetime maximum benefit amount) you will keep will equal the total amount of premiums you've paid since your policy was first issued. If you have already received benefits under the policy, so that the remaining maximum benefit amount is less than the total amount of premiums you've paid, the amount of coverage will be that remaining amount.

Except for this reduced lifetime maximum benefit amount, all other policy benefits will remain at the levels attained at the time of the lapse and will not increase thereafter.

Should you choose this Contingent Nonforfeiture option, your policy, with this reduced maximum benefit amount, will be considered "paid-up" with no further premiums due.

Example:

- You bought the policy at age 65 and paid the \$1,000 annual premium for 10 years, so you have paid a total of \$10,000 in premium.
- In the eleventh year, you receive a rate increase of 50%, or \$500 for a new annual premium of \$1,500, and you decide to lapse the policy (not pay any more premiums).
- Your "paid-up" policy benefits are \$10,000 (provided you have a least \$10,000 of benefits remaining under your policy.)

Contingent Nonforfeiture
Cumulative Premium Increase Over Initial Premium
That qualifies for Contingent Nonforfeiture
(Percentage increase is cumulative from date of original issue. It does NOT represent a one-time increase.)

Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

[The following contingent nonforfeiture disclosure need only be included for those limited pay policies to which WAC 284-83-130 (4)(d) and (f) are applicable.]

In addition to the contingent nonforfeiture benefits described above, the following reduced "paid-up" contingent nonforfeiture benefit is an option in all policies that have a fixed or limited premium payment period, even if you selected a nonforfeiture benefit when you bought your policy. If both the reduced "paid-up" benefit AND the contingent benefit described above are triggered by the same rate increase, you can choose either of the two benefits.

You are eligible for the reduced "paid-up" contingent nonforfeiture benefit when all three conditions shown below are met:

1. The premium you are required to pay after the increase exceeds your original premium by the same percentage or more shown in the chart below;

Triggers for a Substantial Premium Increase

Issue Age	Percent Increase Over Initial Premium
Under 65	50%
65-80	30%
Over 80	10%

2. You stop paying your premiums within 120 days of when the premium increase took effect;

AND

3. The ratio of the number of months you already paid premiums is 40% or more than the number of months you originally agreed to pay.

If you exercise this option, your coverage will be converted to reduced "paid-up" status. That means there will be no additional premiums required. Your benefits will change in the following ways:

a. The total lifetime amount of benefits your reduced paid up policy will provide can be determined by multiplying 90% of the lifetime benefit amount at the time the policy becomes paid up by the ratio of the number of months you already paid premiums to the number of months you agreed to pay them.

b. The daily benefit amounts you purchased will also be adjusted by the same ratio.

If you purchased lifetime benefits, only the daily benefit amounts you purchased will be adjusted by the applicable ratio.

Example:

- You bought the policy at age 65 with an annual premium payable for 10 years.
- In the sixth year, you receive a rate increase of 35% and you decide to stop paying premiums.
- Because you have already paid 50% of your total premium payments and that is more than the 40% ratio, your "paid-up" policy benefits are .45 (.90 times .50) times the total benefit amount that was in effect when you stopped paying your premiums. If you purchased inflation protection, it will not continue to apply to the benefits in the reduced "paid-up" policy.

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

NEW SECTION

WAC 284-83-195 Form for reporting replacement and lapse of long-term care insurance policies. The following form must be used in this state to report replacements and lapses of long-term care insurance.

Long-Term Care Insurance Replacement and Lapse Reporting Form

For the State of _____ For the Reporting Year of _____

Company Name: _____

Due: June 30, Annually

Company Address: _____

Company NAIC Number: _____

Contact Person: _____ Phone Number: _____

Instructions

The purpose of this form is to report on a statewide basis information regarding long-term care insurance policy replacements and lapses. Specifically, every issuer must maintain records for each [agent] [insurance producer] on that [agent's] [insurance producer's] amount of long-term care insurance replacement sales as a percent of the [agent's] [insurance producer's] total annual sales and the amount of lapses of long-term care insurance policies sold by the [agent] [insurance producer] as a percent of the [agent's] [insurance producer's] total annual sales. The tables below should be used to report the ten percent of the issuer's [agents] [insurance producers] with the greatest percentages of replacements and lapses.

Listing of the 10% of [Agents] [Insurance Producers] with the Greatest Percentage of Replacements

[Agent's] [Insurance Pro-ducer's] Name	Number of Policies Sold by This [Agent] [Insurance Pro-ducer]	Number of Policies Replaced by This [Agent] [Insurance Producer]	Number of Replacements as % of Number Sold by This [Agent] [Insurance Producer]

Listing of the 10% of [Agents] [Insurance Producers] with the Greatest Percentage of Lapses

[Agent's] [Insurance Pro-ducer's] Name	Number of Policies Sold by This [Agent] [Insurance Pro-ducer]	Number of Policies Lapsed by This [Agent] [Insurance Producer]	Number of Lapses as % of Number Sold by This [Agent] [Insurance Producer]

Company Totals

Percentage of Replacement Policies Sold to Total Annual Sales _____%

Percentage of Replacement Policies Sold to Policies In Force (as of the end of the preceding calendar year)____%

Percentage of Lapsed Policies to Total Annual Sales_____%

Percentage of Lapsed Policies to Policies In Force (as of the end of the preceding calendar year) _____%

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

NEW SECTION

WAC 284-83-210 Definitions. For purposes of WAC 284-83-210 through 284-83-250:

(1) "Actual loss ratio" means a retrospective calculation and calculated as the benefits incurred divided by the "premiums earned," both measured from the beginning of the calculating period to the date of the loss ratio calculations.

(2) "Benefits incurred" means the claims incurred plus any increase (or less any decrease) in the reserves.

(3) "Calculating period" means the time span over which the actuary expects the premium rates, whether level or increasing, to remain adequate in accordance with the actuary's best estimate of future experience and during which the actuary does not expect to request a rate increase.

(4) "Claims incurred" means:

(a) Claims paid during the accounting period; plus

(b) The change in the liability for claims which have been reported but not paid; plus

(c) The change in the liability for claims which have not been reported but which may reasonably be expected.

Claims incurred does not include expenses incurred in processing the claims, home office or field overhead, acquisition and selling costs, taxes or other expenses, contributions to surplus, or profit.

(5) "Expected loss ratio" means a prospective calculation calculated as the projected benefits incurred divided by the projected premiums earned and based on the actuary's best projections of the future experience within the calculating period.

(6) "Overall loss ratio" means the benefits incurred divided by the premiums earned over the entire calculating

period; it may involve both retrospective and prospective data.

(7) "Premium" means all sums charged, received or deposited as consideration for a long-term care insurance policy and includes any assessment, membership, contract, survey, inspection, service, or similar fees or charges paid.

(8) "Premiums earned" means the premiums, less experience credits, refunds or dividends, applicable to an accounting period whether received before, during or after such period.

(9) "Reserves" includes:

(a) Active life disability reserves;

(b) Additional reserves whether for a specific liability purpose or not;

(c) Contingency reserves;

(d) Reserves for select morbidity experience; and

(e) Increased reserves which may be required by the commissioner.

NEW SECTION

WAC 284-83-220 Grouping of policy forms for purposes of ratemaking and requests for rate increase. (1) The actuary responsible for setting premium rates must group similar policy forms, including forms no longer being marketed, in the pricing calculations.

(a) The grouping must be satisfactory to the commissioner, who may rely on the judgment of the pricing actuary.

(b) Factors that must be considered include similar claims experience, types of benefits, reserves, margins for contingencies, expenses and profit, and equity between policyholders.

(c) A grouping must enhance statistical reliability and improve the likelihood of premium adequacy without introducing elements of discrimination in violation of RCW 48.18.480.

(d) A grouping is not required to include forms issued by health care service contractors or health maintenance organizations before January 1, 1988.

(2) Persons insured under similar policy forms must be grouped at the time of ratemaking in accord with RCW 48.18.480 because they are expected to have substantially like insuring, risk and exposure factors and expense elements.

(a) The morbidity and mortality experience of these insureds, as a group, will deteriorate over time.

(b) A form may not be withdrawn from its assigned grouping by reason only of the deteriorating health of the people insured thereunder, as provided for in RCW 48.83.-170.

(3) One or more of the policy forms grouped for rate-making purposes, by random chance, may experience significantly higher or more frequent claims than the other forms. A form may not deviate from the assigned grouping of policy forms for pricing purposes at the time of requesting a rate increase unless the actuary can justify to the satisfaction of the commissioner that a different grouping is more equitable because of some previously unrecognized and nonrandom distinction between forms or between groups of insureds.

(4) Successive generic policy forms and policy forms of similar benefits covering generations of policyholders must be combined in the calculation of premium rates and loss ratios.

NEW SECTION

WAC 284-83-225 Separation of data regarding certain policies. For reporting and record-keeping purposes, commencing with reports for accounting periods beginning on or after January 1, 2009, all issuers must separate data concerning long-term care insurance policies from data concerning other insurance policies.

NEW SECTION

WAC 284-83-230 Loss ratio requirements for long-term care insurance forms. The following standards and requirements apply to long-term care insurance forms:

(1) Benefits for individual long-term care insurance forms will be deemed reasonable in relation to the premiums if the overall loss ratio is at least sixty percent over a calculating period chosen by the issuer and satisfactory to the commissioner.

(2) Benefits for group long-term care insurance forms will be deemed reasonable in relation to the premiums if the overall loss ratio is at least seventy percent over a calculating period chosen by the issuer and satisfactory to the commissioner.

(3) The calculating period may vary with the benefit and renewal provisions. The issuer may be required to demonstrate the reasonableness of the calculating period chosen by the actuary responsible for the premium calculations. A brief

explanation of the selected calculating period must accompany the filing.

(4) Policy forms, the benefits of which are particularly exposed to the effects of inflation and whose premium income may be particularly vulnerable to an eroding persistency and other similar forces, must use a relatively short calculating period reflecting the uncertainties of estimating the risks involved.

(a) Policy forms based on more dependable statistics may employ a longer calculating period.

(b) The calculating period may be the lifetime of the policy for guaranteed renewable and noncancellable policy forms if these forms provide benefits which are supported by reliable statistics and which are protected from inflationary or eroding forces by such factors as fixed dollar coverages, inside benefit limits, or the inherent nature of the benefits.

(c) The calculating period may be as short as one year for coverages that are based on statistics of minimal reliability or which are highly exposed to inflation.

(5) A request for a rate increase to be effective at the end of the calculating period must include a comparison of the actual to the expected loss ratios, must employ any accumulation of reserves in the determination of rates for the new calculating period, and must account for the maintenance of such reserves for future needs. The request for the rate increase must be further documented by the expected loss ratio for the new calculating period.

(6) A request for a rate increase submitted during the calculating period must include a comparison of the actual to the expected loss ratios, a demonstration of any contributions to and support from the reserves, and must account for the maintenance of such reserves for future needs. If the experience justifies a premium increase, it will be deemed that the calculating period has prematurely been brought to an end. The rate increase must further be documented by the expected loss ratio for the next calculating period.

(7) Issuers must review their experience periodically and file appropriate rate revisions in a timely manner to reduce the necessity of later filing of exceptionally large rate increases.

NEW SECTION

WAC 284-83-240 Experience records. Issuers must maintain records of earned premiums and incurred benefits for each policy year for each contract, rider, endorsement and similar form which is combined for purposes of premium calculations, including the reserves. Records must be maintained of the experience expected in the premium calculations. Notwithstanding the foregoing, with proper justification, the commissioner may accept approximation of policy year experience based on calendar year data.

NEW SECTION

WAC 284-83-245 Evaluating experience data. In determining the credibility and appropriateness of experience data, due consideration will be given by the commissioner to all relevant factors including:

(1) Statistical credibility of premiums and benefits such as low exposure or low loss frequency;

(2) Past and projected trends relative to the kind of coverage, such as inflation in medical expenses, economic cycles affecting disability income experience, inflation in expense charges and others;

(3) The concentration of experience at early policy durations where select morbidity and preliminary term reserves are applicable and where loss ratios are expected to be substantially higher or lower than in later policy durations;

(4) The mix of business by risk classification;

(5) The expected lapses and antiselection at the time of rate increases.

NEW SECTION

WAC 284-83-250 Life insurance policies that accelerate benefits for long-term care. (1) WAC 284-83-210 through 284-83-245 do not apply to life insurance policies that accelerate benefits for long-term care.

(2) A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following provisions:

(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

(b) The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of chapter 48.76 RCW;

(c) The policy meets the disclosure requirements of RCW 48.83.070(2) and 48.83.080;

(d) Any policy illustration that meets the applicable requirements of the chapter 48.23A RCW; and

(e) An actuarial memorandum is filed with the insurance department that includes:

(i) A description of the basis on which the long-term care rates were determined;

(ii) A description of the basis for the reserves;

(iii) A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

(iv) A description and a table of each actuarial assumption used. For expenses, the issuer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

(v) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

(vi) The estimated average annual premium per policy and the average issue age;

(vii) A statement as to whether underwriting is performed at the time of application. The statement must indicate whether underwriting is used and, if used, the statement must include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement must indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

(viii) A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status.

NEW SECTION

WAC 284-83-300 Standards for protecting patient privacy rights. Issuers must adopt and use administrative, business, and operational practices and procedures designed to protect an insured's right to privacy granted under chapter 70.02 RCW and federal laws and regulations. For example, issuers must not disclose the insured's health information without the written authorization of the insured, except where the recipient needs to know the information, such as:

(1) To any person, health care provider or health care facility that the issuer reasonably believes is providing health care to the insured;

(2) To any other person who requires health care information to provide planning, quality assurance, peer review, or administrative, legal, financial, billing or actuarial services;

(3) To assist a health care provider or health care facility in the delivery of health care and the issuer reasonably believes that the recipient will not use or disclose the health care information for any purpose other than the delivery of health care and will take appropriate steps to protect the information;

(4) To a health care provider or health care facility reasonably believed to have previously provided health care to the insured to the extent necessary to provide health care services, unless the insured has instructed the health care provider or health care facility in writing not to make the disclosure.

NEW SECTION

WAC 284-83-310 Right of insureds to receive confidential health services. Issuers must adopt and use administrative, business, and operational practices and procedures to protect the insured's right to confidential health care services.

NEW SECTION

WAC 284-83-320 Standards for the issuer's timely review of a claim denial. The following administrative, business, and operational standards must be used by issuers to ensure timely review of a claim denial.

(1) Issuers must have a fully operational, comprehensive claims denial review process.

(2) Issuers must implement procedures for registering and responding to oral and written requests for review of a claim denial in a timely and thorough manner.

(3) Issuers must provide written notice to the insured, to the insured's designated representative, and to the insured's provider of its decision to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits, including the admission to or continued stay in a health care facility or any other long-term care services or benefits.

(4) Issuers must process as an appeal an enrollee's written or oral request that the issuer reconsider its decision to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits, including the admission to, or continued stay in, a health care facility. The issuer must not require that the insured file a complaint prior to seeking appeal of any such decision.

(5) The issuer must:

(a) Provide written notice to the insured when the appeal is received;

(b) Assist the insured with the appeal process;

(c) Make its decision regarding the appeal within thirty days after the date the appeal is received, except when a determination is made that the issuer's action must be expedited;

(d) Cooperate with a representative authorized in writing by the insured;

(e) Consider all information submitted by the insured;

(f) Investigate and resolve the appeal; and

(g) Provide written notice of its resolution of the appeal to the insured and, with the permission of the insured, to the insured's providers, that:

(i) Explains the issuer's decision and the supporting coverage or clinical reasons for the decision; and

(ii) If applicable, explains any further appeal process, including, if applicable, information about how to exercise the insured's rights to a second opinion and how to continue receiving or reinstate services.

(6) An appeal must be expedited if the insured's provider or the insured's medical director reasonably determines that following the appeal process, response timelines could seriously jeopardize the insured's life, health, or ability to regain maximum function. The decision regarding an expedited appeal must be made within seventy-two hours after the time the appeal is received by the issuer.

(7) If the insured requests that the issuer reconsider its decision to modify, reduce, or terminate an otherwise covered health care service, and if the issuer's decision is based on the issuer's determination that the health service or level of health service is no longer covered, the issuer must continue to provide the health service until the appeal is resolved.

(8) Issuers must provide a clear explanation of their grievance processes and procedures at the time of application and upon request of the insured.

(9) Issuers must ensure that their grievance processes and procedures are accessible to insureds who are limited-English speakers, who have literacy problems, or who have physical or mental disabilities that impede their ability to file a grievance.

(10) Issuers must track each appeal until final resolution and, upon request, make available to the commissioner a log of all appeals and grievances.

(11) Issuers must establish a process to identify and track problems encountered by enrollees when filing claims denials and, where appropriate, to make reasonable modifications to their appeals and grievance processes and procedures.

NEW SECTION

WAC 284-83-350 Standard applied if there is a conflict between a master policy and certificate of insurance. If there is a discrepancy between a description of the terms and conditions of insurance between the master policy and any certificate issued under that master policy, the description most favorable to the insured must be used by the issuer and governs the matter.

WSR 08-17-106

PROPOSED RULES

UTILITIES AND TRANSPORTATION COMMISSION

[Docket UE-080111—Filed August 20, 2008, 9:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-04-087.

Title of Rule and Other Identifying Information: Chapter 480-100 WAC, Electric companies—Part VII—Greenhouse gas emissions. The proposed rules implement the requirements of RCW 80.80.060 regarding electrical company compliance with the greenhouse gases emissions performance standard contained in RCW 80.80.040. The commission is required in RCW 80.80.060 (5) and (8) to adopt rules addressing commission review of electrical company applications requesting commission determinations regarding whether long-term financial commitments for base-load generation comply with the greenhouse gases emissions performance standard and whether to grant exemptions from the greenhouse gases performance standard under certain circumstances.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on October 23, 2008, at 10:00 a.m.

Date of Intended Adoption: October 23, 2008.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-1150, by September 23, 2008. Please include "Docket UE-080111" in your comments.

Assistance for Persons with Disabilities: Contact Mary De Young by October 21, 2008, TTY (360) 586-8203 or (360) 664-1133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On May 3, 2007, the governor signed ESSB 6001, chapter 307, Laws of 2007, with the title climate change - mitigating impacts. The law became effective July 22, 2007, and is codified at chapter 80.80 RCW. RCW 80.80.060 requires the Washington utilities and transportation commission to adopt rules covering at a minimum two specific topics by December 31, 2008.

First, the rules must provide for a schedule for proceedings to consider applications made by electrical companies under RCW 80.80 [80.80.060](5). These proceedings must accommodate the needs of the parties to a proposed resource

acquisition or power purchase agreement for timely decisions that allow transactions to be completed; and protect the procedural rights to be provided to parties in chapter 34.05 RCW (Part IV), including intervention, discovery, briefing, and hearing.

Second, RCW 80.80.060(8) directs that the rules must provide generally for the enforcement of the greenhouse gas emissions performance standard applied to electrical companies and must include procedural rules for approving costs incurred by an electrical company applying for an exemption from the greenhouse gases performance standard as authorized under RCW 80.80.060(4).

The proposed rules establish the information required to be included in electrical company filings requesting determination by the commission that new long-term financial commitments for base-load electric generation comply with the greenhouse gases emissions performance standards (EPS), and the process by which these requests will be considered. In addition, the proposed rules establish the information required to be included in requests electrical companies may make to be exempted from the EPS under certain circumstances. Finally, the proposed rules specify reports required to be filed by electrical companies using the cost deferral accounting authorized under RCW 80.80.060(6).

The department of ecology (ecology) is required to adopt rules to implement the DPS standard at RCW 80.80.040(10). Ecology adopted rules at chapter 173-407 WAC on June 19, 2008, that establish procedures and methods for determining greenhouse gas emissions and compliance with the EPS. The commission's proposed rules adopt the procedures and methods established in chapter 173-407 WAC.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 80.80.060 and 80.01.040.

Statute Being Implemented: RCW 80.80.060.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Dick Byers, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1209; Implementation and Enforcement: David W. Danner, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1208.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules require investor-owned utilities, none of which qualify as a small business, to comply with the greenhouse gases emissions performance standard established in chapter 80.80 WAC. Because there will not be any increase in costs to small businesses resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW

34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

August 20, 2008
David W. Danner
Executive Director
and Secretary

**PART VII—((ADOPTION BY REFERENCE))
GREENHOUSE GAS EMISSIONS**

NEW SECTION

WAC 480-100-405 Electrical company generation resource compliance with the greenhouse gases emissions performance standard. (1) No electrical company may enter into a long-term financial commitment after June 30, 2008, for the supply of baseload generation unless such generation complies with the greenhouse gases emissions performance standard. Electrical companies bear the burden to prove compliance with the greenhouse gases emissions performance standard under the requirements of WAC 480-100-415 or as part of a general rate case. For electrical companies that fail to carry their burden of proof, the commission may disallow recovery of some or all costs in rates, impose penalties, or take such other action as is consistent with law. Electrical companies seeking to prove compliance with the greenhouse gases emissions standard as part of a general rate case must submit all of the information specified in WAC 480-100-415.

(2) The following definitions apply for purposes of this section, WAC 480-100-425 and 480-100-435:

(a) "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.

(b) "Electricity from unspecified sources" means electricity that is to be delivered in Washington pursuant to a long-term financial commitment entered into by an electrical company and whose sources or origins of generation and expected average annual deliveries cannot be ascertained with reasonable certainty.

(c) "Greenhouse gases emissions performance standard" means the standard established in RCW 80.80.040, WAC 173-407-120 and 173-407-130, and the verification and measurement procedures contained in WAC 173-407-140, 173-407-230, and 173-407-300.

(d) "Long-term financial commitment" means either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or a new or renewed contract for baseload electric generation with a term of five or more years for provision of retail power or wholesale power to end-use customers in this state.

(e) "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:

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

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

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

(f) "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.

(g) "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.

(h) "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:

- (i) Routine or necessary maintenance;
- (ii) Installation of emission control equipment;
- (iii) Installation, replacement, or modification of equipment that improves the heat rate of the facility; or
- (iv) 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.

NEW SECTION

WAC 480-100-415 Electrical company applications for commission determination outside of a general rate case of electric generation resource compliance with greenhouse gases emissions performance standard. (1) An electrical company may apply for determination by the commission outside of a general rate case of whether an electric generation resource it proposes to acquire as a long-term financial commitment complies with the greenhouse gases emissions performance standard, including whether the resource is baseload electric generation, whether the company has a need for the resource, and whether the proposed resource is appropriate to meet that need. Such an application must include the following information:

(a) The electrical company's most recent integrated resource plan filed under WAC 480-100-238 and a description of how the proposed electric generation resource meets the resource need, resource investment strategies and other factors identified in the integrated resource plan.

(b) If the proposed electric generation resource is a specific power plant:

- (i) The plant technology, design, fuel and fuel consumption;
- (ii) Any site certificate or other permits necessary for operation of the power plant, including, for power plants located in Washington, any determination made by the department of ecology or the energy facility site evaluation council regarding compliance with the greenhouse gases emissions performance standard;
- (iii) Such other information as is available concerning the exhaust emissions characteristics of the plant; and
- (iv) The expected cost of the power generation to be acquired from the plant.

(c) If the proposed electric generation resource is a power purchase contract including contracts for delivery of electricity from unspecified sources:

- (i) The proposed contract;
- (ii) The technology, location, design, fuel and fuel consumption of any power plant, or plants, identified in the contract as the source of the contracted power deliveries, including such information as is knowable regarding the proportionate share each power source, or type of plant, will contribute to deliveries on an annual basis over the life of the contract;
- (iii) Such other information as is available concerning the exhaust emissions characteristics of the plant(s) supporting contracted power deliveries; and
- (iv) The contract term and expected cost of the power to be acquired through the power purchase agreement.

(2) The commission will consider the application pursuant to chapter 34.05 RCW (Part IV) following the procedures established in chapter 480-07 WAC. The schedule for a proceeding under this subsection will take into account both:

- (a) The needs of the parties to the proposed resource acquisition or power purchase agreement for timely decisions that allow transactions to be completed; and
- (b) The procedural rights to be provided to parties in chapter 34.05 RCW (Part IV), including intervention, discovery, briefing, and hearing.

(3) The commission will not decide in a proceeding under this section, issues involving the actual costs to construct and operate the selected resource, cost recovery, or other issues reserved by the commission for decision in a general rate case or other proceeding authorized by the commission for recovery of the resource or contract costs.

NEW SECTION

WAC 480-100-425 Electrical company applications for exemption from the greenhouse gas emissions performance standard. (1) An electrical company may apply to the commission for a case-by-case exemption from the greenhouse gases emissions performance standard to address:

- (a) Unanticipated electric system reliability needs; or
- (b) Catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(2) An electrical company's application under subsection (1)(a) of this section must include:

(a) A description of the electric system reliability needs including an explanation of why these needs were not anticipated, and why they cannot be addressed with other baseload electric generation that complies with the greenhouse gases performance standard.

(b) The estimated duration of the exemption necessary to address the reliability need.

(c) A description of any long-term financial commitment the company proposes to enter into to address the reliability need including all of the information specified in WAC 480-100-415.

(3) An electrical company's application under subsection (1)(b) of this section must include:

(a) A description of the catastrophic event or threat of significant financial harm and an explanation of why the cir-

cumstances from which the event or harm arose were not foreseen including:

(i) An explanation of why the circumstances cannot be addressed with baseload generation that complies with the greenhouse gases performance standard;

(ii) What the anticipated negative financial impact would be to the company if such exemption were denied;

(b) The estimated duration of the exemption necessary to address the catastrophic event or threat of significant financial harm.

(c) A description of any long-term financial commitment the company proposes to enter into to address the catastrophic event or threat of significant financial harm including all of the information specified in WAC 480-100-415.

(4) An electrical company may propose recovery of costs associated with an application under this rule as part of a general rate case.

NEW SECTION

WAC 480-100-435 Electrical company deferral of costs associated with long-term financial commitments—Notice and reporting.

(1) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with a long-term financial commitment for baseload electric generation, including operating and maintenance costs, depreciation, taxes, and cost of invested capital.

(2) An electrical company deferring costs under subsection (1) of this section must:

(a) Notify the commission within ten business days of its intent to defer such costs; and

(b) File quarterly with the commission a report documenting the balances of costs deferred in a form specified by the commission.

(3) The deferral begins with the date on which the power plant begins commercial operation or the effective date of the power purchase agreement and continues for a period not to exceed twenty-four months; provided that if during such period the company files a general rate case or other proceeding for the recovery of such costs, deferral ends on the effective date of the final decision by the commission in such proceeding. Creation of such a deferral account does not by itself determine the actual costs of the long-term financial commitment, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding authorized by the commission for recovery of these costs.

PART VIII—ADOPTION BY REFERENCE

**WSR 08-17-108
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed August 20, 2008, 9:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-14-120.

Title of Rule and Other Identifying Information: The department is amending WAC 388-478-0005 Cash assistance need and payment standards and grant maximum.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503, (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on September 23, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 24, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 23, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by September 16, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The community service division is proposing to revise the maximum payment limit to reflect the 3% increase for temporary assistance for needy families (TANF), state family assistance (SFA) and refugee cash assistance (RCA).

Reasons Supporting Proposal: This change was authorized in section 207 (1)(e), chapter 329, Laws of 2008 (ESSB [ESHB] 2687).

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ian Horlor, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by defining what the cash benefit levels will be for TANF, SFA and RCA clients.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." These rules affect grant payments for TANF, SFA, and RCA clients.

August 15, 2008
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-05-010, filed 2/6/04, effective 3/8/04)

WAC 388-478-0005 Cash assistance need and payment standards and grant maximum. (1) Need standards for cash assistance programs represent the amount of income required by individuals and families to maintain a minimum and adequate standard of living. Need standards are based on assistance unit size and include basic requirements for food, clothing, shelter, energy costs, transportation, household maintenance and operations, personal maintenance, and necessary incidentals.

(2) Payment standards for assistance units in medical institutions and other facilities are based on the need for clothing, personal maintenance, and necessary incidentals (see WAC 388-478-0040 and 388-478-0045).

(3) Need and payment standards for persons and families who do not reside in medical institutions and other facilities are based on their obligation to pay for shelter.

(a) Eligibility and benefit levels for persons and families who meet the requirements in WAC 388-478-0010 are determined using standards for assistance units with an obligation to pay shelter costs.

(b) Eligibility and benefit levels for all other persons and families are determined using standards for assistance units who have shelter provided at no cost.

(c) For recent arrivals to Washington state who apply for temporary assistance for needy families (TANF), see WAC 388-468-0005.

(4) The monthly grant for an assistance unit containing eight or more persons cannot exceed the grant maximum (~~of one thousand seventy-five dollars~~) payment standard for a family of eight listed in WAC 388-478-0020(1).

WSR 08-17-109
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed August 20, 2008, 9:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-13-055.

Title of Rule and Other Identifying Information: The department is amending WAC 388-450-0195 Utility allowances for Basic Food programs and 388-492-0070 How are my WASHCAP benefits calculated?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503, (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on September 23, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 24, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.

wa.gov, fax (360) 664-6185, by 5 p.m. on September 23, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by September 16, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules provide standards used to determine monthly benefit levels for the Washington Basic Food program and WASHCAP program. The rules also indicate when a WASHCAP-eligible household may choose to participate in the Basic Food program.

The proposed changes update utility standards for Basic Food, the WASHCAP high-cost shelter standard, the WASHCAP low-cost shelter standard, and the WASHCAP shelter threshold. Rules in this filing will be emergency adopted effective October 1, 2008, because federal implementation time frames do not allow sufficient time to make the changes using the standard adoption process.

Reasons Supporting Proposal: 7 C.F.R. 273.9 (d)(6)(iii) (B) and the approved waiver the department uses to administer the WASHCAP program requires the department to update the standard contained in these rules on an annual basis. The department updates the standards based on the consumer price index (CPI) and adopts new standards effective with the new federal fiscal year each October.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.9.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4116.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses; it only affects DSHS clients by setting standards used to determine benefit levels for the Washington Basic Food program.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

August 15, 2008

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-22-036, filed 10/30/07, effective 11/30/07)

WAC 388-450-0195 Utility allowances for Basic Food programs. (1) For Basic Food, "utilities" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water or sewer;

- (d) Well or septic tank installation/maintenance;
- (e) Garbage/trash collection; and
- (f) Telephone service.

(2) The department uses the amounts below if you have utility costs separate from your rent or mortgage payment. We add your utility allowance to your rent or mortgage payment to determine your total shelter costs. We use total shelter costs to determine your Basic Food benefits.

(a) If you have heating or cooling costs, you get a standard utility allowance (SUA) that depends on your assistance unit's size.

Assistance Unit (AU) Size	Utility Allowance
1	\$ ((328)) <u>352</u>
2	\$ ((338)) <u>362</u>
3	\$ ((348)) <u>373</u>
4	\$ ((358)) <u>384</u>
5	\$ ((368)) <u>394</u>
6 or more	\$ ((378)) <u>405</u>

(b) If your AU does not qualify for the SUA and you have any two utility costs listed above, you get a limited utility allowance (LUA) of two hundred ~~((fifty-nine))~~ seventy-six dollars.

(c) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of forty-two dollars.

AMENDATORY SECTION (Amending WSR 07-22-036, filed 10/30/07, effective 11/30/07)

WAC 388-492-0070 How are my WASHCAP food benefits calculated? We calculate your food benefits as follows:

- (1) We begin with your gross income.
- (2) We subtract one hundred ~~((thirty-four))~~ forty-four dollars from your gross income to get your countable income.
- (3) We figure your shelter cost based on information we receive from Social Security Administration (SSA), unless you report a change as described under WAC 388-492-0080. If you pay:
 - (a) Two hundred ~~((seventy-five))~~ eighty-four dollars or more a month for shelter, we use three hundred ~~((sixty-six))~~ seventy-nine dollars as your shelter cost; or
 - (b) Less than two hundred ~~((seventy-five))~~ eighty-four dollars for shelter, we use one hundred ~~((seventy-six))~~ eighty-two dollars as your shelter cost; and
- (c) We add the current standard utility allowance under WAC 388-450-0195 to determine your total shelter cost.
- (4) We figure your shelter deduction by subtracting one half of your countable income from your shelter cost.
- (5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.
- (6) We figure your WASHCAP food benefits (allotment) by:

(a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and

(b) Subtracting the result from the maximum allotment under WAC 388-478-0060.

(c) If you are eligible for WASHCAP, you will get at least ~~((ten dollars in food benefits each month))~~ the minimum monthly benefit for Basic Food under WAC 388-412-0015.

WSR 08-17-110
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)
 [Filed August 20, 2008, 9:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-12-069.

Title of Rule and Other Identifying Information: The department is amending WAC 388-492-0090 How often do my WASHCAP food benefits need to be reviewed?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503, (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on September 23, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 24, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on September 23, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by September 16, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend the rules to support having longer certification periods for Washington combined application program (WASHCAP) recipients, eligible under chapter 388-492 WAC. This will reduce the frequency of eligibility reviews for this population and ensure more consistent benefits.

Reasons Supporting Proposal: The division has an approved waiver from the food and nutrition service (FNS) allowing the certification periods to be extended from twenty-four to thirty-six months for WASHCAP.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Rebecca Henrie, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses; it extends the period of eligibility for the Washington combined application project (WASHCAP) recipients.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

August 15, 2008

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-23-026, filed 11/8/04, effective 12/9/04)

WAC 388-492-0090 How often do my WASHCAP food benefits need to be reviewed? (1) Your eligibility for WASHCAP food benefits must be reviewed at least every ~~((twenty-four))~~ thirty-six months.

(2) Your certification period is the amount of time your assistance unit is eligible for WASHCAP food benefits.

WSR 08-17-112

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed August 20, 2008, 9:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-04-077.

Title of Rule and Other Identifying Information: The department is amending WAC 388-561-0200 Annuities and adopting new WAC 388-561-0201 Annuities established on or after November 1, 2008. (This is the proposed effective date of the new WAC. The title of the WAC may change if the adoption date is different.)

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503, (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on September 23, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 24, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 23, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by September 16, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments are necessary to meet the requirements of Section 6012 of the Deficit Reduction Act (DRA) of 2005. Section 6012 added new requirements to Title XIX of the Social Security Act pertaining to the treatment of annuities. WAC 388-561-0200 is being amended to include the new requirements of the DRA, clarify language, and update WAC references.

The department is creating WAC 388-561-0201 for new rules regarding annuities purchased on or after the effective date of the WAC.

Reasons Supporting Proposal: See above.

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

Statute Being Implemented: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530.

Rule is necessary because of federal law, Section 6012 of the Deficit Reduction Act (DRA) of 2005.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lori Rolley, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2271.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the rules and determined that no new costs will be imposed on small businesses or nonprofit organizations.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(vii), relating only to client medical or financial eligibility.

August 15, 2008

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-06-043, filed 3/5/01, effective 5/1/01)

WAC 388-561-0200 Annuities established prior to November 1, 2008. (1) The department determines how annuities affect eligibility for medical programs.

(2) A revocable annuity is considered an available resource.

(3) An irrevocable annuity established prior to May 1, 2001 is not an available resource when issued by an individual, insurer, or other body licensed and approved to do business in the jurisdiction in which the annuity is established.

(4) The income from an irrevocable annuity, meeting the requirements of this section, is considered in determining eligibility and the amount of participation in the total cost of care. The annuity itself is not considered a resource or income.

~~((4))~~ (5) An annuity established on or after May 1, 2001 and before November 1, 2008 will be considered an available resource unless it:

(a) Is irrevocable;

(b) Is paid out in equal monthly amounts within the actuarial life expectancy of the annuitant;

(c) Is issued by an individual, insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established; and

(d) Names the department as the beneficiary of the remaining funds up to the total of Medicaid funds spent on the client during the client's lifetime. This subsection only applies if the annuity is in the client's name.

~~((5))~~ (6) An irrevocable annuity established on or after May 1, 2001 and before November 1, 2008 that is not scheduled to be paid out in equal monthly amounts, can still be considered an unavailable resource if:

(a) The full pay out is within the actuarial life expectancy of the client; and

(b) The client:

(i) Changes the scheduled pay out into equal monthly payments within the actuarial life expectancy of the annuitant; or

(ii) Requests that the department calculate and budget the payments as equal monthly payments within the actuarial life expectancy of the annuitant. The income from the annuity remains unearned income to the annuitant.

~~((6))~~ (7) An irrevocable annuity, established prior to May 1, 2001 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consideration at the time it was purchased. A penalty period of ineligibility, determined according to WAC 388-513-1365, may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy.

~~((7))~~ (8) An irrevocable annuity, established on or after May 1, 2001 and before November 1, 2008 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consideration at the time it was purchased. A penalty may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy. The penalty for a client receiving:

(a) Long-term care benefits will be a period of ineligibility (see WAC 388-513-1365).

(b) Other medical benefits will be ineligibility in the month of application.

~~((8))~~ (9) An irrevocable annuity is considered unearned income when the annuitant is:

(a) The client;

(b) The spouse of the client;

(c) The blind or disabled child, as defined in WAC 388-475-0050 (b) and (c), of the client; ~~((9))~~

(d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child, as defined in WAC 388-475-0050 (b) and (c), of the client.

~~((9))~~ (10) An annuity is not considered an available resource when there is a joint owner, co-annuitant or an irrevocable beneficiary who will not agree to allow the annuity to be cashed, UNLESS the joint owner or irrevocable beneficiary is the community spouse. In the case of a community spouse, the cash surrender value of the annuity is considered

an available resource and counts toward the maximum community spouse resource allowance.

NEW SECTION

WAC 388-561-0201 Annuities established on or after November 1, 2008. (1) The department determines how annuities affect eligibility for medical programs. Applicants and recipients of Medicaid must disclose to the state any interest the applicant or spouse has in an annuity.

(2) A revocable annuity is considered an available resource.

(3) The following annuities are not considered available resources:

(a) An annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986;

(b) Purchased with proceeds from an account or trust described in subsection (a), (c), or (p) of section 408 of the Internal Revenue Code of 1986;

(c) A simplified employee pension (within the meaning of section 408 of the Internal Revenue Code of 1986); or

(d) A Roth IRA described in section 408A of the Internal Revenue Code of 1986.

(4) The purchase of an annuity established on or after November 1, 2008, will be considered as an available resource unless it:

(a) Is immediate, irrevocable, nonassignable; and

(b) Is paid out in equal monthly amounts with no deferral and no balloon payments:

(i) Over a term equal to the actuarial life expectancy of the annuitant;

(ii) Over a term that is not less than five years if the actuarial life expectancy of the annuitant is at least five years; or

(iii) Over a term not less than the actuarial life expectancy of the annuitant, if the actuarial life expectancy of the annuitant is less than five years.

(iv) Actuarial life expectancy shall be determined by tables that are published by the office of the chief actuary of the social security administration (<http://www.ssa.gov/OACT/STATS/table4c6.html>).

(c) Is issued by an individual, insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established;

(d) Names the state as the remainder beneficiary when the applicant is the annuitant:

(i) In the first position for the total amount of medical assistance paid for the individual, including both long-term care services and waiver services; or

(ii) In the second position for the total amount of medical assistance paid for the individual, including both long-term care services and waiver services, if there is a community spouse, or a minor or disabled child as defined in WAC 388-475-0050 (b) and (c) who is named as the beneficiary in the first position.

(e) Names the state as the beneficiary upon the death of the community spouse for the total amount of medical assistance paid on behalf of the individual at any time of any payment from the annuity if a community spouse is the annuitant;

(f) Names the state as the beneficiary in the first position for the total amount of medical assistance paid on behalf of the individual at the time of any payment from the annuity, including both long-term care services and waiver services, unless the annuitant has a community spouse or minor or disabled child, as defined in WAC 388-475-0050 (b) and (c). If the annuitant has a community spouse or minor or disabled child, such spouse or child may be named as beneficiary in the first position, and the state shall be named as beneficiary in the second position:

(i) If the community spouse, minor or disabled child, or representative for a child named as beneficiary is in the first position as described in (f) and transfers his or her right to receive payments from the annuity for less than fair market value, then the state shall become the beneficiary in the first position.

(5) If the annuity is not considered a resource, the stream of income produced by the annuity is considered available income.

(6) An irrevocable annuity established on or after November 1, 2008 that meets all of the requirements of subsection (4) except that it is not immediate or scheduled to be paid out in equal monthly amounts will not be treated as a resource if:

(a) The full pay out is within the actuarial life expectancy of the annuitant; and

(b) The annuitant:

(i) Changes the scheduled pay out into equal monthly payments within the actuarial life expectancy of the annuitant; or

(ii) Requests that the department calculate and budget the payments as equal monthly payments within the actuarial life expectancy of the annuitant beginning with the month of eligibility. The income from the annuity remains unearned income to the annuitant.

(7) An irrevocable annuity, established on or after November 1, 2008 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource.

(8) An irrevocable annuity established on or after November 1, 2008 that meets all of the requirements of subsection (4) or (5) is considered unearned income when the annuitant is:

(a) The client;

(b) The spouse of the client;

(c) The blind or disabled child, as defined in WAC 388-475-0050 (b) and (c), of the client; or

(d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child of the client.

(9) An annuity is not considered an available resource when there is a joint owner, co-annuitant or an irrevocable beneficiary who will not agree to allow the annuity to be cashed, unless the joint owner or irrevocable beneficiary is the community spouse. In the case of a community spouse, the cash surrender value of the annuity is considered an available resource and counts toward the maximum community spouse resource allowance.

(10) Nothing in this section shall be construed as preventing the department from denying eligibility for medical

assistance for an individual based on the income or resources derived from an annuity other than an annuity described in subsections (3), (4), and (5).

WSR 08-17-121

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed August 20, 2008, 11:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-06-001.

Title of Rule and Other Identifying Information: The board of funeral directors and embalmers is proposing changes to WAC 308-48-010 Definitions.

The board is proposing adding new section WAC 308-48-015 Retired status certificate of registration.

Hearing Location(s): Department of Licensing, 405 Black Lake Boulevard, Conference Room 209, Olympia, WA 98502, on September 29, 2008, at 9:00 a.m.

Date of Intended Adoption: October 14, 2008.

Submit Written Comments to: Sherri Lonsbery, P.O. Box 9012, Olympia, WA 98507-9012, e-mail slonsbery@dol.wa.gov, fax (360) 570-7098, by September 26, 2008.

Assistance for Persons with Disabilities: Contact Erica Hansen by September 26, 2008, TTY (360) 664-8885 or (360) 664-6597.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amends WAC 308-48-010 by providing clarification of "In its employ," as used in RCW 18.39.148.

Creates a new section of WAC establishing a certificate of registration for retired licensees that clarifies the privileges and restrictions under the registration.

Reasons Supporting Proposal: To add clarity to rule language and establish a certificate of registration for retired licensees that clarifies the privileges and restrictions under the registration.

Statutory Authority for Adoption: RCW 18.39.175 and chapter 34.05 RCW.

Statute Being Implemented: RCW 18.39.175 and chapter 34.05 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dennis McPhee, Olympia, (360) 664-1555; and Enforcement: Joe Vincent Jr., Olympia, (360) 664-1386.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department of licensing (DOL) is exempt from this requirement.

A cost-benefit analysis is not required under RCW 34.05.328. DOL is not one of the named agencies to which this rule applies. Agencies that are not named can apply this

rule to themselves voluntarily. DOL has chosen not to do this.

August 19, 2008
Joe Vincent, Jr.
Administrator

AMENDATORY SECTION (Amending WSR 07-18-030, filed 8/28/07, effective 9/28/07)

WAC 308-48-010 Definitions. For the purpose of these rules, the following term will be construed as follows:

"Embalmer intern" is a person engaged in the study and supervised practical training of embalming under the instruction of a qualified sponsor.

"Funeral director intern" is a person engaged in the study and supervised practical training of funeral directing under the instruction of a qualified sponsor.

"In its employ" as used in RCW 18.39.148 will include personnel who are employed on a part-time basis as well as personnel who are employed on a full-time basis and be in service at a specific location and involved in the execution of the daily activities of the business.

"Internship" means a course of required practical training, for a specified period of time, as a prerequisite for obtaining a license to practice the profession of funeral directing or embalming.

NEW SECTION

WAC 308-48-015 Retired status certificate of registration. Any individual who has been issued a license, in accordance with chapter 18.39 RCW, as a funeral director and/or embalmer having reached at least the age of sixty-two and having discontinued active practice may be eligible to obtain a "retired certificate of registration." If granted, further certificate of registration renewal fees and continuing education are waived. For the purpose of this provision, active practice has the same meaning as funeral director and/or embalmer under RCW 18.39.010 (1) and (2).

(1) Applications. Those persons wishing to obtain the status of a retired registration shall complete an application form, as provided by the board, and pay the required application fee. The retired status would become effective upon the filing of a complete application.

(2) Privileges. In addition to the waiver of the renewal fee and continuing education, a retired registrant is permitted to:

- (a) Retain and display the board-issued wall certificate of registration;
- (b) Use the title funeral director and/or embalmer, provided that it is supplemented by the term "retired";
- (c) Offer consultant services relative to funeral directing and embalming;
- (d) Provide references for persons seeking licensure under 18.39 RCW;
- (e) Serve as a volunteer in an instructional capacity on funeral directing and/or embalming topics; and
- (f) Provide services as a technical expert before a court, or in preparation for pending litigation, on matters directly related to funeral directing and/or embalming work per-

formed by the registrant prior to being granted a retired registration.

(3) Restrictions. A retired registrant is not permitted to: Perform any duties of a funeral director and/or embalmer on a full-time, part-time or occasional basis.

(4) Certificate of registration reinstatement. A retired registrant, upon written request to the board and payment of the current renewal fee, may resume active practice as a funeral director and/or embalmer. At that time, the retired registrant shall be removed from retired status and placed on valid/active status in the records of the board.

(5) Exemptions. Under no circumstances shall a registrant be eligible for a retired certificate of registration if his/her license(s) has been revoked, surrendered, or in any way permanently terminated by the board under chapter 18.39 RCW. Registrants who are suspended from practice and/or who are subject to terms of a board order at the time they reach age sixty-two, shall not be eligible for a retired registration until such time that the board has removed the restricting conditions.

**WSR 08-17-122
PROPOSED RULES
GAMBLING COMMISSION**

[Filed August 20, 2008, 11:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-08-002.

Title of Rule and Other Identifying Information: WAC 230-15-055 Limit on number of players at each table.

Hearing Location(s): Red Lion Hotel, 303 West North River Drive, Spokane, WA 99201, (509) 326-8000, on October 10, 2008, at 9:30 a.m.

Date of Intended Adoption: October 10, 2008.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan2@wsgc.wa.gov, fax (360) 486-3625, by October 1, 2008.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by October 1, 2008, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: At their May 2008 meeting, the commission filed a petition for rule change from the Recreational Gaming Association (RGA) to increase the number of players at a card table to:

- (1) Seven to nine at house-banked games, unless limited by manufacturer's rule; and
- (2) Ten to twelve at nonhouse-banked games.

The RGA states that tribal venues are allowed up to nine players in house-banked card games and up to twelve players at poker tables, which is the industry standard. The RGA states that house-banked card rooms should be able to offer games at the same levels being offered at tribal casinos.

Alternative #1: At the August 2008 commission meeting, the commission filed an amended petition submitted by the RGA requesting only an increase in the number of players a [at] house-banked games and withdrew their request to

increase the number of players at nonhouse-banked card games. The RGA states this increase would allow:

- Players to wager on multiple hands. For example, three players wagering on three hands of cards.
- For the development of new games.
- Small operators in eastern Washington to add two additional players to a game, rather than opening an additional gaming table. This saves the operating expenses of paying dealers and floor supervisors to operate an additional card table.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Recreational Gaming Association, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

August 20, 2008
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

WAC 230-15-055 Limit on number of players at each table. Card game licensees must only allow:

- (1) Up to ~~((seven))~~ nine players or areas for wagering at any table in house-banked card games.
- (2) Up to ten players at any table in nonhouse-banked card games.