

WSR 08-22-028
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Child Support)
[Filed October 28, 2008, 2:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-06-089.

Title of Rule and Other Identifying Information: The department is adding new sections and/or making amendments to chapter 388-14A WAC. The division of child support (DCS) is adopting new and amended sections to implement state legislation which implements the federal Deficit Reduction Act of 2005. The state law was signed by the governor on April 20, 2007, as chapter 143, Laws of 2007, with an effective date of July 22, 2007. The changes to the public assistance assignment and to the distribution of child support collections with which these new and revised rules are concerned were effective October 1, 2008. Emergency rules with an effective date of October 1, 2008, were filed in order to keep the DCS in compliance with the state plan pending enactment of the permanent rules.

Amending WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-2036 What does assigning my rights to support mean?, 388-14A-2037 What are permanently assigned arrears?, 388-14A-2038 What are temporarily assigned arrears?, 388-14A-5000 (~~How does the division of child support distribute support payments?~~) What is the difference between distribution and disbursement of child support collections?, 388-14A-5001 What procedures does DCS follow to distribute support (~~payments~~) collections?, 388-14A-5002 How does DCS distribute support (~~money~~) collections in a nonassistance case?, 388-14A-5003 How does DCS distribute (~~money~~) support collections in an assistance case?, 388-14A-5004 How does DCS distribute (~~money~~) support collections in a former assistance case?, 388-14A-5005 How does DCS distribute (~~intercepted~~) federal (~~income~~) tax refund(~~s~~) offset collections?, 388-14A-5006 How does DCS distribute support (~~money~~) collections when the paying parent has more than one case?, 388-14A-5010 How does the division of child support (~~handle~~) distribute (~~intercepted~~) federal (~~income~~) tax refund(~~s~~) offset collections from (~~a~~) joint returns? and 388-14A-5100 (~~What kind of distribution notice does the division of child support send?~~) How does the division of child support notify the custodial parent about support collections?; and new sections WAC 388-14A-2039 What are conditionally assigned arrears? and 388-14A-5015 What is a pass-through payment?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (behind Goodyear Courtesy Tire) (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 December 23, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 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 DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by noon on December 23, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by December 9, 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: DCS is adopting new and amended sections of chapter 388-14A WAC to implement state legislation that implements the federal Deficit Reduction Act of 2005 (DRA). These new and amended WAC sections will implement RCW 26.23.035 and 74.20.330. These statutes will affect the public assistance assignment and the rules concerning the distribution of child support collections. These changes took effect on October 1, 2008. The overall effect of these rules will be to direct more money to families.

Reasons Supporting Proposal: Efficiency and clarity.

Statutory Authority for Adoption: Sections 2 and 6, chapter 143, Laws of 2007.

Statute Being Implemented: RCW 26.23.035 and 74.20.330.

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: Onika Garvin, DCS HQ, P.O. Box 9162, Olympia, WA 98507-9162, (360) 664-5230.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not have an economic impact on small businesses. It only affects individuals who have support obligations or individuals who are owed child support.

A cost-benefit analysis is not required under RCW 34.05.328. The rule does meet the definition of a significant legislative rule but DSHS/DCS rules relating to the care of dependent children are exempt from preparing further analysis under RCW 34.05.328 (5)(b)(vii).

October 27, 2008
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

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

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

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

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

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

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

- (1) An order entered under chapter 34.05 RCW;
- (2) An agreed settlement or consent order entered under WAC 388-14A-3600; and
- (3) A support establishment notice which has become final by operation of law.

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

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

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

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

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

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

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

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

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

"Assistance unit" means a cash assistance unit as defined in WAC 388-408-0005. An assistance unit is the group of people who live together and whose income or resources the department counts to decide eligibility for benefits and the amount of benefits.

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

"Conditionally assigned arrears" means those temporarily assigned arrears remaining on a case after the period of public assistance ends.

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

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

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

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

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

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

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

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

"Dependent child" means a person:

- (1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;
- (2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;
- (3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists if the child is participating full-time in a secondary school program or the same level of vocational or technical training.

"Disbursement" means the amount of child support distributed to a case that is paid to the family, state, other child support enforcement agency in another state or foreign country, Indian tribe, or person or entity making the payment.

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

"Distribution" means how a collection is allocated or split within a case or among multiple cases.

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

- (1) Wages or salary;
- (2) Commissions and bonuses;
- (3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;
- (4) Disability payments under Title 51 RCW;
- (5) Unemployment compensation under RCW 50.40.020, 50.40.050 and Title 74 RCW;
- (6) Gains from capital, labor, or a combination of the two; and

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

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

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

- (1) Partnerships and associations;
- (2) Trusts and estates;
- (3) Joint stock companies and insurance companies;
- (4) Domestic and foreign corporations;
- (5) The receiver or trustee in bankruptcy; and
- (6) The trustee or legal representative of a deceased person.

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

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

"Family arrears" means the amount of past-due support owed to the family, which has not been conditionally, temporarily or permanently assigned to a state. Also called "nonassistance arrears."

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

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

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

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

- (1) The representation of the existence or the nonexistence of a fact;
- (2) The representation's materiality;
- (3) The representation's falsity;
- (4) The speaker's knowledge that the representation is false;
- (5) The speaker's intent that the representation should be acted on by the person to whom it is made;
- (6) Ignorance of the falsity on the part of the person to whom it is made;
- (7) The latter's:
 - (a) Reliance on the truth of the representation;
 - (b) Right to rely on it; and
 - (c) Subsequent damage.

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

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

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

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

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

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

"Income" includes:

- (1) All gains in real or personal property;
- (2) Net proceeds from the sale or exchange of real or personal property;
- (3) Earnings;
- (4) Interest and dividends;
- (5) Proceeds of insurance policies;
- (6) Other periodic entitlement to money from any source; and
- (7) Any other property subject to withholding for support under the laws of this state.

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

- (1) Asserting liens under RCW 74.20A.060;
- (2) Serving and enforcing liens under chapter 74.20A RCW;
- (3) Issuing orders to withhold and deliver under chapter 74.20A RCW;
- (4) Issuing notices of payroll deduction under chapter 26.23 RCW; and
- (5) Obtaining wage assignment orders under RCW 26.18.080.

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

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

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

- Medical costs incurred on behalf of a child, which include:
 - Medical services related to an individual's general health and well-being, including but not limited to, medical/surgical care, preventive care, mental health care and physical therapy; and
 - Prescribed medical equipment and prescribed pharmacy products;

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

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

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

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

"Medical support" means either or both:

(1) Medical expenses; and

(2) Health insurance coverage for a dependent child.

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

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

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

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

(1) Directly benefits the dependent child; and

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

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

"Pass-through" means the portion of a support collection distributed to assigned support that the state pays to a family currently receiving TANF.

"Past support" means support arrears.

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

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

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

"Physical custodian" means custodial parent (CP).

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

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

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

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

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

(3) Tracing activity such as:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Delinquent support;
- (2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including medical expenses, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;
- (3) A debt under RCW 74.20A.100 or 74.20A.270; or
- (4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

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

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

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

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

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

"Temporarily assigned (~~arrears~~) arrears" means those arrears which accrue prior to the family receiving assistance, for assistance applications dated on or after October 1, 1997, but before October 1, 2008. After the family terminates assistance, temporarily assigned arrears become conditionally assigned arrears.

"Temporary assistance for needy families," or "TANF" means cash assistance under the temporary assistance for needy families (TANF) program under Title IV-A of the Social Security Act.

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

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

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

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

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

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

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

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

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

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

"Uninsured medical expenses":

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

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

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

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

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

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

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

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

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

"WSSR" is the Washington state support registry.

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

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

WAC 388-14A-2036 What does assigning my rights to support mean? (1) As a condition of eligibility for assistance, a family member must assign to the state the right to collect and keep, subject to the limitation in WAC 388-14A-2035(3)((:));

(a) Any support owing to the family member or to any other person for whom the family member has applied for or is receiving assistance if the family applied for cash public assistance before October 1, 2008.

(b) Support owing to the family member, or to any other person for whom the family member has applied for or is receiving cash public assistance, for any month during which the family receives assistance.

(2) While your family receives assistance, ~~((all support collected is retained by the state to reimburse the total amount of assistance which has been paid to your family))~~ support is distributed and disbursed in accordance with WAC 388-14A-5000 through 388-14A-5015.

(3) After your family terminates from assistance, certain accrued arrears remain assigned to the state in accordance with the following rules:

(a) For assistance applications dated prior to October 1, 1997, you permanently assigned to the state all rights to support which accrued before the application date ~~((and which will accrue prior to))~~ until the date your family ~~((terminates))~~ terminated from assistance.

(b) For assistance applications dated on or after October 1, 1997, and before October 1, 2000:

(i) You permanently assigned to the state all rights to support which accrued while your family receives assistance; and

(ii) You temporarily assigned to the state all rights to support which accrued before the application date, until October 1, 2000, or when your family ~~((terminates))~~ terminated from assistance, whichever date is later. ~~((After this date, if any remaining arrears are collected by federal income tax refund offset, the state retains such amounts, up to the amount of unreimbursed assistance.))~~

(c) For assistance applications dated on or after October 1, 2000, and before October 1, 2008:

(i) You permanently assigned to the state all rights to support which accrued while the family ~~((receives))~~ received assistance; and

(ii) You temporarily assigned to the state all rights to support which accrued before the application date, until the date your family ~~((terminates))~~ terminated from assistance. ~~((After this date, if any remaining arrears are collected by federal income tax refund offset, the state retains such amounts, up to the amount of unreimbursed assistance.))~~

(d) For assistance applications dated on or after October 1, 2008, you permanently assign to the state all rights to support which accrue while the family receives assistance.

(4) When you assign your medical support rights to the state, you authorize the state on behalf of yourself and the children in your care to enforce the noncustodial parent's full duty to provide medical support.

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

WAC 388-14A-2037 What are permanently assigned arrears? Permanently assigned arrears accrue only under the following conditions:

(1) For those periods prior to the family receiving assistance, for assistance applications dated ~~((on or))~~ before ~~((September 30, 1997))~~ October 1, 1997; and

(2) For those periods while a family receives assistance, for assistance applications dated at any time.

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

WAC 388-14A-2038 What are temporarily assigned arrears? (1) Temporarily assigned arrears are(=

~~(1) Not permanently assigned to the state;~~

~~(2) Collected and retained by the state up to the amount of unreimbursed assistance, if these arrears are collected by federal income tax refund offset at any time; and~~

~~(3) Collected and kept by the state, up to the cumulative amount of unreimbursed assistance:~~

~~(a) Until October 1, 2000 or until the date the family terminates from assistance, whichever date is later; or~~

~~(b) Only while the family receives assistance, for assistance periods beginning October 1, 2000 or later))~~ arrears owed to the family at the time TANF started, for TANF periods beginning before October 1, 2008. These arrears remain temporarily assigned during the assistance period.

(2) Temporarily assigned arrears convert to conditionally assigned arrears when the TANF period ends. See WAC 388-14A-2039 for a description of conditionally assigned arrears.

(3) If any support collections are distributed to temporarily assigned arrears, those collections are retained by the state, up to the amount of unreimbursed assistance.

NEW SECTION

WAC 388-14A-2039 What are conditionally assigned arrears? (1) Conditionally assigned arrears are any temporarily assigned arrears that remain on a case after the family stops receiving TANF.

(2) These arrears remain conditionally assigned during TANF periods beginning on or after October 1, 2008.

(3) If federal tax refund offset collections are distributed to conditionally assigned arrears, those collections are retained by the state, up to the amount of unreimbursed assistance.

(4) If support collections other than federal tax refund offset collections are distributed to conditionally assigned arrears, those collections are disbursed to the family.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

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

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

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

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

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

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

refers to how the division of child support (DCS) applies or allocates collections within a child support case or between child support cases.

(2) ~~(DCS distributes support based on the date of collection. DCS considers the date of collection to be the date that DCS receives the payment, no matter when the payment was withheld from the noncustodial parent (NCP))~~ Disbursement of child support collections refers to DCS sending out or paying support collections to the appropriate recipient.

(3) ~~(If DCS is unable to distribute support money because the location of the family or person is unknown, it must exercise reasonable efforts to locate the family or person. When the family or person cannot be located, DCS handles the money in accordance with chapter 63.29 RCW, the Uniform Unclaimed Property Act))~~ WAC 388-14A-5001 through 388-14A-5015 explain how DCS distributes and disburses child support collections.

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

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

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

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

WAC 388-14A-5001 What procedures does DCS follow to distribute support ~~((payments))~~ collections? (1) When distributing support ~~((money))~~ collections, the division of child support (DCS) ~~((does the following:~~

~~(1) Records ~~payments~~)~~ records collections in exact amounts of dollars and cents~~(±)~~.

(2) DCS distributes support ~~((money))~~ collections within two days of the date DCS receives the ~~((money))~~ collection, unless DCS is unable to distribute the ~~((payment))~~ collection for one or more of the following reasons:

(a) The location of the payee is unknown;

(b) DCS does not have sufficient information to identify the accounts against which or to which it should ~~((apply))~~ distribute the money;

(c) An action is pending before a court or agency which has jurisdiction over the issue to determine whether child support ~~((money))~~ is owed or how DCS should distribute the ~~((money))~~ collection.

(d) DCS receives prepaid child support ~~((money))~~ and is holding it for distribution in future months under subsection (2)(e) of this section;

(e) DCS mails a notice of intent to distribute support money to the custodial parent (CP) under WAC 388-14A-5050;

(f) DCS may hold funds and not issue a check to the family for amounts under one dollar. DCS must give credit for the ~~((payment))~~ collection, but may delay disbursement of that amount until a future ~~((payment))~~ collection is received which increases the amount of the ~~((payment))~~ disbursement to the family to at least one dollar. If no future ~~((payments))~~

collections are received which increase the ~~((payment))~~ disbursement to the family ~~((€))~~ to at least one dollar, DCS transfers the amount to the department of revenue under RCW 63.29.130. This subsection does not apply to disbursements which can be made by electronic funds transfer (EFT), or to refunds of ~~((intercepted))~~ federal ~~((income))~~ tax refund~~(s)~~ offset collections; or

(g) Other circumstances exist which make a proper and timely distribution of the ~~((money))~~ collection impossible through no fault or lack of diligence of DCS.

(3) ~~((Distribute))~~ DCS distributes support ~~((money))~~ collections based on the date DCS receives the ~~((money))~~ collection, except as provided under WAC 388-14A-5005. DCS distributes support collections based on the date of collection. DCS considers the date of collection to be the date that DCS receives the ~~((payment))~~ support collection, no matter when the ~~((payment))~~ money was withheld from the noncustodial parent (NCP).

(4) Under state and federal law, the division of child support (DCS) disburses support collections to the:

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

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

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

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

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

(5) If DCS is unable to disburse a support collection because the location of the family or person is unknown, it must exercise reasonable efforts to locate the family or person. When the family or person cannot be located, DCS handles the collection in accordance with chapter 63.29 RCW, the uniform unclaimed property act.

(6) WAC 388-14A-5000 through 388-14A-5015 contain the rules for the distribution of support collections by DCS.

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

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

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

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

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

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

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

~~(3) ((After DCS disburses at least five hundred dollars to the family on a case in a federal fiscal year, DCS may retain a twenty-five dollar annual fee for that case from a custodial parent who has never received AFDC, TANF or Tribal TANF. DCS gives the noncustodial parent credit against the child support debt for the amount retained for the fee)) DCS uses the fee retained under WAC 388-14A-2200 to offset the fee amount charged by the federal government for IV-D cases that meet the fee criteria in WAC 388-14A-2200(1).~~

AMENDATORY SECTION (Amending WSR 01-24-078, filed 12/3/01, effective 1/3/02)

WAC 388-14A-5003 How does DCS distribute ~~((money))~~ support collections in an assistance case? (1) An assistance case is one where the family is currently receiving a ~~((cash public assistance))~~ TANF grant.

(2) The division of child support (DCS) ~~((applies))~~ distributes support ~~((money))~~ collections within each Title IV-D assistance case:

(a) First, to satisfy the current support obligation for the month DCS received the ~~((money (this money is kept by the state under WAC 388-14A-2035)))~~ collection;

(b) Second, to satisfy support debts which are permanently assigned to the department to reimburse the cumulative amount of assistance which has been paid to the family ~~((this money is kept by the state under WAC 388-14A-2035))~~;

(c) Third~~((:))~~;

(i) To satisfy support debts which are temporarily assigned to the department to reimburse the cumulative amount of assistance paid to the family ~~((this money is kept by the state under WAC 388-14A-2035))~~; or

(ii) To satisfy support debts which are conditionally assigned to the department. Support collections distributed to conditionally assigned arrears are disbursed according to WAC 388-14A-2039.

(d) Fourth, to satisfy support debts ~~((which exceed the cumulative amount of unreimbursed assistance which has been paid to the family (this money goes to the family)))~~ owed to the family;

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

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

WAC 388-14A-5004 How does DCS distribute ~~((money))~~ support collections in a former assistance case?

(1) A former assistance case is one where the family is not currently receiving a ~~((cash public assistance))~~ TANF grant, but has at some time in the past.

(2) Subject to the exceptions provided under WAC 388-14A-5005, the division of child support (DCS) ~~((applies))~~ distributes support ~~((money))~~ collections within each Title IV-D former-assistance case:

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

~~(b) Second, to satisfy support debts ((which accrued after the family's most recent period of assistance)) owed to the family;~~

(c) Third, to satisfy support debts which are ~~((temporarily))~~ conditionally assigned to the department ~~((to reimburse the cumulative amount of assistance which has been paid to the family)).~~ These collections are disbursed according to WAC 388-14A-2039;

(d) Fourth, to satisfy support debts which are permanently assigned to the department to reimburse the cumulative amount of assistance which has been paid to the family; and

(e) Fifth, to ~~((satisfy support debts which exceed the cumulative amount of unreimbursed assistance which has been paid to the family; and~~

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

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

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

~~((+))~~ (1) First, ~~((to support debts which are permanently assigned to the department to reimburse public assistance payments; and~~

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

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

~~((d))~~ To support debts only, not to current and future support obligations. DCS must refund any excess to the noncustodial parent (NCP)) to satisfy the current support obligation for the month in which DCS received the collection.

(2) Second, DCS distributes any amounts over current support depending on the type of case to which the collection is distributed:

(a) In a never assistance case, all remaining amounts are distributed to family arrears, meaning those arrears which have never been assigned.

(b) In a former assistance case, all remaining amounts are distributed first to family arrears, then to permanently assigned arrears, then to conditionally assigned arrears.

(c) In a current assistance case, all remaining amounts are distributed first to permanently assigned arrears, then to temporarily assigned arrears (if they exist), then to conditionally assigned arrears, and then to family arrears.

~~((2))~~ (3) Federal tax refund offset collections distributed to assigned support are retained by the state to reimburse the cumulative amount of assistance which has been paid to the family.

(4) DCS may distribute federal tax refund offset collections only to certified support debts and to current support obligations on cases with certified debts. DCS must refund any excess to the noncustodial parent (NCP).

(5) DCS may retain the twenty-five dollar annual fee required under the federal deficit reduction act of 2005 and RCW 74.20.040 from federal ~~((income))~~ tax refund~~((s applied))~~ offset collections distributed to nonassistance ~~((support debts))~~ cases.

~~((3))~~ (6) When the Secretary of the Treasury, through the federal Office of Child Support Enforcement (OCSE), notifies DCS that a ~~((payment on behalf of an NCP is from an intercepted))~~ collection from a federal tax refund offset is from a tax refund based on a joint return, DCS follows the procedures set forth in WAC 388-14A-5010.

AMENDATORY SECTION (Amending WSR 01-24-078, filed 12/3/01, effective 1/3/02)

WAC 388-14A-5006 How does DCS distribute support ~~((money))~~ collections when the paying parent has more than one case? ~~((Except as provided in WAC 388-14A-5005,))~~ When the NCP has more than one Title IV-D case, the division of child support (DCS) distributes support ~~((money))~~ collections:

(1) First, to the current support obligation on each Title IV-D case, in proportion to the amount of the current support order on each case; and

(2) Second, to the total of the support debts whether owed to the family or to the department for the reimbursement of public assistance on each Title IV-D case, in proportion to the amount of support debt owed by the NCP on each case; and

(3) Third, within each Title IV-D case according to WAC 388-14A-5002 ~~((or)),~~ 388-14A-5003, or 388-14A-5004.

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

WAC 388-14A-5010 How does the division of child support ~~((handle intercepted))~~ distribute federal ~~((income))~~ tax refund~~((s))~~ offset collections from ~~((a))~~ joint returns? (1) The division of child support (DCS) collects child support ~~((arrear))~~ through the interception of federal ~~((income))~~ tax refunds. This section deals with the issues that arise when the Secretary of the Treasury intercepts a tax refund based on a joint tax return filed by a noncustodial parent (NCP) and the NCP's spouse who does not owe child support.

(2) When the Secretary of the Treasury, through the federal Office of Child Support Enforcement (OCSE), notifies DCS that a ~~((payment))~~ collection on behalf of an NCP is from an intercepted tax refund based on a joint return, DCS may ~~((delay distribution of))~~ distribute fifty percent of that ~~((payment))~~ collection and hold the remainder for up to six months in case the NCP's spouse is entitled to a share of the federal ~~((income))~~ tax refund.

(3) DCS distributes fifty percent of the ~~((payment))~~ collection according to WAC 388-14A-5005.

(4) DCS holds the other fifty percent of the ~~((payment))~~ collection in suspense until the earlier of the following:

(a) DCS is notified by OCSE or the Secretary of the Treasury whether DCS must pay back the unobligated spouse's portion of the refund; or

(b) For a period not to exceed six months from notification of the offset.

(5) ~~((When))~~ After DCS holds part of a ~~((payment))~~ collection under subsection (4) of this section, DCS ~~((applies))~~ distributes the remainder of the ~~((payment))~~ collection to the NCP's ~~((back))~~ support obligations if DCS is not required to return the unobligated spouse's portion of the refund. The CP may:

(a) Request that DCS ~~((apply))~~ distribute the payment to the NCP's ~~((back))~~ support obligation sooner upon a showing of hardship to the CP; and

(b) Request a conference board if the CP disagrees with DCS' denial of a hardship claim.

NEW SECTION

WAC 388-14A-5015 What is a pass-through payment? (1) A pass-through payment is the portion of a support collection applied to assigned support that the state elects to pay to a family currently receiving TANF. The pass-through payment is paid in the following amounts:

(a) Up to one hundred dollars per month to a family with one child in the assistance unit.

(b) Up to two hundred dollars per month to a family with two or more children in the assistance unit.

(2) The pass-through is paid from collections which are distributed to either current support or assigned arrears.

(3) The pass-through amount can never exceed the amount collected in the month.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

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

(2) DCS includes the following information in the ~~((notice))~~ distribution and disbursement statement:

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

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

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

(d) The amount kept by the state to repay public assistance paid to the family;

(e) The amount disbursed to the family as a pass-through payment under WAC 388-14A-5015;

(f) The amount disbursed to the family as a payment on support owed to the family;

(g) The amount kept by the state to pay the twenty-five dollar annual fee, if applicable; and

(h) The amount kept by the state to repay child support paid to the family in error.

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

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

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

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

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

(6) This section does not require DCS to send a (~~(notice)~~) distribution and disbursement statement to a recipient of payment services only.

WSR 08-23-004

PROPOSED RULES

SECRETARY OF STATE

(Elections Division)

[Filed November 5, 2008, 4:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-14-161.

Title of Rule and Other Identifying Information: Election related procedures, including protected records voters, voters requiring verification of identity, certification of voting systems, affidavits by initiative and referendum sponsors, and deadlines for candidate statements.

Hearing Location(s): Office of the Secretary of State, Elections Division, 520 Union Avenue S.E., Olympia, WA, on December 23, 2008, at 11:00 a.m.

Date of Intended Adoption: January 20, 2009.

Submit Written Comments to: Katie Blinn, P.O. Box 40220, Olympia, WA 98504-0220, e-mail kblinn@secstate.wa.gov, fax (360) 586-5629, by December 23, 2008.

Assistance for Persons with Disabilities: Contact Katie Blinn by December 23, 2008, TTY (800) 422-8683 or (360) 902-4168.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules move procedures for protected records voters into election-related WAC chapters, clarify which government documents a voter may use to prove his or her identity, repeal antiquated references, clarify the appointment of members of the voting systems review board, change terminology from "independent testing authority" to "voting system test laboratory," repeal references to telephonic transmission since that technology is antiquated and obsolete, clarify the process for testing voting

systems during certification testing, repeal the requirement that initiative and referendum sponsors have the affidavit notarized, and create one standard deadline for statements submitted by candidates for the voters' pamphlet.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: RCW 40.24.060, 29A.08.-113, 28A.12.020, 29A.72.010, and 29A.32.031.

Rule is necessary because of federal court decision, *Washington Association of Churches v. Sam Reed*, 492 F. Supp. 2d 1264 (2006).

Name of Proponent: Office of the secretary of state, elections division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Katie Blinn, P.O. Box 40220, Olympia, WA 98504-0220, (360) 902-4168.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

November 5, 2008

Steve Excell

Assistant Secretary of State

NEW SECTION

WAC 434-250-035 Protected records voters. (1) At least twenty days before every special, primary, or general election, authorized personnel shall review all protected records voter files and forward the appropriate absentee ballot for each protected records voter via the substitute mailing address.

(2) The ballot, ballot security envelope, and return envelope must be placed in an envelope addressed to the substitute address. The return envelope shall be printed in a manner that ensures that the returned ballot will be segregated and routed to the authorized personnel for processing.

(3) The voted absentee ballot for a protected records voter shall be processed by county authorized personnel. The authorized personnel shall maintain a record of ballots sent to protected records voters and a record of ballots returned. This record shall be maintained in accordance with WAC 434-324-034.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-250-040 Instructions to voters. (1) Instructions that accompany an absentee ballot must include:

(a) How to cancel a vote by drawing a line through the text of the candidate's name or ballot measure response;

(b) Notice that, unless specifically allowed by law, more than one vote for an office or ballot measure will be an over-vote and no votes for that office or ballot measure will be counted;

(c) Notice that, if a voter has signed or otherwise identified himself or herself on a ballot, the ballot will not be counted;

(d) An explanation of how to complete and sign the affidavit on the return envelope;

(e) An explanation of how to make a mark, witnessed by two other people, if unable to sign the affidavit;

(f) An explanation of how to place the ballot in the security envelope and place the security envelope in the return envelope;

(g) An explanation of how to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost;

(h) Notice that postage is required, if applicable;

(i) Notice that, in order for the ballot to be counted, it must be either postmarked or deposited at a designated deposit site no later than election day;

(j) An explanation of how to learn about the locations, hours, and services of voting centers and ballot deposit sites, including the availability of accessible voting equipment;

~~((County auditors may use existing stock of instructions appearing on absentee ballot envelopes until December 1, 2008;))~~

(k) For a primary election that includes a partisan office, a notice on a separate insert printed on colored paper explaining:

"Washington has a new primary. You do not have to pick a party. In each race, you may vote for any candidate listed. The two candidates who receive the most votes in the August primary will advance to the November general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(l)(i) For a general election that includes a partisan office, the following explanation:

"Washington has a new election system. In each race for partisan office, the two candidates who receive the most votes in the August primary advance to the November general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not

Dear Voter:

[date]

Based on your recent registration, federal law requires that you provide identification with your ballot. **If you fail to provide identification, your ballot will not be counted.**

Please provide a copy of one of the following:

- Valid photo identification;
- A valid enrollment card of a federally recognized tribe in Washington;
- A current utility bill;
- A current bank statement;
- A current government check;
- A current paycheck; or
- A government document, other than a voter registration card, that shows both your name and address.

You may return the photocopy with your ballot but, in order to protect the secrecy of your ballot, do not place the photocopy inside the security envelope.

If you do not provide a copy of your identification, your ballot will not be counted.

If you have any questions, please feel free to contact the _____ County Auditor's Office at _____.

imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(ii) In a year that president and vice-president appear on the general election ballot, the following must be added to the statement required by (l)(i) of this subsection:

"The election for president and vice-president is different. Candidates for president and vice-president are the official nominees of their political party."

(m) Any other information the county auditor deems necessary.

(2) Instructions that accompany a special absentee ballot must also include:

(a) A listing of all offices and measures that will appear upon the ballot, together with a listing of all persons who have filed for office or who have indicated their intention to file for office; and

(b) Notice that the voter may request and subsequently vote a regular absentee ballot, and that if the regular absentee ballot is received by the county auditor prior to certification of the election, it will be tabulated and the special absentee ballot will be voided.

AMENDATORY SECTION (Amending WSR 07-02-100, filed 1/3/07, effective 2/3/07)

WAC 434-250-045 Voters requiring verification of identity. (1) If the voter registration record of an absentee voter is flagged as requiring verification of identity, a notice must be sent at the time of the election explaining that a photocopy of identification must be provided in order for the ballot to be counted, and listing what forms of identification are acceptable. The county auditor may provide an inner envelope separate from the security envelope for return of the photocopy of the identification.

(2) The notice to the absentee voter must be in substantially the following form:

(3) If the voter provides one of the acceptable forms of identification no later than the day before certification of the election, the flag on the voter registration record must be removed and the ballot must be counted.

(4) If the voter fails to provide one of the acceptable forms of identification by the day prior to certification of the election, the ballot ~~((may))~~ shall not be counted. If the voter provides one of the acceptable forms of identification at a later date, the ballot cast in that election ~~((may))~~ shall not be counted but the flag on the voter registration record must 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.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-250-050 Envelopes. Absentee ballots must be accompanied by the following:

- (1) A security envelope, which may not identify the voter and must have a hole punched in a manner that will reveal whether a ballot is inside;
- (2) A return envelope, which must be addressed to the county auditor and have a hole punched in a manner that will reveal whether the security envelope is inside. The return envelope must display the official election materials notice required by the United States Postal Service, the words "POSTAGE REQUIRED" or "POSTAGE PAID" in the upper right-hand corner, and the following oath with a place for the voter to sign, date, and write his or her daytime phone number:

I do solemnly swear or affirm under penalty of perjury that:

I am a citizen of the United States;

I am a legal resident of the state of Washington;

I will be at least 18 years old on or before election day;

I am not presently denied my voting rights as a result of being convicted of a felony;

I have not been judicially declared mentally incompetent;

I have not already voted in this election; and

I understand it is illegal to cast a ballot or sign a ballot envelope on behalf of another voter.

Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this oath is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.

Signature _____ Date _____

The return envelope must include space for witnesses to sign.

The return envelope must conform to postal department regulations.

~~((County auditors may use existing stock of absentee envelopes until December 1, 2008.))~~

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-253-045 Provisional ballots—Required information. A provisional ballot may only be voted on a direct recording electronic voting device if the voting system has been certified by the secretary of state for provisional voting and the county auditor has submitted approved procedures to the secretary of state.

At a minimum, the following information is required to be printed on the outer ballot envelope:

- (1) Name of voter.
- (2) Voter's registered address both present and former if applicable.
- (3) Voter's date of birth.
- (4) Reason for the provisional ballot.
- (5) Polling place and precinct number, if applicable, at which voter voted.
- (6) Sufficient space to list disposition of the ballot after review by the county auditor.
- (7) The following affidavit with a place for the voter to sign and date:

I do solemnly swear or affirm under penalty of perjury that:

I am a citizen of the United States;

I am a legal resident of the state of Washington;

I will be at least 18 years old on or before election day;

I am not presently denied my voting rights as a result of being convicted of a felony;

I have not been judicially declared mentally incompetent;

I have not already voted in this election;

and

I understand it is illegal to cast a ballot or sign a ballot envelope on behalf of another voter.

Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this oath is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.

Signature _____ Date _____

~~((County auditors may use existing stock of absentee envelopes until December 1, 2008.))~~

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-261-005 Definitions. (1) "Manual inspection" is the process of inspecting each voter response position on each voted ballot. Inspection is performed on an absentee ballot as part of the initial processing, and on a poll ballot after breaking the seals and opening the ballot containers from the precincts or, in the case of precinct counting systems, prior to the certification of the election;

(2) "Duplicating ballots" is the process of making a true copy of valid votes from ballots that may not be properly counted by the vote tallying system. Ballots may be duplicated on blank ballots or by making changes on an electronic

image of the ballot. The original ballot may not be altered in any way;

(3) "Readable ballot" is any ballot that the certified vote tallying system can accept and read as the voter intended without alteration, and that meets the standards of the county canvassing board subject to the provisions contained in this title;

(4) "Unreadable ballot" is any ballot that cannot be read by the vote tallying system as the voter intended without alteration. Unreadable ballots may include, but not be limited to, ballots with damage, write-in votes, incorrect or incomplete marks, and questions of vote intent. Unreadable ballots may subsequently be counted as provided by these administrative rules;

(5) "Valid signature" on a ballot envelope for a registered voter eligible to vote in the election is:

(a) A signature verified against the signature in the voter registration file; or

(b) ~~((On an absentee ballot envelope,))~~ Δ mark ~~((with))~~ witnessed by two ((witnesses)) people.

AMENDATORY SECTION (Amending WSR 06-11-042, filed 5/10/06, effective 6/10/06)

WAC 434-261-045 Secure storage. Received ballots and ballot images must be maintained in secure storage except during processing, duplication, inspection by the canvassing board, or tabulation. Secure storage must employ the use of numbered seals and logs, or other security measures that will detect any inappropriate access to the secured materials. Ballots and ballot images may only be accessed in accordance with RCW 29A.60.110 and 29A.60.125.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-261-107 Daily canvassing.

NEW SECTION

WAC 434-262-036 Canvassing procedure for ballot of a protected records voter. If the ballot of a protected records voter must be presented to the county canvassing board, the canvassing board must review the ballot in private executive session or take other necessary steps to ensure the privacy of the protected records voter.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-262-140 Microfilm copies of election returns.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-264-020 Recount—Restrictions. All questions of voter registration, voter qualification, and voter intent previously considered during the original count shall not be reconsidered during a recount of the original ballots.

However, if any ballots or votes are discovered during the recount process that were not originally counted, the ballots shall be presented to the county canvassing board in accordance with RCW ~~((29A.60.021))~~ 29A.60.050, and the county canvassing board shall determine whether such ballots are to be included in the recount.

Nothing in this section shall preclude the county canvassing board from canvassing a ballot or a vote not canvassed during the original or previous count.

NEW SECTION

WAC 434-324-034 Confidentiality of protected records voter information. All records pertaining to a protected records voter shall be maintained in a manner that ensures that the records are accessible only to authorized personnel. Location information (including, but not limited to, residential address, county, precinct, taxing district, legislative or congressional district) for a protected records voter shall not be maintained on any voter registration data base and shall not be publicly accessible, except as provided by chapter 40.24 RCW.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-324-045 Verification of applicant's identity. (1) If the applicant is provisionally registered pursuant to WAC 434-324-040(5), the county auditor must verify the applicant's identity before counting the applicant's ballot. The county auditor may use other government resources and public records to confirm the applicant's driver's license or state identification card number or the last four digits of the applicant's Social Security number. The county auditor may also attempt to contact the applicant by phone, e-mail or other means to obtain identification information.

(2) If the county auditor is still unable to verify the applicant's identity, the county auditor must send the applicant an identity verification notice that includes a postage prepaid, preaddressed form by which the applicant may verify or send information. The identity verification notice must be in substantially the following form:

Dear Voter:

[date]

Thank you for submitting a voter registration application. Because we were unable to verify your identity based on the information you provided, you are now provisionally registered to vote.

Federal law requires that you provide identification either before or when you vote. **If you fail to provide identification, your ballot will not be counted.**

Please provide one of the following:

- The number on your Washington driver's license or state ID card: _____
Your name and date of birth as it appears on your driver's license or state ID card:

_____	_____	_____	_____
First	M.I.	Last	date of birth

- The last four digits of your Social Security number: _____
Your name and date of birth as maintained by the Social Security Administration:

_____	_____	_____	_____
First	M.I.	Last	date of birth

- A copy of one of the following:
 - Valid photo identification;
 - A valid enrollment card of a federally recognized tribe in Washington;
 - A current utility bill;
 - A current bank statement;
 - A current government check;
 - A current paycheck; or
 - A government document, other than a voter registration card, that shows both your name and address.

Please provide this documentation as soon possible. **If it is not provided, your ballot will not be counted.**

If you have any questions, please feel free to contact the _____ County Auditor's Office at _____.

(3) If the applicant responds with updated driver's license, state ID card, or Social Security information, or with a copy of one of the alternative forms of identification, the flag on the voter registration record must be removed, allowing the applicant's ballot to otherwise be counted the first time he or she votes after registering.

(4) If the applicant fails to respond with adequate documentation to verify his or her identity, the applicant's voter registration record must remain flagged. If the applicant votes absentee, he or she must be notified that the ballot will not be counted unless he or she provides adequate verification of identity.

(5) A provisional registration must remain on the official list of registered voters for at least two general elections for federal office. If, after two general elections for federal office, the voter still has not verified his or her identity, the provisional registration (~~(may)~~) shall be canceled.

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 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-020 Voting systems review board. The voting systems review board may review voting systems for certification and make recommendations to the secretary of state based upon those reviews. The voting systems review board includes independent experts in computer science or information technology, recognized experts in election administration, and representatives of the public at large. Members of the voting systems review board are appointed ~~((to a two-year term by the secretary of state))~~ by the secretary of state to staggered two or four year terms. Appointees may be reappointed to serve more than one term. The secretary of state may appoint a new member to fill any vacancy on the board for the remainder of the unexpired term. The duties of the voting systems review board include ~~((but are not limited to;))~~ reviewing an application for certification, as provided in WAC 434-335-090, conducting a public hearing on the application, as provided in WAC 434-335-100, and making recommendations on the application to the secretary of state, as provided in WAC 434-335-110.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-335-030 Initial application for certification. Any person or corporation (applicant) owning or representing a voting system or a vote tabulating system, part of a system, equipment, materials or procedure may apply in writing to the secretary of state for certification December 1st and ending June 30th the following year. Certification examinations and hearings are only conducted between December 1st and September 15th of each year.

(1) The application must include, but is not limited to, the following information:

(a) Description of the applicant, business address, customer references, and list of election products.

(b) Description of the equipment under review, version numbers, release numbers, operating and maintenance manuals, training materials, and technical and operational specifications.

(c) Documentation of all other states that have tested, certified and used the equipment in a binding election, and the length of time used in that state. The information for each state must include the version numbers of the operating system, software, and firmware, the dates and jurisdictions, and any reports compiled by state or local governments concerning the performance of the system.

~~(d) ((A monetary deposit as described in WAC 434-335-080.~~

~~(e))~~ A copy of a letter from the applicant to each ~~((independent testing authority (ITA)))~~ voting system test laboratory which:

(i) Directs the ~~((ITA))~~ voting system test laboratory to send a copy of the completed ~~((ITA))~~ voting system test laboratory qualification report to the secretary of state;

(ii) Authorizes the ~~((ITA))~~ voting system test laboratory to discuss testing procedures and findings with the secretary of state; and

(iii) Authorizes the ~~((ITA))~~ voting system test laboratory to allow the secretary of state to review all records of any qualification testing conducted on the equipment.

~~((#))~~ ~~(e)~~ A technical data package ~~((TDP))~~ conforming to the 2002 ~~((FEC Federal))~~ Voting Systems Standards ~~((FVSS))~~ VSS, Vol. II, Sec. 2 standards that includes:

(i) Identification of all COTS hardware and software products and communications services used in the operation of the voting system (ref. ~~((FVSS))~~ VSS, 2.2.1.e);

(ii) A system functionality description (ref. ~~((FVSS))~~ VSS, 2.3);

(iii) A system security specification (ref. ~~((FVSS))~~ VSS, 2.6);

(iv) System operations procedures (ref. ~~((FVSS))~~ VSS, 2.8);

(v) System maintenance procedures (ref. ~~((FVSS))~~ VSS, 2.9);

(vi) Personnel deployment and training requirements (ref. ~~((FVSS))~~ VSS, 2.10);

(vii) Configuration management plan (ref. ~~((FVSS))~~ VSS, 2.11);

(viii) System change notes (if applicable, ref. ~~((FVSS))~~ VSS, 2.13);

(ix) A system change list, if any, of modifications currently in development;

(x) A system usability testing report; and

(xi) A set of procedures for county personnel on how the operating system, equipment, and application software should be optimally configured and used in a secure environment.

(2) The vendor must either file the system executables for the certified system with the National Software Reference Library (NSRL) or place the source code of an electronic voting system in escrow, which must be accessible by the secretary of state under prescribed conditions.

(3) All documents, or portions of documents, containing proprietary information are not subject to public disclosure. The secretary of state must agree to use proprietary information solely for the purpose of analyzing and testing the system, and to the extent permitted by law, may not use the proprietary information or disclose it to any other person or agency without the prior written consent of the applicant.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-335-040 Voting system requirements. (1)

No voting device or its component software may be certified by the secretary of state unless it:

(a) Secures to the voter secrecy in the act of voting;

(b) Permits the voter to vote for any person for any office and upon any measure that he or she has the right to vote for;

(c) Correctly registers all votes cast for any and all persons and for or against any and all measures;

(d) Provides that a vote for more than one candidate cannot be cast by one single operation of the voting device or vote tally system except when voting for President and Vice-President of the United States;

(e) Produces a machine countable and human readable paper record for each vote that may be accepted or rejected by the voter before finalizing his or her vote. The paper record of an electronic vote may not be removed from the device by the voter. If the voting device is programmed to display the ballot in multiple languages, the paper record produced must be printed in the language used by the voter; and

(f) Has been tested and approved by the appropriate ~~((independent testing authority))~~ voting system test laboratory approved by the United States election assistance commission.

(2) No vote tabulating system may be certified by the secretary of state unless it:

(a) Correctly counts votes on ballots on which the proper number of votes have been marked for any office or issue;

(b) Ignores votes marked for any office or issue where more than the allowable number of votes have been marked, but correctly counts the properly voted portions of the ballot;

(c) Accumulates a count of the specific number of ballots tallied for each precinct, total votes by candidate for each office, and total votes for and against each ballot measure on the ballot in that precinct;

(d) Produces precinct and cumulative totals in printed form; and

(e) Produces legislative and congressional district totals for statewide races and issues in electronic and printed form.

(3) A vote tabulating system must:

(a) Be capable of being secured with lock and seal when not in use;

(b) Be secured physically and electronically against unauthorized access;

(c) Not be connected to, or operated on, any electronic network including, but not limited to, internal office networks, the internet, or the world wide web. A network may be used as an internal, integral part of the vote tabulating system but that network must not be connected to any other network, the internet, or the world wide web; and

(d) Not use wireless communications in any way.

(4) ~~((Transfer of information from a remote tabulating system may be made by telephonic transmission only after the creation of a disk, paper tape, or other physical means of recording ballot results.~~

(5)) The source code of electronic voting system software that has been placed in escrow must be identical to the source code of software that has been tested and certified by the federal ~~((independent testing authority))~~ voting system test laboratory and installed in the county. The applicant must place in escrow both the human-readable source code and the working or compiled version. In lieu of placing them in escrow, the source code and the working or compiled version may be deposited with the national software reference library. The software may be verified by matching the system's digital software signatures with the digital signatures the elections assistance commission has on file, when available.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-335-060 Examination of equipment. Secretary of state staff will initiate an examination of the applicant's equipment after receiving a completed application and a working model of the equipment, documentation, and software to be reviewed. The examination consists of a series of functional application tests designed to insure that the system or equipment meets all applicable federal guidelines, and state law and rules. The examination may include an additional ~~((independent testing authority))~~ voting system test laboratory test at the discretion of the secretary of state. The examination shall include the set-up and conduct of two mock elections and a machine recount. ~~((The applicant shall provide ballot materials after the secretary of state has set up the programming to create these elections.))~~ The ~~((independent testing authority will))~~ voting system test laboratory shall provide to the secretary of state the voting system software they tested ((directly to the secretary of state)) and, if requested, the hash codes of the software they tested.

(1) The first election must replicate an even year general election.

(2) The second election must replicate ~~((an odd year))~~ a primary, and include the use of split precincts and precinct ~~((election))~~ committee officer contests.

Both elections must feature at least ten precincts, with at least ten ballots in each precinct. The tests must include bal-

lots of various ballot codes, including multiple candidates, cumulative reports, precinct reports, and canvass reports, as detailed in the test plan provided by the secretary of state.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-090 Voting systems review board evaluation. The voting systems review board evaluation must include, but is not limited to:

(1) A review of statutory requirements;

(2) A review of applicable federal standards;

(3) A review of the approved qualification test results released directly to the secretary of state by the federally approved ~~((independent testing authority))~~ voting system test laboratory;

(4) If applicable, a review of reports or other materials from prior hearings on the proposed system, procedure, or modification, either in whole or in part;

(5) A review of the report produced by the secretary of state upon completion of the examination of the voting system;

(6) If applicable, a review of any procedures manuals, guidelines, or other materials issued for use with the system;

(7) A review of any effect the application will have on the security of the voting system;

(8) A review of any effect the application will have on the accuracy of the voting system;

(9) A review of any effect the application will have on the ease and convenience with which voters use the system;

(10) A review of any effect the application will have on the timeliness of vote reporting; and

(11) A review of any effect the application will have on the overall efficiency of the voting system.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-100 Public hearing. The voting systems review board must conduct a public hearing, scheduled at the convenience of the secretary of state and voting systems review board. At the public hearing, the applicant ~~((must))~~ may demonstrate the equipment and explain its function. The applicant must be available to answer questions from the voting systems review board and the public. The applicant may be asked to submit answers in writing if the voting systems review board is not satisfied with the completeness of answers given at the hearing.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-110 Voting systems review board report. Following the review and public hearing, the voting systems review board ~~((must issue a report to the secretary of state. The voting systems review board))~~ may recommend for or against certification of the voting system under review. The board may also recommend that certification be contingent upon fulfillment of specific conditions or procedures with the purchase or use of the voting system in this state.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-140 Failure to meet certification requirements. If the secretary of state determines that the voting system fails to meet any of the requirements for certification, the applicant must be notified and allowed thirty days to submit another version of the voting system ~~((of the new voting system must be conducted as if never before performed by the office of the secretary of state))~~ for examination and testing ~~((of the new voting system must be conducted as if never before performed by the office of the secretary of state))~~.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-160 Modification of certified equipment, guidelines for administrative approval. The secretary of state may approve an application for modification of certified equipment administratively if the ~~((application))~~ modification does not:

- (1) Materially affect the lawful conduct, accuracy, efficiency, capacity or security of elections;
- (2) Materially and adversely affect the convenience to the voter of the elections process; or
- (3) Otherwise result in significant modification to existing procedures used in Washington by extending the equipment's functionality.

~~((An application))~~ A modification approved administratively does not require examination or review by the voting systems review board.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-170 Application for administrative approval of modified voting systems or devices. The application for review of a modification of an existing certified system must include, but is not limited to, the following information:

- (1) Description of the applicant.
- (2) Description of the equipment under review, the modification, and all version numbers and release numbers.
- (3) All changes to the operating and maintenance manuals, training materials, and technical and operational specifications required by the modification.
- (4) All certification documents from all other states that have certified the equipment with the modification.
- (5) Reports for all tests conducted on the modification by ~~((an independent testing authority))~~ a voting system test laboratory. The ~~((independent authority))~~ voting system test laboratory must meet the criteria established by the election assistance commission for such agents.
- (6) Documentation that the modification meets all applicable federal voting equipment guidelines.
- (7) A complete description, in operational and technical detail, of all differences between the previously certified equipment or system and the modified equipment or system, prepared by the applicant.

~~((8) A monetary deposit as described in WAC 434-335-080.))~~

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-210 Application information for emergency approval. ~~((During the restricted period.))~~ A county auditor may apply in writing to the secretary of state for emergency approval of a modification of an existing certified system. The application must include a complete description of the modification that is required and an explanation of why failure to modify the system materially affects the lawful conduct, efficiency, accuracy, or security of the upcoming election. The application must also explain why the emergency cannot be adequately remedied with procedural processes.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-212 ~~((Temporary approval of))~~ Emergency ~~((modification))~~ approval. Emergency approval for a modification of an existing voting or vote tabulating system or equipment may be obtained from the secretary of state if failure to modify the system could materially affect the lawful conduct, efficiency, accuracy, or security of an upcoming election.

If, after reviewing the application, the secretary of state determines that an emergency exists, the examination and testing of the proposed modification is expedited to meet the needs of the upcoming election. The secretary of state develops a test plan and audit procedures to ensure the modified system does not adversely affect the lawful conduct, efficiency, accuracy, or security of the upcoming elections. The secretary of state may consult with the voting systems review board. The requirement that the modification be certified by ~~((an independent testing authority))~~ a voting system test laboratory is waived for an emergency approval. An emergency approval of a modification must state the time period it is ~~((effective))~~ in effect.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-214 Public notice of emergency approval. The secretary of state must notify all county auditors of the emergency approval within five days of ~~((approval))~~ approving the application. Such notice shall also be posted to a public forum such as the secretary of state's web site.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-250 Inclusion of the Federal Election Commission standards for voting equipment. The 2002 Federal Election ~~((assistance))~~ Commission standards concerning voting systems and software escrow are hereby included by reference, except where otherwise modified by these rules and the *Revised Code of Washington*. After January 1, 2006, in order for a modification of a system that was previously certified according to the 1990 Federal Election Commission voting system standards to be administratively

approved, the entire voting system must be tested and approved according to the 2002 standards.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-335-605 Initial application for approval. Any vendor requesting approval of an ~~((automatic))~~ auto-mated signature verification system for use with a specific election management system must complete and submit an application to the secretary of state. The secretary of state shall coordinate its review of the system with the vendor and the participating county.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-335-200 Emergency approval.

AMENDATORY SECTION (Amending WSR 06-23-094, filed 11/15/06, effective 12/16/06)

WAC 434-379-005 Filing of an initiative or referendum—Fee—Required documents. A person desiring to file with the secretary of state a ~~((petition to enact a proposed measure to the legislature or submit a proposed initiative measure to the people, or order that a referendum of all or part of any act, bill, or law, passed by the legislature be submitted to the people.))~~ proposed initiative to the people, initiative to the legislature, or referendum measure may do so by filing the following documents:

(1) A legible copy of the measure proposed, or the act or part of such act on which a referendum is desired;

(2) ~~((A notarized))~~ An affidavit ((that the sponsor is a legal voter and is submitting the proposed measure for filing)) declaring under penalty of perjury:

(a) That the person submitting the proposed measure is over eighteen years of age and competent to testify;

(b) That the person submitting the proposed measure is a registered voter in the state of Washington;

(c) Whether the proposed measure is an initiative to the people, initiative to the legislature, or referendum; and

(d) The subject of the initiative, or the bill number of the legislation being referred; and

(3) A filing fee of five dollars for each measure submitted.

The proposed measure is not considered filed with the secretary of state until all documents and fees are filed, including any original versions required.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-381-120 Deadlines. (1) Candidate statements and photographs shall be submitted to the secretary of state ~~((within seven calendar days after filing their declaration of candidacy))~~ no later than the Friday following the last day of the filing period.

(2) For ballot measures, including initiatives, referenda, alternatives to initiatives to the legislature, and constitutional amendments, the following documents shall be filed with the secretary of state on or before the following deadlines:

(a) Appointments of the initial two members of committees to prepare arguments for and against measures:

(i) For an initiative to the people or referendum measure: Within ten business days after the submission of signed petitions to the secretary of state;

(ii) For an initiative to the legislature, with or without an alternative, constitutional amendment or referendum bill, within ten business days after the adjournment of the regular or special session at which the legislature approved or referred the measure to the ballot:

(b) Appointment of additional members of committees to prepare arguments for and against ballot measures, not later than the date the committee submits its initial argument to the secretary of state;

(c) Arguments for or against a ballot measure, no later than twenty calendar days following appointment of the initial committee members;

(d) Rebuttals of arguments for or against a ballot measure, by no later than fourteen calendar days following the transmittal of the final statement to the committees by the secretary. The secretary shall not transmit arguments to opposing committees for the purpose of rebuttals until both arguments are complete.

(3) If a ballot measure is the product of a special session of the legislature and the secretary of state determines that the deadlines set forth in subsection (2) of this section are impractical due to the timing of that special session, then the secretary of state may establish a schedule of deadlines unique to that measure.

(4) The deadlines stated in this rule are intended to promote the timely publication of the voters pamphlet. Nothing in this rule shall preclude the secretary of state from accepting a late filing when, in the secretary's judgment, it is reasonable to do so.

WSR 08-23-016

PROPOSED RULES

DEPARTMENT OF HEALTH

(Veterinary Board of Governors)

[Filed November 6, 2008, 5:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-03-070.

Title of Rule and Other Identifying Information: WAC 246-933-300, adding the PAVE (program for assessment of veterinary education equivalence) program as an option for veterinary specialty licensure.

Hearing Location(s): Department of Health, 20435 72nd South, Second Floor, Conference Room One, Kent, WA 98032, on March 2, 2009, at 1:00 p.m.

Date of Intended Adoption: March 2, 2009.

Submit Written Comments to: Judy Haenke, P.O. Box 47868, Olympia, WA 98504-7868, web site <http://www3>.

doh.wa.gov/policyreview/, fax (360) 686-4359, by February 16, 2009.

Assistance for Persons with Disabilities: Contact Judy Haenke by February 16, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The veterinary board of governors approves the Education Commission for Foreign Veterinary Graduates (ECFVG) and the PAVE as a pathway to full licensure. Both programs assess the educational equivalence of graduates from nonaccredited programs. The ECFVG program is also an option for specialty licensure under WAC 246-933-300. The proposed rule would add the PAVE program as an option for specialty licensure.

Reasons Supporting Proposal: The veterinary board of governors approves the ECFVG and the PAVE to evaluate education of candidates for full licensure. Only the ECFVG is referenced in WAC 246-933-300 as a pathway to licensure. Since PAVE is also an approved pathway, it should also be an option for specialty licensure.

Statutory Authority for Adoption: RCW 18.92.030, 18.92.135.

Statute Being Implemented: RCW 18.92.135.

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

Name of Proponent: Department of health, veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Judy Haenke, 310 Israel Road S.E., Tumwater, WA 98310, (360) 236-4828.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. The rule does not set or change a standard to obtain or keep a license. The rule does not create or significantly amend a policy or regulatory program.

November 5, 2008

William H. Keatts, DVM, Chair
Veterinary Board of Governors

AMENDATORY SECTION (Amending Order 299B, filed 8/19/92, effective 9/19/92)

WAC 246-933-300 Veterinary specialty licensure. (1) A person may be licensed to practice only specialized veterinary medicine in Washington state. Application for specialty licensure shall be made on forms provided by the secretary and include:

(a) Official transcript or other evidence of graduation from an American Veterinary Medical Association approved or accredited college or university; or

(b) Certification (~~from~~) that the applicant has successfully completed either:

(i) The American Veterinary Medical Association's Educational Commission for Foreign Veterinary Graduates; or

(ii) The American Association of Veterinary State Board's Program for the Assessment of Veterinary Education Equivalence (PAVE); and

(c) Documented licensure, in good standing, to practice veterinary medicine in any state, United States territory, or province of Canada; and

(d) Certification as a diplomate of a national board or college recognized in the specialty area for which application is submitted.

(2) Applicants must pass a written examination approved by the board pertaining to laws regulating the practice of veterinary medicine in the state of Washington. Examination grades will be based on a possible score of one hundred percent with a minimum passing score of ninety percent.

(3) At the time of license renewal, licensees must present evidence of continued certification by the veterinary specialty board authority.

(4) The veterinary board of governors recognizes all veterinary medicine specialties recognized by the American Veterinary Medical Association. The practice of a veterinarian licensed as a specialized practitioner is limited to the specific specialty for which licensed.

(5) Individuals licensed as a veterinary specialist are subject to chapter 18.130 RCW.

(6) Veterinary specialty licensees shall be charged the impaired veterinarian assessment on each license issuance or renewal: Provided however, That no licensee shall pay more than one impaired veterinarian assessment per year.

WSR 08-23-024

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed November 7, 2008, 12:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-14-160.

Title of Rule and Other Identifying Information: WAC 192-150-170 Meaning of good cause—RCW 50.20.050(2). The proposed new rule specifies the circumstances under which an individual may establish good cause for voluntarily leaving work other than those good cause reasons enumerated in the statute. WAC 192-16-009 is repealed.

Hearing Location(s): Employment Security Department, Maple Leaf Conference Room, 212 Maple Park, Olympia, WA, on April 7, 2009, at 10:00 a.m.

Date of Intended Adoption: April 17, 2009.

Submit Written Comments to: Pamela Ames, Agency Rules Coordinator, Employment Security Department, P.O. Box 9047, Olympia, WA 98507-9047, e-mail pames@esd.wa.gov, fax (360) 902-9569, by April 6, 2009.

Assistance for Persons with Disabilities: Contact Beverly Peterson by April 6, 2009, TTY (360) 902-9569 or (360) 902-9234.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This filing adopts a new rule in chapter 192-150 WAC, Job separations. The rule describes the conditions under which an individual may establish good cause for voluntarily leaving work for reasons other than the eleven enumerated in statute. WAC 192-16-009 is repealed. It lists the factors under which an individual

could establish good cause for quitting work prior to January 1, 2004, and is obsolete.

Reasons Supporting Proposal: On June 19, 2008, the Washington supreme court issued a published opinion holding that the list of eleven reasons listed in RCW 50.20.050(2) as constituting good cause for voluntarily leaving work was not exclusive. The court held that the department has the responsibility to consider whether other factors constitute the requisite good cause. Existing rules address only the eleven good cause reasons listed in the statute. The proposed rule explains the other factors that will be considered by the department, as required by the court.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.20.010.

Statute Being Implemented: RCW 50.20.050.

Rule is necessary because of state court decision, *Spain v. ESD* (79878-8) consolidated with *Batey v. ESD* (80309-9).

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Juanita Myers, 212 Maple Park, Olympia, (360) 902-9665; Implementation and Enforcement: Nan Thomas, 212 Maple Park, Olympia, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is mandated under the Washington supreme court's ruling. Any impact created by the rule affects all businesses, not just small businesses. Separations from work based on undue hardship to the employee constitute only about 1-2% of voluntary quits.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Juanita Myers, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone (360) 902-9665, fax (360) 902-9799, e-mail jmyers@esd.wa.gov.

November 7, 2008

Paul Trause
Deputy Commissioner

NEW SECTION

WAC 192-150-170 Meaning of good cause—RCW 50.20.050(2). (1) **General.** RCW 50.20.050(2) provides that you will not be disqualified from receiving unemployment benefits when you voluntarily leave work for good cause. The Washington Supreme Court in *Spain v. Employment Security Department* held that the factors listed in RCW 50.20.050 (2)(b) are not the only circumstances in which an individual has good cause for voluntarily leaving work. While these are considered *per se* or stand alone good cause reasons, the court held that the department is required under RCW 50.20.050 (2)(a) to consider whether other circumstances constitute good cause for voluntarily leaving work.

(2) **Other factors constituting good cause—RCW 50.20.050 (2)(a).** The department may determine that you had good cause to leave work voluntarily for reasons other than those listed in RCW 50.20.050 (2)(b).

(i) For separations under subsection (3) below, all of the following conditions must be met to establish good cause for voluntarily leaving work:

(A) You left work primarily for reasons connected with your employment; and

(B) These work-connected reasons were of such a compelling nature they would have caused a reasonably prudent person to leave work; and

(C) You first exhausted all reasonable alternatives before you quit work, unless you are able to show that pursuing reasonable alternatives would have been futile.

(ii) **Substantial involuntary deterioration of the work.** As determined by the legislature, RCW 50.20.050 (2)(b), subsections (v) through (x), represent changes to employment that constitute a substantial involuntary deterioration of the work.

(3) **Unreasonable hardship.** In addition to the good cause reasons listed in RCW 50.20.050 (2)(b), other work-connected circumstances may constitute good cause if you can show that continuing in your employment would work an unreasonable hardship on you. "Unreasonable hardship" means a result not due to your voluntary action that would cause a reasonable person to leave that employment. The circumstances must be based on existing facts, not conjecture, and the reasons for leaving work must be significant.

Examples of work-connected unreasonable hardship circumstances that may constitute good cause include, but are not limited to, those where:

(A) Repeated behavior by your employer or co-worker(s) creates an abusive working environment.

(B) You show that your health or physical condition or the requirements of the job have changed so that your health would be adversely affected by continuing in that employment.

(3) **Commissioner Approved Training.** After you have been approved by the department for Commissioner Approved Training, you may leave a temporary job you have taken during training breaks or terms, or outside scheduled training hours, or pending the start date of training, if you can show that continuing with the work will interfere with your approved training.

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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-16-009

Disqualification for leaving work voluntarily—Meaning of good cause for claims with an effective date prior to January 4, 2004—RCW 50.20.-050(1).

WSR 08-23-033
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed November 10, 2008, 11:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-19-047.

Title of Rule and Other Identifying Information: Chapter 392-340 WAC, School district organization.

Hearing Location(s): Office of Superintendent of Public Instruction, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, on December 29, 2008, at 9:00 a.m.

Date of Intended Adoption: December 30, 2008.

Submit Written Comments to: Scott Black, Office of Superintendent of Public Instruction, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, by December 26, 2008.

Assistance for Persons with Disabilities: Contact Penny Coker by December 26, 2008, TTY (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 2008 legislation required changes to be made to chapter 392-340 WAC; the emergency rule process was utilized to quickly enact changes to the WAC chapter to be consistent with the legislative changes.

Reasons Supporting Proposal: A requirement for utilizing the emergency rule process is to allow for public comments by conducting a public hearing. We solicited comments from interested stakeholders before submitting the emergency rule change, but we want to make sure that everyone has had a chance to provide comments to the proposed rules.

Statutory Authority for Adoption: RCW 28A.525.020 Duties of the superintendent of public instruction.

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

Name of Proponent: None, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Scott Black, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6268; and Enforcement: Gordon Beck, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6261.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose any costs on school districts.

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

November 10, 2008

Terry Bergeson

Superintendent of

Public Instruction

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-003 Authority. The general authority for this chapter is RCW ((~~28A.305.130~~)) 28A.315.005,

28A.315.015 (2)(e), 28A.315.175, 28A.315.195(4), and 28A.315.205(3).

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-007 Purpose and policy of chapter.

((~~1~~)) The purpose of this chapter is the same as set forth under RCW 28A.315.015((~~1~~)).

((~~2~~)) ~~It is the policy of the state that decisions on changes in school district boundaries should be made by the affected districts whenever possible. When this is not possible the decision shall be made by the appropriate regional committee on school district organization consistent with the following policies:~~

(a) ~~A balance of local petition requests and the needs of the statewide community at large in a manner that advances the best interest of public education (see RCW 28A.315.015 (2)(a) for full text);~~

(b) ~~Contributing to logical service boundaries (see RCW 28A.315.015 (2)(b) for full text);~~

(c) ~~Enhancing the educational opportunities of pupils (see RCW 28A.315.015 (2)(c) for full text); and~~

(d) ~~Promoting a wiser use of public funds (see RCW 28A.315.015 (2)(d) for full text.);~~

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-00701 Regional committee ((~~decision-making criteria~~)) decision making. (1) The regional committee shall give consideration to all of the ((~~following~~)) criteria in RCW 28A.315.015 (2)(a) through (d) and 28A.315.205 (4)(a) through (e) when reviewing the proposed transfer of territory:

((~~a~~)) ~~Student educational opportunities (see RCW 28A.315.205 (4)(a) for full text);~~

(b) ~~Safety and welfare of pupils (see RCW 28A.315.205 (4)(b) for full text);~~

(c) ~~History and relationship of the property affected to the students and communities affected (see RCW 28A.315.205 (4)(c) for full text). "Communities affected" includes all citizens living within the territory proposed to be transferred, all other citizens residing within the school district from which the proposed territory will be transferred, all citizens living within the immediate locale/neighborhood of which the proposed territory will become part, and all citizens residing within the school district to which the proposed territory will be transferred;~~

(d) ~~Geographic accessibility (see RCW 28A.315.205 (4)(d) for full text);~~

(e) ~~Disparities in per pupil valuation, economies of operation and transportation costs (see RCW 28A.315.205 (4)(e) for full text); and~~

(f) ~~Other criteria or considerations as may be established in rule by the superintendent of public instruction. (RCW 28A.315.015 (2)(e-))~~

(2) The boundaries of the school districts affected by a proposed change in school district organization shall be contiguous to one another.

(3) When considering student educational opportunities under RCW 28A.315.205 (4)(a), the regional committee shall not consider one set of test scores alone as a sufficient basis to make a judgment about student educational opportunities. Test scores in the district affected by the proposed transfer of territory shall be looked at in context, including over time and by disaggregating the scores by student subgroups.

(4) "Communities affected" under RCW 28A.315.205 (4)(c), include all citizens living within the territory proposed to be transferred, all other citizens residing within the school district from which the proposed territory will be transferred, all citizens residing within the school district to which the proposed territory will be transferred.

(5) When considering "geographic accessibility" under RCW 28A.315.205 (4)(d), ("geographic accessibility" includes, but is not limited to, consideration of) the regional committee shall consider, but is not limited to the following factors:

(a) Mountains, hills, valleys, wasteland, and related geographic and man-made features, which either enhance or impede travel.

(b) Rivers, lakes, canals, and other natural or man-made waterways and bodies of water, which either enhance or impede travel.

(c) The extent and nature of roads, highways, ferries, and traffic patterns.

(d) Climatic conditions.

(e) Time required to travel to and from school.

~~((4))~~ In considering student educational opportunities under subsection (1)(a) of this section, the regional committee shall not consider one set of test scores, alone, as a sufficient basis to make a judgment about student educational opportunities. Test scores in the districts affected by the proposed transfer of territory shall be looked at in context, including over time and by disaggregating the scores by student subgroups.

~~((5))~~ (6) After considering ((geographic accessibility under subsection (1)(d) of this section)) all factors, the regional committee shall make one judgment on geographic accessibility, regardless of how many individual components may apply to the particular transfer of territory petition.

~~((6))~~ (7) Each regional committee shall use the same criterion checklist included in the ((Lay Person's)) Guide to *Changing School District Boundaries* and published on the superintendent of public instruction web site.

~~((7))~~ (8) If a regional committee needs to continue a public hearing or schedule more than one additional hearing on a proposed transfer of territory, each such hearing is subject to public notice requirements.

~~((8))~~ (9) Regional committees shall use the decision format (motion) included in the ((Lay Person's)) Guide to *Changing School District Boundaries* and published on the superintendent of public instruction web site.

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-207 Transfer of territory—Other district requirements. (1) At least one member of each school board whose district is affected by a proposed transfer of ter-

ritory must be part of the respective district's negotiating team.

(2)(a) Upon reaching a decision recommendation through the district-to-district negotiation process on a proposed transfer of territory, the negotiating parties shall produce, at a minimum, a written summary of the recommendation, including rationale for the recommendation, and submit to the respective affected school district boards of directors.

(b) Each school board of directors shall adopt at a public meeting of the board a written resolution indicating whether the board approves or disapproves the recommendation on the proposed transfer of territory. The resolution format included in the *((Lay Person's)) Guide to Changing School District Boundaries* and published on the superintendent of public instruction web site shall be used.

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-209 Transfer of territory—Sufficiency of written record for appeal to the superintendent of public instruction—Referral of case back to regional committee. (1) For purposes of review by the superintendent of public instruction, the record of regional committee proceedings must be sufficient to allow the superintendent of public instruction to determine what facts the regional committee relied on in applying the required statutory and regulatory criteria. Evidence of facts relied on may be contained in the written findings required in RCW 28A.315.205(2) or in a written verbatim transcript of the proceedings, or elsewhere in the record.

(2) When referring a transfer of territory case back to the originating regional committee, the superintendent of public instruction will make every effort to submit the written referral ~~((within fourteen days of a decision))~~ as expeditiously as possible.

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-210 Adjustment of assets and liabilities—Time considerations. ~~((1))~~ In determining an equitable adjustment of assets and liabilities, the negotiating school districts and the regional committees shall consider the factors under RCW 28A.315.245.

~~((2))~~ A regional committee is authorized to phase in the adjustment of assets and liabilities over a period not less than two years nor more than eight years. This authorization is subject to the annual March 1 deadline for taxing districts to establish the taxing boundaries and rates for the ensuing tax collection year.

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-225 Frequency of petitions—Limitation. ~~((1))~~ The authority for this section is RCW 28A.315.195(4) which authorizes the superintendent of public instruction to establish rules limiting the frequency of petitions that may be filed pertaining to territory included in whole or in part in a previous petition.

(2)) An educational service district superintendent may not accept a petition to transfer territory if any portion of such territory was included in a previous petition brought before the regional committee, unless five years have expired since the date of final disposition of the previous petition.

NEW SECTION

WAC 392-340-336 Regional committee members—Position numbers—Appointments—Terms of office. (1) Regional committee members shall be appointed by the educational service district boards of directors in accordance with RCW 28A.315.105.

(2) Regional committee member position numbers shall be assigned by the educational service district superintendent. Regional committee member positions one, three, seven, and nine shall serve terms staggered with positions two, four, six, and eight. Each position shall correspond to an educational service district director districts determined pursuant to chapter 28A.310 RCW.

(3) Regular appointments of regional committee members shall be made in even-numbered years for four-year terms.

(4) Appointments to fill vacancies occurring during a term shall be made as soon as possible and shall be for the remainder of the original term.

(5) Each committee member must reside in the director district for which the appointment is made.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-340-009 Constitutional and statutory framework.
- WAC 392-340-105 Election of regional committee members—Applicable provisions.
- WAC 392-340-110 Election of regional committee members—Election officer.
- WAC 392-340-115 Election of regional committee members—Dissolution—Position numbers—Initial elections—Regular elections—Terms of office.
- WAC 392-340-120 Election of regional committee members—Tentative certification of electors.
- WAC 392-340-125 Election of regional committee members—Call for election—Regional committee members.
- WAC 392-340-130 Election of regional committee members—Candidates—Eligibility—Filing.

- WAC 392-340-135 Election of regional committee members—Declaration and affidavit of candidacy form.
- WAC 392-340-140 Election of regional committee members—Biographical data form.
- WAC 392-340-145 Election of regional committee members—Withdrawal of candidacy.
- WAC 392-340-150 Election of regional committee members—Ballots—Contents.
- WAC 392-340-155 Election of regional committee members—Ballots and envelopes—Mailing to voters.
- WAC 392-340-160 Election of regional committee members—Voting—Marking and return of ballots.
- WAC 392-340-165 Election of regional committee members—Election board—Appointment and composition.
- WAC 392-340-170 Election of regional committee members—Receipt of ballots and count of votes.
- WAC 392-340-175 Election of regional committee members—Ineligible votes.
- WAC 392-340-180 Election of regional committee members—Recount of votes cast—Automatic or by request.
- WAC 392-340-185 Election of regional committee members—Certification of election.
- WAC 392-340-190 Election of regional committee members—Run-off elections.
- WAC 392-340-205 Transfer of territory—Procedures and timelines.
- WAC 392-340-335 Election of regional committee members—Certification of electors.

WSR 08-23-048
PROPOSED RULES
HORSE RACING COMMISSION

[Filed November 14, 2008, 8:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-20-089.

Title of Rule and Other Identifying Information: WAC 260-24-580 Starter and assistant starters.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on January 8, 2009, at 9:30 a.m.

Date of Intended Adoption: January 8, 2009.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by January 5, 2009.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 5, 2009, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC 260-24-580(1) to allow the starter to recommend horses to the stewards that should be scratched from racing because a horse refuses to load in the starting gate or is being unruly.

Reasons Supporting Proposal: Currently a horse at the gate can only be scratched if the horse or rider is injured. However, there may be times where a horse that is not injured should be scratched. This proposal does not give the starter the authority to scratch a horse, but only the authority to recommend to the stewards that a horse be scratched from a race.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

November 14, 2008

R. J. Lopez

Deputy Secretary

AMENDATORY SECTION (Amending WSR 08-05-088, filed 2/15/08, effective 3/17/08)

WAC 260-24-580 Starter and assistant starters. (1)

The starter is responsible for the following duties:

(a) Approve all horses which have never started to ensure that the horse is familiar with, and capable of, breaking from the starting gate.

(b) Ensure all participants have an equal opportunity to a fair start;

(c) Supervise the assistant starters;

(d) Provide a sufficient number of assistant starters for each race;

(e) Assign the starting gate stall positions to assistant starters and notify the assistant starters of their respective stall positions, or assign a foreman to act in his behalf, before post time for each race;

(f) Assess and make recommendations to the board of stewards on the ability of each person applying for an initial jockey license in breaking from the gate and working a horse in the company of other horses;

(g) Load horses into the gate in any order necessary to ensure a safe and fair start;

(h) Recommend to the stewards horses that should be scratched because a horse at the starting gate is refusing to load or is unruly.

(2) The starter will place and remove horses on the starter's list for poor or unruly behavior in the starting gate. Horses placed on the starter's list will be refused entry until the horse has been satisfactorily schooled in the starting gate. Schooling will be under the direct supervision of the starter or his designee.

(3) The starter has complete authority over the starting gate, the starting of horses, and the authority to give orders, which are not in conflict with these rules.

(4) The starter will appoint all assistant starters. Assistant starters must first demonstrate they are adequately trained to safely handle horses in the starting gate. In emergencies the starter may appoint qualified individuals to act as substitute assistant starters.

(5) Assistant starters may not:

(a) Handle or take charge of any horse in the starting gate without the expressed permission of the starter;

(b) Impede the start of a race;

(c) Strike a horse with a whip;

(d) Use a device, unless approved by the stewards, to assist in the loading of a horse into the starting gate;

(e) Slap, boot or otherwise dispatch a horse from the starting gate;

(f) Strike or use abusive language to a jockey; or

(g) Accept or solicit any gratuity or payment other than his/her regular salary, directly or indirectly, for services in starting a race.

(6) The starter and assistant starters will report all unauthorized activities to the stewards.

WSR 08-23-049
PROPOSED RULES
HORSE RACING COMMISSION

[Filed November 14, 2008, 8:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-20-041.

Title of Rule and Other Identifying Information: WAC 260-34-020 Drug and alcohol violations.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on January 8, 2009, at 9:30 a.m.

Date of Intended Adoption: January 8, 2009.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by January 5, 2009.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 5, 2009, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend WAC 260-34-020 to lower the maximum allowable alcohol concentration for persons on horseback to 0.02%.

Reasons Supporting Proposal: Riding a horse on the grounds of a licensed racing facility presents a number of dangers to both the rider and other participants. Riders must be in full control of their faculties while on horseback. The current maximum allowable alcohol concentration of 0.08% is insufficient to continue the agency's efforts to protect both the human and equine participants.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

November 14, 2008

R. J. Lopez

Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-07-008, filed 3/8/07, effective 4/8/07)

WAC 260-34-020 Drug and alcohol violations. No licensee or applicant, while acting in an official capacity or participating directly in horse racing, ~~((shall))~~ will commit any of the following violations:

(1) Be under the influence of or affected by intoxicating liquor and/or drugs, have an alcohol concentration of 0.08 percent or higher, or have within their body any illegal controlled substance while on the grounds of any licensed race meet;

The alcohol concentration for persons on horseback may not be 0.02 percent or higher.

(2) Engage in the illegal sale or distribution of alcohol;

(3) Engage in the illegal sale or distribution of a controlled substance or possess an illegal controlled substance with intent to deliver;

(4) Possess an illegal controlled substance;

(5) Possess on the grounds of any licensed race meet any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing an

illegal controlled substance, or any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance; or

(6) Refuse to submit to blood, breath and/or urine testing, when notified that such testing is conducted pursuant to the conditions of WAC 260-34-030.

Failure to provide a blood, breath and/or urine sample when directed or intentional contamination of the sample by any person tested for the purpose of preventing accurate analysis of the sample, or other actions with intent to subvert the test, ~~((shall))~~ will be considered a refusal to submit to a test.

"Controlled substance" or "drug" as used in this chapter means any substance listed in chapter 69.50 RCW or legend drug as defined in chapter 69.41 RCW. The presence of a controlled substance or drug in any quantity measured by the testing instrument establishes the presence of that substance for the purpose of this section. The fact that a licensee or applicant is or has been entitled to use a drug under the laws of the state of Washington ~~((shall))~~ will not constitute a defense against a violation for being under the influence of or affected by intoxicating liquor and/or any drug.

WSR 08-23-050

PROPOSED RULES

HORSE RACING COMMISSION

[Filed November 14, 2008, 8:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-20-073.

Title of Rule and Other Identifying Information: WAC 260-40-040 Making entries and nominations.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on January 8, 2009, at 9:30 a.m.

Date of Intended Adoption: January 8, 2009.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by January 5, 2009.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 5, 2009, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend WAC 260-40-040 to (1) incorporate language in a current policy/interpretive statement; and (2) clarifies the many different methods current technology affords owners and trainers in making entries and nominations (of horses for races).

Reasons Supporting Proposal: (1) The proposal includes language in a long-standing policy/interpretive statement into rule; and (2) allows the owner or trainer to utilize modern technology to make entries and nominations.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

November 14, 2008

R. J. Lopez
Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-07-010, filed 3/8/07, effective 4/8/07)

WAC 260-40-040 Making entries and nominations.

(1) Entries and nominations must be ~~((made))~~ submitted in writing on the forms provided by the association and signed by the owner, trainer or ~~((designee))~~ if designated, the jockey agent. ~~((Each association will provide blank forms on which entries and declarations are made.))~~ The racing secretary may accept entries and nominations by telephone, facsimile or other electronic method deemed acceptable by the association. A telephone or electronic entry or nomination will be confirmed promptly in writing if requested by the stewards or the racing secretary.

(2) ~~((Entries may be made by telephone but must be confirmed in writing prior to the closing of entries.))~~ Persons entering or nominating a horse are responsible for the accuracy of the information provided at the time of entry or nomination.

WSR 08-23-051

PROPOSED RULES

HORSE RACING COMMISSION

[Filed November 14, 2008, 8:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-20-046.

Title of Rule and Other Identifying Information: WAC 260-44-150 Horseshoes.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on January 8, 2009, at 9:30 a.m.

Date of Intended Adoption: January 8, 2009.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by January 5, 2009.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 5, 2009, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend WAC 260-44-150 to adopt the model rule on toe grabs from 4mm to 2mm on the front shoes of thoroughbred horses while racing or training on any surface or conditions.

Reasons Supporting Proposal: In December 2007 the agency amended this section by limiting the size of toe grabs on the front shoes of thoroughbred horses to 4mm. Since then, additional research has suggested that 4mm toe grabs still presents a danger to the legs of race horses. As a result, the Jockey Club Thoroughbred Safety Committee recommended reducing the length of toe grabs from 4mm to 2mm in an effort to reduce the risk of musculoskeletal injury.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

November 14, 2008

R. J. Lopez
Deputy Secretary

AMENDATORY SECTION (Amending WSR 08-01-053, filed 12/13/07, effective 1/13/08)

WAC 260-44-150 Horseshoes. (1) A horse starting in a race must be fully shod with racing plates.

(2) During off-track conditions the trainer is required to report any additional traction devices to the board of stewards or designee.

(3) For turf racing, horses must be shod with racing plates approved by the association.

(4) Toe grabs with a height greater than ~~((four))~~ two millimeters, worn on the front shoes of thoroughbred horses while racing or training on any surface or conditions are prohibited.

WSR 08-23-065

PROPOSED RULES

NOXIOUS WEED

CONTROL BOARD

[Filed November 17, 2008, 1:23 p.m.]

Continuance of WSR 08-20-124.

Title of Rule and Other Identifying Information: Chapter 16-750 WAC, State noxious weed list and schedule of monetary penalties, the board is proposing to amend the state noxious weed list and state weed board meeting guidelines.

Date of Intended Adoption: December 15, 2008.

November 17, 2008

Alison Halpern
Executive Secretary

WSR 08-23-074
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed November 18, 2008, 9:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-20-019.

Title of Rule and Other Identifying Information: Chapter 16-30 WAC, Restricted feedlots and restricted holding facilities.

Hearing Location(s): Kittitas County Event Center, Heritage Center, 512 North Poplar Street, Ellensburg, WA 98926, on December 29, 2008, at 1:00 p.m.; and at the Natural Resources Building, 1111 Washington Street S.E., First Floor Conference Room #175A&B, Olympia, WA 98504, on December 30, 2008, at 1:00 p.m.

Date of Intended Adoption: January 9, 2009.

Submit Written Comments to: Dannie McQueen, P.O. Box 42560, Olympia, WA 98504, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., January 2, 2009.

Assistance for Persons with Disabilities: Contact WSDA receptionist by December 22, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Washington state has seen an increase in tuberculosis cases from cattle importing into the state and entering our feedlot industry. The department is proposing to amend chapter 16-30 WAC to remove exceptions for certain cattle movement from restricted feedlots. This will confine these untested animals to the feedlot to avoid potential infection of our state's breeding herds.

Reasons Supporting Proposal: These changes are necessary to prevent the spread of disease in the state, to protect the public's health and welfare, and are a part of the department's ongoing commitment to regulatory improvement under Executive Order 06-02, 05-03, and 97-02.

Statutory Authority for Adoption: Chapters 16.36 and 34.05 RCW.

Statute Being Implemented: Chapter 16.36 RCW.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Kohrs, DVM, Olympia, (360) 902-1835; and Enforcement: Leonard Eldridge, DVM, Olympia, (360) 902-1878.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on businesses in an industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they are negligible costs on the regulated industry and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

November 18, 2008

Leonard E. Eldridge, DVM

State Veterinarian

AMENDATORY SECTION (Amending WSR 08-01-095, filed 12/17/07, effective 1/17/08)

WAC 16-30-030 Conditions of permit to operate a restricted feedlot. The operator of a restricted feedlot must abide by the following conditions:

(1) There ~~((may))~~ shall be no contact between animals not also similarly restricted.

(2)~~((a))~~ No cattle ~~(, except for brucellosis vaccinated females, may))~~ shall be removed from the restricted feedlot except to a federally inspected slaughter plant, a slaughter plant of like status, or a restricted feedlot of like status ~~((or to a licensed public livestock market where they will be marketed for immediate slaughter.~~

~~(b) Cattle that move from a restricted feedlot to a public livestock market must be identified with an "F" brand and remain in the slaughter channels.~~

~~(c) Female cattle that are calthood vaccinated may be removed from the restricted feedlot for breeding purposes only and by permit from the director. Calthood vaccinated female cattle that are test eligible must also test negative for brucellosis and tuberculosis before removal from the restricted feedlot for breeding purposes.~~

~~(d) Bulls under six months of age may be removed from the restricted feedlot for breeding purposes only).~~

(3) The restricted feedlot will be maintained in a ~~((sanitary))~~ condition that follows common industry practices to mitigate disease risk.

(4) The department will be notified immediately of any outbreak of any infectious or contagious disease.

(5) The disposal of dead livestock will be in accordance with the laws relating to the disposal of dead livestock and in accordance with chapter 16-25 WAC.

(6) Accurate records will be kept for six years accounting for all cattle entering and leaving the restricted feedlot.

(7) Proper facilities shall be provided for inspection of brands, branding, and identification of cattle.

WSR 08-23-075
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed November 18, 2008, 9:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-20-020.

Title of Rule and Other Identifying Information: Chapter 16-86 WAC, Cattle and bison diseases in Washington state.

Hearing Location(s): Kittitas County Event Center, Heritage Center, 512 North Poplar Street, Ellensburg, WA

98926, on December 29, 2008, at 9:00 a.m.; and at the Natural Resources Building, 1111 Washington Street S.E., First Floor Conference Room #175A&B, Olympia, WA 98504, on December 30, 2008, at 1:00 p.m.

Date of Intended Adoption: January 9, 2009.

Submit Written Comments to: Dannie McQueen, P.O. Box 42560, Olympia, WA 98504, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., January 2, 2009.

Assistance for Persons with Disabilities: Contact WSDA receptionist by December 22, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Washington state has seen an increase in tuberculosis cases from cattle imported into this state. The United States Department of Agriculture's Tuberculosis Uniform Methods and Rules now have standards for tuberculosis responder detection rates for private veterinarians performing caudal fold testing. Washington must meet these standards to assure proper testing measures are in place to protect the industry. The Washington state department of agriculture (WSDA) is proposing rules to require training for private veterinarians who perform tuberculosis testing.

Reasons Supporting Proposal: By requiring that private veterinarians are properly trained to perform tuberculosis caudal fold tests, the state of Washington will meet the standards required under the United States Department of Agriculture's Tuberculosis Uniform Methods and Rules and will help protect the livestock industry and the public's health.

Statutory Authority for Adoption: Chapters 16.36 and 34.05 RCW.

Statute Being Implemented: Chapter 16.36 RCW.

Rule is necessary because of federal law, [no further information supplied by agency].

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Kohrs, DVM, Olympia, (360) 902-1835; and Enforcement: Leonard Eldridge, DVM, Olympia, (360) 902-1878.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on businesses in an industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they are negligible costs on the regulated industry and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

November 18, 2008
Leonard E. Eldridge, DVM
State Veterinarian

AMENDATORY SECTION (Amending WSR 08-01-094, filed 12/17/07, effective 1/17/08)

WAC 16-86-005 Definitions. In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"Accredited veterinarian" means a veterinarian licensed to practice veterinary medicine, surgery, and dentistry in the state of Washington and approved by the United States Department of Agriculture (USDA) Veterinary Services to participate in state-federal cooperative programs.

"Breed registry tattoo" means individual registry tattoos issued by breed associations.

"Brucellosis vaccine" means only those *Brucella abortus* products that are approved by and produced under license of the USDA for injection into cattle to enhance their resistance to brucellosis.

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

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

"Official calfhooed vaccinate" means female cattle between four and twelve months of age that are vaccinated with brucellosis vaccine at a calfhooed dose (2cc subcutaneously).

"Official identification" means identifying an animal or group of animals using devices or methods approved by the director, including, but not limited to, official tags, unique breed registry tattoos, and registered brands when accompanied by a certificate of inspection from a brand inspection authority who is recognized by the director.

"Official Washington mature vaccinate" means female cattle over the age of twelve months that are native to Washington state, or originate from other class free states or countries to be determined on a case-by-case investigation by the director, and vaccinated with a reduced dose of brucellosis vaccine (0.25cc subcutaneously) under directions issued by the director.

"Premises" means a location or physical address.

"Timed events" means competitive events that take place where time elapsed is the factor that determines the placing of individuals competing in the event.

"USDA" means the United States Department of Agriculture.

"Vaccination tattoo" means a tattoo in the right ear bearing the United States registered shield and V preceded by a number indicating the quarter of the year and followed by a number corresponding to the last digit of the year in which the animal was vaccinated with strain 19 *Brucella* vaccine. For strain RB-51 calfhooed vaccination, an R precedes the shield and V. In the case of strain RB-51 mature vaccination, an M precedes the shield and V. For strain RB-51 vaccinates, the last number of the tattoo corresponds to the last digit of the year in which vaccine was administered.

NEW SECTION

WAC 16-86-125 Duties of accredited veterinarians—Training requirement for veterinarians performing tuberculosis testing in cattle and bison. (1) All testing of cattle or bison in Washington state for tuberculosis shall be

performed by a veterinarian accredited by the United States Department of Agriculture, Animal and Plant Health Inspection Service (USDA APHIS). In addition, all accredited veterinarians testing cattle or bison in Washington state for tuberculosis are required to successfully complete training in tuberculosis testing procedures provided by USDA or the department. Accredited veterinarians who have not successfully completed the training by April 30, 2010, may not perform official tuberculosis testing of cattle or bison in Washington state. A schedule of training opportunities is available by contacting the department at:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, Washington 98504-2577
360-902-1878.

(2) The department may review the testing results and other records associated with tuberculosis testing of cattle or bison by accredited veterinarians in Washington state. In the event that the response rates reported by an accredited veterinarian do not meet the response rates standards established in Appendix C of the *Bovine Tuberculosis Eradication Uniform Methods and Rules*, effective January 1, 2005 (adopted in WAC 16-86-120), the director may require additional training or may refuse to accept the testing of cattle or bison for tuberculosis performed by that veterinarian.

WSR 08-23-076

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed November 18, 2008, 9:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-14-059.

Title of Rule and Other Identifying Information: Chapter 16-90 WAC, Penalty schedule.

Hearing Location(s): Kittitas County Event Center, Heritage Center, 512 North Poplar Street, Ellensburg, WA 98926, on December 29, 2008, at 10:00 a.m.; and at the Natural Resources Building, 1111 Washington Street S.E., First Floor Conference Room #175A&B, Olympia, WA 98504, on December 30, 2008, at 10:00 a.m.

Date of Intended Adoption: January 9, 2009.

Submit Written Comments to: Dannie McQueen, P.O. Box 42560, Olympia, WA 98504, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., January 2, 2009.

Assistance for Persons with Disabilities: Contact WSDA receptionist by December 22, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During the 2007 legislative session, the Washington state department of agriculture was given authority to assess civil penalties for violations of chapter 16.36 RCW and rules adopted under the

chapter. The department is proposing to develop a new chapter within Title 16 WAC that would describe the department's process in assessing penalties, the types of violations, and the monetary amount per violation.

Reasons Supporting Proposal: Having the ability to assess civil penalties for violations of chapter 16.36 RCW will serve as a deterrent for further violations of the state's animal health requirements, which will protect Washington state's livestock industry and the health, safety, and welfare of the state's citizens.

Statutory Authority for Adoption: Chapters 16.36 and 34.05 RCW.

Statute Being Implemented: Chapter 16.36 RCW.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Kohrs, DVM, Olympia, (360) 902-1835; and Enforcement: Leonard Eldridge, DVM, Olympia, (360) 902-1878.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on businesses in an industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they are negligible costs on the regulated industry and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

November 18, 2008

Leonard E. Eldridge, DVM
State Veterinarian

Chapter 16-90 WAC

PENALTY SCHEDULE

NEW SECTION

WAC 16-90-005 Purpose. The purpose of this chapter is to provide for fair and uniform determination of penalties issued under RCW 16.36.113 and to provide for fair and uniform actions taken in relation to permits or licenses issued by the department as a result of violations of chapter 16.36 RCW and the rules adopted under that statute.

NEW SECTION

WAC 16-90-010 Penalty outline. (1) In accordance with RCW 16.36.113, any person who violates chapter 16.36 RCW or the rules adopted under that statute may be subject to a civil penalty in an amount of not more than one thousand dollars for each violation.

(2) Each violation is a separate and distinct offense. Penalties may be assessed per violation or per head when pertaining to animals, depending on the unique circumstances of the

violation(s). Every person who, through an act of commission or omission, procures, aids, or abets in the violation is in violation and may be subject to a civil penalty. When a person has committed multiple violations, the violations are cumulative for purposes of calculating the appropriate penalty. Penalties will be added together.

(3) Moneys collected from civil penalty payments will be deposited in the state general fund.

(4) Nothing in this chapter shall prevent the department from:

(a) Choosing not to pursue a civil penalty, permit or license denial, suspension, or revocation;

(b) Issuing a notice of correction in lieu of pursuing a civil penalty, permit or license denial, suspension, or revocation;

(c) Negotiating settlement(s) of cases on such terms and for reasons as it deems appropriate.

(5) A prior violation covered by a settlement agreement may be used by the department for the purpose of determining the appropriate penalty for future violations, if not prohibited by the agreement.

(6) A violation committed during a period when an individual's permit or license is suspended or revoked may be subject to the maximum civil penalty of one thousand dollars or revocation of the permit or license for a period of up to five years. A violation committed by an unlicensed or unpermitted person is subject to the provisions of this chapter.

(7) The department may also choose to refer a violation to any federal, state or county authority with jurisdiction over the activities in question.

NEW SECTION

WAC 16-90-015 Revoking, suspending, or denying a permit or license. (1) The department retains the sole discretion to determine when a permit or license should be revoked or suspended. In circumstances where the department determines revocation to be appropriate, the period of revocation shall be determined at the discretion of the department, but in no instance shall the revocation exceed five years.

(2) The department may deny an applicant a permit or license when the applicant has committed a violation of chapter 16.36 RCW or the rules adopted under the chapter. In circumstances where the department determines denial to be appropriate, the period of denial shall not exceed five years.

(3) Nothing shall prevent the department from denying an applicant a permit or license when the applicant has an outstanding civil penalty owed to the department from a previous violation of any statute or rule under the jurisdiction of the department.

(4) The department may, at its discretion, suspend a permit or license without also seeking a civil penalty. Such circumstances include, but are not limited to, those incidents where a civil penalty is not available as an appropriate penalty pursuant to RCW 43.05.110.

NEW SECTION

WAC 16-90-020 Issuance of a civil penalty without first issuing a notice of correction. (1) Pursuant to RCW 43.05.100, a notice of correction may be issued by the department

when they become aware of conditions and/or conduct that are not in compliance with the applicable laws and rules enforced by the department.

(2) The department may assess a civil penalty without first issuing a notice of correction in accordance with RCW 43.05.110.

NEW SECTION

WAC 16-90-030 Penalty schedule. (1) The following penalty schedule will be used for violations of Washington state animal health laws and rules, including chapter 16.36 RCW and the rules adopted under that statute. The level of civil penalty is determined by the number of prior civil penalties the person has received in the past ten years excluding notices of correction.

Violation	Procedural Violations	Disease Violations
First	\$150.00	\$250.00
Second	\$350.00	\$650.00
Third and subsequent	\$1,000.00	\$1,000.00

(2) Procedural violations: A "procedural violation" is a violation of the administrative functions associated with state import regulations where the violation did not cause a threat to Washington state's livestock industry. Procedural violations include but are not limited to violations of the following statutes and rules:

WAC 16-54-030 Certificate of veterinary inspection, and entry permit requirements.

WAC 16-54-032 Certificate of veterinary inspection—Required information.

WAC 16-54-068 Restrictions.

WAC 16-54-082 Domestic bovine animals—Importation requirements.

WAC 16-54-088 Temporary grazing permits.

WAC 16-54-105 Llamas and alpacas.

WAC 16-54-160 Birds other than poultry—Importation and testing requirements.

WAC 16-54-180 Wild and exotic animals and birds—Importation and testing requirements.

Chapter 16-74 WAC Livestock testing—Duties of owners.

WAC 16-80-045 Identification of swine.

WAC 16-86-017 Grazing permits.

(3) Disease violations: A "disease violation" is a violation of animal health statute and rules that cause a threat to Washington state's livestock industry and include the failure to obtain required testing and vaccinations prior to entry into Washington state. Disease violations include, but are not limited to, violations of the following statutes and rules:

RCW 16.36.105 Swine, garbage feeding, license—Application—Fee—Inspection.

Chapter 16-25 WAC Disposal of dead livestock.

Chapter 16-42 WAC Biological products.

WAC 16-54-025 Transporting livestock—Sanitary requirements.

WAC 16-54-028 Testing procedure requirements.

WAC 16-54-065 Prohibited entries.
 WAC 16-54-068(4) - proof of current rabies vaccination.
 WAC 16-54-071 Domestic equine and equine reproductive products—Importation requirements.
 WAC 16-54-083 Domestic and foreign bovine brucellosis requirements.
 WAC 16-54-085 Domestic bovine tuberculosis requirements.
 WAC 16-54-086 Bovine trichomoniasis requirements.
 WAC 16-54-090 Goats—Importation and testing requirements.
 WAC 16-54-101 Sheep—Importation and testing requirements.
 WAC 16-54-111 Swine—Importation and testing requirements.
 WAC 16-54-145 Poultry and game birds, including ratites—Importation and testing requirements.
 Chapter 16-59 WAC Avian diseases in Washington state.
 Chapter 16-70 WAC Animal disease—Reporting.
 Chapter 16-71 WAC Equine infectious anemia.
 WAC 16-80-025 Disinfecting premises.
 WAC 16-80-030 Disinfecting vehicles.
 WAC 16-86-015 Change of ownership requirements for cattle and bison in Washington.
 WAC 16-86-026 Brucellosis testing requirements for raw milk dairies.
 WAC 16-86-110 Q fever testing requirements for raw milk dairies.
 WAC 16-86-130 Cattle used in rodeo or timed events.
 WAC 16-86-140 Tuberculosis testing requirements for raw milk dairies.
 WAC 16-89-022 Scrapie identification of sheep and goats.
 WAC 16-89-090 Destruction and disposal of scrapie infected animals or flocks.
 WAC 16-89-120 Concealing the disease.
 WAC 16-89-150 Brucellosis testing for sheep and goat dairies.
 WAC 16-89-170 Q fever testing requirements for sheep and goat dairies.
 WAC 16-89-180 Tuberculosis testing for goat dairies.
 (4) A one thousand dollar civil penalty will be issued regardless of the number of prior violations for a violation of the following:
 (a) Chapter 16-30 WAC Restricted feedlots and restricted holding facilities;
 (b) WAC 16-54-071 (13) and (14) - piroplasmosis;
 (c) WAC 16-54-111 Swine—Importation and testing requirements;
 (d) WAC 16-54-180 Wild and exotic animals and birds—Importation and testing requirements;
 (e) WAC 16-80-015 Sale of quarantined animals;
 (f) WAC 16-80-040 Vaccination;
 (g) WAC 16-80-047 Mandatory reporting of suspected pseudorabies;
 (h) Importation of a foreign animal disease or "transboundary" diseased animal. A transboundary animal disease is a disease that has been eradicated within the borders of the

United States that would cause an economic loss if detected; and

(i) All quarantine and hold order violations under chapter 16.36 RCW. The department may assess a civil penalty for these violations without first issuing a notice of correction in accordance with RCW 43.05.110.

(5) Mitigating factors: The department reserves the right to decrease the civil penalty assessed for a violation by up to one hundred dollars in circumstances that include, but are not limited to, voluntary disclosure of a violation, or voluntary taking of remedial measures that would result in increased public protection and a decreased likelihood that the violation will be repeated.

(6) Aggravating factors: The department reserves the right to increase the civil penalty assessed for a violation by up to five hundred dollars, not to exceed one thousand dollars per violation. Circumstances may include, but are not limited to, situations where the violator knowingly commits a violation, where the civil penalty assessed is not substantially equivalent to the violator's economic benefit derived from the violation, the high magnitude of the harm, or potential harm to humans, animals, or property caused by the violation, the similarity of the current alleged violation to previous violations committed within the past ten years, or the extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.

WSR 08-23-078

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed November 18, 2008, 9:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-20-023.

Title of Rule and Other Identifying Information: Chapter 16-91 WAC, Requested animal services and holding facilities—Fees.

Hearing Location(s): Kittitas County Event Center, Heritage Center, 512 North Poplar Street, Ellensburg, WA 98926, on December 29, 2008, at 2:00 p.m.; and at the Natural Resources Building, 1111 Washington Street S.E., First Floor Conference Room #175A&B, Olympia, WA 98504, on December 30, 2008, at 2:00 p.m.

Date of Intended Adoption: January 9, 2009.

Submit Written Comments to: Dannie McQueen, P.O. Box 42560, Olympia, WA 98504, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., January 2, 2009.

Assistance for Persons with Disabilities: Contact WSDA receptionist by December 22, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During the 2008 legislative session, the Washington state department of agriculture (WSDA) was given authority to establish fees by rule for certain requested services; (1) establishment and inspection of animal holding facilities; (2) inspection and monitoring of animals in animal holding facilities; and (3) special

inspections of animals or facilities at the request of the owner. The department is proposing to develop a new chapter within Title 16 WAC that would describe the department's process in assessing fees for such requested services.

Reasons Supporting Proposal: In chapter 16.36 RCW, WSDA is given the authority to supervise the prevention of the spread and the suppression of infectious, contagious, communicable, and dangerous diseases affecting animals within, in transit through, and imported into the state of Washington. To provide additional tools to accomplish this mission, individuals representing the Washington state livestock and poultry industry went before the 2008 legislature and requested that the WSDA receive statutory authority to establish in rule an equitable fee-for-service schedule for requested monitoring and oversight services by the WSDA animal services program. The ability to provide these requested services will continue to protect Washington state's livestock industry and the health, safety, and welfare of the state's citizens.

Statutory Authority for Adoption: Chapters 16.36 and 34.05 RCW.

Statute Being Implemented: Chapter 16.36 RCW.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Kohrs, DVM, Olympia, (360) 902-1835; and **Enforcement:** Leonard Eldridge, DVM, Olympia, (360) 902-1878.

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

Small Business Economic Impact Statement

In chapter 16.36 RCW, the WSDA is given the authority to supervise the prevention of the spread and the suppression of infectious, contagious, communicable, and dangerous diseases affecting animals within, in transit through, and imported into the state of Washington.

To provide additional tools to accomplish this vital mission, individuals representing the Washington state livestock and poultry industry went before the 2008 legislature and requested that the WSDA receive statutory authority to establish in rule an equitable fee-for-service schedule for requested monitoring and oversight services by the WSDA animal services program. RCW 16.36.023 passed by the 2008 legislature in EHB 3381 states:

RCW 16.36.023 Fees—Rules.

(1) The director may adopt rules establishing fees for:

(a) The establishment and inspection of animal holding facilities authorized under this chapter;

(b) The inspection and monitoring of animals in authorized animal holding facilities; and

(c) Special inspections of animals or animal facilities that the director may provide at the request of the animal owner or interested persons.

(2) The fees shall, as closely as practicable, cover the cost of the service provided.

(3) All fees collected under this section shall be deposited in an account in the agricultural local fund and used to carry out the purposes of this chapter.

I. Poultry Industry: Washington state had become out of compliance with the national poultry improvement plan (NPIP), a voluntary program under the USDA. Lack of compliance became a concern as the threat of avian influenza to poultry increased and it became clear that NPIP regulations had been modified. Also, in the past, the department did not have available staff and funding resources to document NPIP compliance.

Washington state is currently in compliance with NPIP. However, without the fee-for-service schedule, WSDA will not have the resources available to stay NPIP compliant.

NPIP compliance is beneficial to the Washington state poultry industry for the following reasons:

(a) The flocks of producers are tested and monitored on a regular basis. This testing and monitoring allows producers to send poultry products out of state and streamlines the shipping process. There are different levels of NPIP certification, which provides purchasers with assurance that Washington poultry products meet the NPIP standards.

(b) If Washington is NPIP compliant, USDA will indemnify **100%** of the cost of euthanasia, cleanup, disinfection and disposal in the event of a major poultry disease outbreak in the state.

However, if Washington state is not NPIP compliant, USDA will indemnify producers at the rate of **25%** of the cost of the birds **only**. The poultry industry can suffer severe economic impacts due to disease outbreak. An exotic Newcastle disease (END) outbreak in California in 2002 cost producers an estimated \$145 million.

In 2002, the poultry/egg industry was valued at \$145 million (that number appears to be a low estimate and 2007 NASS statistical information is not yet available for confirmation). Costs of depopulation are extrapolated from the 2002 END response report. Based on the total cost of the response and number of birds depopulated, it turned out to be ~ \$40.00 per bird. Taking into account a 2% annual inflation factor, in 2008 it would come to ~ \$45.00 per bird. It is estimated that the number of birds in the commercial industry to be close to eight million. The cost of a response including depopulation plus cleanup and disposal for the commercial industry would therefore be estimated at \$350 million (USDA).

Washington's poultry industry is a **\$169 million dollar industry commercially and a \$1.3 million dollar noncommercial industry** annually. The poultry producers in Washington see NPIP compliance as necessary to survive a disease outbreak, such as avian influenza. Should a disease outbreak occur requiring flocks to be euthanized, USDA would provide 100% indemnification funding. This funding would allow a devastated poultry industry to quickly recover. The lack of NPIP compliance would mean that the USDA indemnity amount would only be 25% of the cost of birds **only** and there would be no funding for cleanup, disinfection and disposal funds provided.

WSDA is receiving requests from the poultry industry to perform NPIP required tests and monitoring, but, as stated above, the department currently lacks the funding to perform

these services. Prior to the passage of this legislation, the funds to perform testing have been limited and have been placing a financial strain on the WSDA animal health program, both in terms of staff and budget resources. Implementation of the proposed rule will allow WSDA to perform vital services for the poultry industry.

Estimated costs of proposed rule to small poultry producers: Comparison of costs of NPIP inspections with other states is difficult. The NPIP inspection fees in other states vary widely, from \$25.00 to \$200 per hour plus the cost of the testing. WSDA used the following information to determine projected costs of NPIP in Washington:

- Forty-eight NPIP flocks have registered with the WSDA animal health program, and the industry is growing.
- Thirty-eight of that total are small poultry producers.
- The remaining producers are eight large poultry producers and two hatcheries. These producers maintain compliance using their own trained personnel; the thirty-eight small poultry producers will be the most likely requestors of WSDA services.
- The average NPIP inspection will take approximately 30-60 minutes. The number of birds that need to be tested for an official statistical sample depends upon the size of the flock. It takes about two minutes to test each bird (thirty birds/hour).

Compliance Requirements: The proposed fee-for-service schedule does not contain any compliance requirements and will only apply to requested services for NPIP inspections. NPIP compliance is voluntary and not mandated by state or federal law.

Professional Services Required to Comply: WSDA does not anticipate that the proposed rule will create any need for additional professional services.

Cost of Compliance: The only cost for poultry producers will be the cost of requested NPIP inspections.

Other actions taken by the department that will contain costs:

- WSDA staff combining trips with other inspections and offering the requesting party the option to take advantage of doing several inspections in the same day, if scheduling permits.
- Use of electronic communication, recordkeeping and filing wherever possible will streamline the

inspection and notification process, thus decreasing the cost of inspection. WSDA will pass these cost reductions on to the requesting producer.

II. Livestock Industry and Livestock Owners: Washington state has a vital and growing livestock industry, the value of which in Washington state is \$1.6 billion. This industry growth has placed additional financial burdens on WSDA because the industry wants WSDA to monitor livestock import activities so that diseases such as tuberculosis (TB), brucellosis, bovine spongiform encephalopathy (BSE), and foot and mouth disease are not introduced into the state.

a. BSE is a disease of adult cattle, but they are exposed at a young age. The border between U.S. and Canada had been closed to adult breeding cattle due to the BSE positive cow found in Washington in December 2003. WSDA monitoring became especially critical after the U.S./Canadian border reopened on November 17, 2007, to breeding cattle born after March 1, 1999, as several recent BSE cases in Canada were born after March 1, 1999. When the U.S./Canadian border opened, monitoring became critical to determine the origin [of] the livestock for trace-back purposes.

To understand the economic impact of BSE, the one illegally imported cow into Washington in December 2003 cost (at a minimum) \$11 billion to the national beef industry and the costs are still being tallied. The economic loss is mainly due to markets that are still closed to U.S. beef imports.

b. Washington state has been free of TB and brucellosis for over twenty years. When a case of these diseases are found in a state, it loses its USDA TB-free or brucellosis-free status and USDA places mandatory testing requirements upon the affected state. This creates a financial burden on the industry because producers have to pay for additional testing and handling fees and the value of the animal drops at point of sale by an estimated \$0.06 - \$0.10 cents per pound.

Once a state loses its TB or brucellosis "free" status, it is difficult to get back because the disease is very difficult to eradicate. The timeframe to regain free status depends upon the necessary investigations and the ability to trace the movement of livestock.

The table below describes the potential economic impact of some states that have lost either their TB or brucellosis status. The economic impact of the fee for service would be economically insignificant as compared to the loss of the "free" status for the industry as a whole.

State	Disease	Industry Value (Estimate)	Testing Impact \$ (Lost Status)	Lost Value @ Point of Sale (Lost Status)	Depopulation
Washington (Disease Free)	Tuberculosis	\$1.6 billion			
New Mexico (Lost Status) USDA FY 2007	Tuberculosis	\$3 billion	\$6 - \$8 per head Testing only	\$.05 - \$.10 per pound Example: 600 pound animal would decrease to \$30 - \$60 per head	\$22 million (USDA)
Minnesota (Lost Status) USDA FY 2008	Tuberculosis	\$2 billion	\$6 - \$8 per head Testing only	\$.05 - \$.10 per pound Example: 600 pound animal would decrease to \$30 - \$60 per head	\$6 million (State legislature buy-out program: \$75.00 per head)

State	Disease	Industry Value (Estimate)	Testing Impact \$ (Lost Status)	Lost Value @ Point of Sale (Lost Status)	Depopulation
California (Lost Status) USDA FY '08-'09	Tuberculosis	\$6.0 billion	\$6 - \$8 per head Testing only	\$.05 - \$.10 per pound Example: 600 pound animal would decrease to \$30 - \$60 per head	\$55 million (USDA)
Montana (Lost Status) USDA FY 2008	Brucellosis	\$1 billion	\$6 - \$8 per head \$80 million	\$.05 - \$.10 per pound Example: 600 pound animal would decrease to \$30 - \$60 per head	

c. Another major concern is the potential for an accidental or intentional introduction of a foreign animal disease, such as foot and mouth disease, into the state. It has been estimated that for each hour this disease goes undetected it will cost the U.S. economy \$10 million. The proposed rule will allow WSDA to better monitor livestock imports and reduce the risk to industry.

Estimated costs of proposed rule to small livestock businesses: Under WSDA rules, industry may establish restricted holding facilities. The holding facilities provide industry with additional flexibility in meeting Washington state animal import requirements. Use of such a facility is not mandatory and producers always have the option of meeting import requirements prior to entry. The proposed rule will allow WSDA to recover the costs associated with monitoring restricted holding facilities.

1. It is estimated that four to six restricted holding facilities will be established for tuberculosis and brucellosis testing and vaccination. The holding facilities will provide a place for requested services and will not be used to address import violations. The need for these holding facilities has increased with the reopening of the U.S./Canada border to breeding cattle. WSDA oversight is necessary to ensure that imports meet Washington state's animal health import requirements.

WSDA currently oversees one restricted holding facility. This holding facility requires an average of three inspections per month (twelve hours and three hundred miles) plus the time to process and ship samples. WSDA anticipates the demand for holding facilities will grow and, therefore, the resources necessary to service them will need to expand.

2. In a very limited number of cases the department may need to extend the life of a quarantine beyond the typical testing requirements that release a quarantine. Quarantines do not disproportionately impact small businesses. The department may find it necessary to make regular visits to ensure that conditions of the quarantine are being followed and the health of the animal(s) is being maintained. These costs may include time and mileage necessary for regular surveillance on the quarantine to ensure biosecurity and isolation protocols are being adhered to, observation of testing or treatment of animals to satisfy chain of custody requirements are met and general evaluation of the health of the animal(s).

Compliance Requirements: The proposed fee-for-service schedule does not affect importation compliance requirements. In actuality, when requested by the producer, the fee-for-service option makes interstate health requirement compliance easier. The fee-for-service implementation will apply to requested services only.

Professional Services Required to Comply: WSDA does not anticipate that the proposed rule will create any need for additional professional services.

Cost of Compliance: The cost of establishing a restricted holding facility will include the initial application fee, annual renewal fee, and the cost of inspections to monitor compliance.

Other actions taken by the department that will contain costs:

- WSDA combining trips with other inspections and offering the requesting party the option to take advantage of doing several inspections in the same day, if scheduling permits.
- In case an extended quarantine is needed, the department will always strive to offer other options to the owner/producer that would allow the release of the quarantine without long-term supervision and the costs associated with it.

III. Equine (Horse) Industry and Horse Owners (the value of equine sales in Washington state, according to the 2002 census of agriculture, is totaled at \$18.6 million):

When horses are imported from out-of-country, the USDA requires that those horses be channeled through a contagious equine merits (CEM) facility to ensure the health of the horses imported and to prevent the introduction of CEM. CEM is a contagious equine disease spread by infected mares and stallions through breeding practices.

Currently, two holding facilities are convenient to Washington state horse owners, one in California and one in Oregon. Each facility has a waiting list for their use.

The equine industry has requested the establishment of this type of facility in Washington state. This would require inspection, approval, testing and monitoring by WSDA animal services program to meet USDA requirements.

A CEM quarantine facility in Washington state would require a significant amount of oversight by WSDA to maintain the level of biosecurity necessary to protect the state's equine industry. And while these facilities benefit and protect the equine industry as a whole, the department would provide the inspection, approval, testing and monitoring needed to establish and maintain a CEM quarantine facility only at the request of an individual or group.

Estimated costs of proposed rule to small equine businesses:

- It is likely that only one or two CEM facilities would be established in Washington in the foreseeable future.
- California and Kentucky currently oversee USDA-approved facilities and these states expend considerable time and resources overseeing the facilities.

- Depending on the number and location of the facilities, requested services would involve WSDA staff mileage traveling to the facilities and staff time spent inspecting and monitoring these facilities' records. Staff time is estimated to be an average of twelve to eighteen hours per week, the estimates, of which, are based upon other states' experience. Mileage costs would depend on the location of the facility. Staff costs would increase if evenings or weekend visits are required.

Mitigation and other options available to industry to reduce costs:

- A CEM facility would be a benefit to the Washington equine industry as residents who import horses would be able to use a local CEM facility rather than sending their animals to another states' holding facility.
- It is likely that the majority of users of a CEM facility would be individual horse owners rather than small businesses. The proposed rule would not disproportionately impact small businesses.

Other actions taken by the department that will contain costs:

- In order to reduce costs, WSDA would strive to combine trips with other inspections and offering the requesting party the option to take advantage of doing several inspections in the same day, if scheduling permits.

CONCLUSION: This analysis has been performed to determine whether the proposed rules WILL have an economic impact on small livestock and poultry producers and whether a small business economic impact statement is required in accordance with chapter 19.85 RCW, the Regulatory Fairness Act.

While it has been concluded that it is questionable whether a small business economic impact statement is required for the proposed rule (based upon some of the reasons outlined below), the department is filing this document as a small business economic impact statement as it has identified measures to mitigate costs when industry requests department services.

Reasons:

- Affected small businesses are not required to use the services provided by WSDA. There are other options available to the public to comply with Washington state animal health laws.
- The fees are only charged when a party requests certain services from the WSDA animal services program.
- Washington is not required to establish an equine quarantine facility for contagious equine merits. Testing and quarantine facilities are available in other states.
- WSDA does not anticipate that the proposed rule will create a need for additional professional services.
- It is likely that the majority of users of a CEM facility would be individual horse owners rather than small businesses.

- Private veterinary practitioners are available to provide services to ensure poultry and/or livestock are in compliance with Washington state animal health laws.
- Parties bringing poultry and/or livestock into the state of Washington can seek services to ensure compliance with animal health laws prior to bringing respective animals into Washington.

There are economic and logistical benefits to Washington livestock, equine, and poultry owners:

- If Washington is NPIP compliant, USDA will indemnify **100%** of the cost of euthanasia, cleanup, disinfection and disposal in the event of a major poultry disease outbreak in the state.
- A CEM facility would be a benefit to the Washington equine industry as residents who import horses would be able to use a local CEM facility rather than sending their animals to another states' holding facility.
- Washington state has been free of TB and brucellosis for over twenty years. Should a case of these diseases be found in a state, that state loses its USDA TB-free or brucellosis-free status and USDA places mandatory testing requirements upon the affected state. This creates a financial burden on the industry because producers have to pay for additional testing and handling fees; and the value of the animal drops at point of sale by an estimated \$0.06 - \$.10 cents per pound.
- It is difficult to determine the cost per hour for a private veterinarian as each circumstance is unique. One estimate received for a simple appointment is averaged at \$40 to \$45 per appointment. It is estimated that the time spent by the private veterinarian for the appointment is ten to fifteen minutes. Therefore, using this estimate, one hour of a private veterinarian's time would be conservatively estimated at \$160.00. The department's veterinarian service time is \$85/hour.

Mitigation and other actions identified to contain costs:

- WSDA may combine trips with other inspections and offering the requesting party the option to take advantage of doing several inspections in the same day, if scheduling permits.
- In the case of the need for an extended quarantine, the department will always strive to offer other options to the owner/producer that would allow the release of the quarantine without long-term supervision and the costs associated with it.

A copy of the statement may be obtained by contacting Lynn Briscoe, P.O. Box 42560, 1111 Washington Street S.E., Olympia, WA, phone (360) 902-1987, fax (360) 902-2087, e-mail lbriscoe@agr.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. The WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

November 18, 2008
Leonard E. Eldridge, DVM
State Veterinarian

Chapter 16-91 WAC

REQUESTED ANIMAL SERVICES AND HOLDING FACILITIES—FEES

NEW SECTION

WAC 16-91-005 Purpose of rule. The purpose of this rule is to establish a schedule as authorized in RCW 16.36.023 for fees charged to animal owners or other interested persons when requesting:

- (1) The establishment and inspection of restricted holding facilities (also known as animal holding facilities) authorized under this chapter and chapter 16-30 WAC;
- (2) The inspection and monitoring of animals in authorized restricted holding facilities; and
- (3) Special inspections of animals or animal facilities that the director may provide.

As provided by RCW 16.36.023, the fees in this chapter, as closely as practicable, cover the cost of the service provided.

NEW SECTION

WAC 16-91-010 Services provided under this chapter. The following services may be provided under this chapter:

- (1) Inspections related to establishment and monitoring of restricted holding facilities under chapter 16-30 WAC.

An inspection of the premises is required upon application for license to establish a restricted holding facility and with annual renewal of that license. The inspection may include, but is not limited to, the evaluation of compliance capabilities with isolation requirements, biosecurity protocols, sanitation practices, recordkeeping, and overall health of animals in quarantine.

- (2) Inspections related to the monitoring of animals held in a licensed restricted holding facility. Inspections may include, but are not limited to, follow-up activities or investigations related to confirmatory disease testing, mortality review, recordkeeping compliance (hold order, test chart submission, etc.), and overall health of the animals.

(3) Special inspections of animals or animal facilities at the request of the animal owner or interested persons. Special inspections may include, but are not limited to, visual inspections of biosecurity and sanitation conditions, rodent control, and overall animal health. Time may also be spent safely handling and sampling animals for disease testing.

- (4) Other special inspections may be provided upon request and at the discretion of the director.

NEW SECTION

WAC 16-91-020 Restricted holding facility license.

(1) An initial application fee of two hundred dollars is established for licensure of a restricted holding facility. The fee for the initial inspection is at the rates set in WAC 16-91-040. There is a renewal fee of one hundred dollars for the license and the applicable fee for the annual inspection of the facility. To implement the rule, the first expiration date of the license will be June 30, 2010, and June 30 every year after.

(2) Information about the application process and the standards for issuing a license to a restricted holding facility are found in chapter 16-30 WAC.

NEW SECTION

WAC 16-91-030 Requesting services from the department. Inspections for services under this chapter are provided at the discretion of the department based on availability of staff and priorities. The department is not obligated to provide an inspection in response to a request. An applicant must place a service request in order to ensure staffing.

(1) Service requests must be received by the state veterinarian's office two business days prior to the date of the requested service.

(a) The notification requirement allows the department to secure adequate staffing to supply the requested service and to accommodate leave or adjust staffing for anticipated workloads.

(b) The notification requirement applies even if there is permanent staffing at the location.

(c) Failure to meet the notification requirement may result in denial of service.

(2) Service requests beyond the office's usual scope or volume will be provided only if adequate numbers of qualified employees are available.

(3) The department reserves the right to determine the number of personnel necessary to provide the requested service.

NEW SECTION

WAC 16-91-040 Fee schedule for inspection services provided.

(1) Requested services during normal business hours are provided at the hourly rate per inspector of eighty-five dollars per hour. In addition, the current mileage and per diem rates as established by the Washington state office of financial management (OFM) will be charged for travel.

(2) The hourly charge is assessed in one-half hour increments. The charges are incurred starting when staff leave their official work station and ending on return to their official work station.

(3) The hourly rate will be one hundred dollars for services provided during nonbusiness hours. Nonbusiness hourly rates apply for services provided before 8:00 a.m. or after 5:00 p.m. during the weekday and for services provided on Saturday, Sunday, or recognized state government holidays listed in RCW 1.16.050.

(4) Persons requesting service with less than two business days notice may be subject to a charge of two additional hours at the applicable hourly rate.

(5) If staff must provide service at multiple locations, the final billings will be prorated accordingly.

(6) The department will recoup at cost, from the person requesting the service, expenses for unforeseen items necessary to complete the inspection service.

NEW SECTION

WAC 16-91-050 Testing fees. The cost of any testing of animals is a separate expense that is the responsibility of the animal owner and is not included in the charge for services under this chapter.

NEW SECTION

WAC 16-91-060 Billing and payment process. (1) The department will bill the parties requesting services for services rendered.

(2) The fees are due and payable upon billing.

(3) A late fee of one percent per month on the unpaid balance will be assessed against persons more than thirty days in arrears.

(4) In addition to other penalties, the director may refuse to perform any inspection or services provided under this chapter for any person in arrears unless the person makes payment in full prior to such inspection or certification service.

(5) Accounts that become ninety or more days in arrears twice within a five-year period may be subject to a permanent requirement for payment in full at the time service is provided.

WSR 08-23-081

PROPOSED RULES

GAMBLING COMMISSION

[Filed November 18, 2008, 10:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-08-007.

Title of Rule and Other Identifying Information: WAC 230-15-050 Minimum cash on hand requirements.

Hearing Location(s): Holiday Inn, 1 South Grady Way, Renton, WA 98057, (425) 226-7700, on January 9, 2009, at 9:30 a.m.

Date of Intended Adoption: January 9, 2009.

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 January 1, 2009.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant by January 1, 2009, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Recreational Gaming Association (RGA) requests that:

1. Licensees must meet this requirement within three hours of opening. Currently, they must meet the cash on hand requirement when they open. This change will accommodate at least one licensee.

2. Cash on premises in the safe and vault, in addition to the cage, be counted towards the minimum cash on hand requirement; and

After the commission approved a wager increase for house-banked games from \$200 to \$300 at the September 2008 commission meeting, we needed to adjust our minimum bankroll requirements. We removed the \$20,000 cap for the largest single prize available. Language was added to exclude player-supported jackpots and progressive jackpots from being included in the minimum bankroll calculation. These funds are required to be deposited into a separate bank account and are not kept in the cage. This is how we've been applying the rule. These changes were discussed at the October 2008 study session and the RGA supports the changes.

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.

November 18, 2008

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending Order 620, filed 11/20/07, effective 1/1/08)

WAC 230-15-050 Minimum cash on hand requirements. (1) Card game licensees must have sufficient cash on hand to redeem all chips issued for play and pay out all prizes.

(2) (~~Before~~) Within three hours of opening for the business day, at a time included in the internal controls, house-banked card game licensees must have at least the following minimum amount of cash on premises in their cage, safe, and vault combined:

(a) One thousand dollars for each house-banked table on the gambling floor; plus

(b) The amount of the largest single prize available (~~or not more than twenty thousand dollars~~) excluding jackpot prizes when WAC rules require a deposit into a separate bank account (for example, player-supported jackpots and progressive jackpots).

For example: If a house-banked card room has fifteen house-banked tables and a largest single prize of twenty-three thousand dollars, before opening, the cage must have at least (~~thirty-five~~) thirty-eight thousand dollars on hand: 15

tables x \$1,000 = \$15,000 + largest single prize ((~~or \$20,000 = \$35,000~~)) of \$23,000 = \$38,000.

(3) Except for the restrictions on player-supported jackpot pay outs in WAC 230-15-405 and progressive jackpot pay outs in WAC 230-15-690, licensees may pay prizes by check if sufficient funds are available on deposit.

(4) Failure to keep funds to cash in chips, pay prizes, or redeem gambling related checks is prima facie evidence of fraud. Meeting the minimum cage cash amount does not relieve the licensee from the requirement to have sufficient funds available to redeem all chips and pay out all prizes.

WSR 08-23-083

PROPOSED RULES

DEPARTMENT OF CORRECTIONS

[Filed November 18, 2008, 1:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-20-047.

Title of Rule and Other Identifying Information: Amendments to chapter 137-25 WAC, Serious infractions and chapter 137-28 WAC, Prisons discipline.

Hearing Location(s): Department of Corrections, Edna Lucille Goodrich Building, Cascade Conference Room #3004, 7345 Linderson Way S.W., Tumwater, WA 98501, on December 23, 2008, at 4 p.m.

Date of Intended Adoption: December 23, 2008.

Submit Written Comments to: John Nispel, Rules Coordinator, P.O. Box 41114, Olympia, WA 98504-1114, e-mail jrnispel@doc1.wa.gov, fax (360) 664-2009, by December 22, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Refine the definitions of general and serious infractions for the purposes of prison discipline. Amend WAC 137-28-160, 137-28-230, 137-28-270, 137-28-280, 137-25-020, and 137-25-030.

Reasons Supporting Proposal: These changes are necessary to further define prohibited conduct by offenders and to clarify hearing procedures and penalties for violations.

Statutory Authority for Adoption: RCW 72.01.090, 72.65.100, and 72.09.130.

Statute Being Implemented: RCW 72.65.100 and 72.09.130.

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

Name of Proponent: Marcia Sanchez, department of corrections, governmental.

Name of Agency Personnel Responsible for Drafting: Marcia Sanchez, Tumwater, (360) 725-8362; Implementation: Dan Pacholke, Tumwater, (360) 725-8779; and Enforcement: Richard L. Morgan, Tumwater, (360) 725-8792.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules impact only offenders committed to the custody of the department and will not impose costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this rule adoption as the agency is not named in RCW 34.05.328 (5)(a)(i).

November 18, 2008

E. Vail
Secretary

AMENDATORY SECTION (Amending WSR 06-21-054, filed 10/13/06, effective 11/13/06)

WAC 137-25-020 Definitions.

• For the purposes of this chapter, the following words have the following meanings:

Abusive sexual contact - an incident in which the contact occurs without his/her consent or he/she was unable to consent or refuse. Abusive sexual contact includes one or more of the following behaviors:

- Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of the victim. It does not include kicking, grabbing or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.

Adult correctional institution and institution - a facility identified in RCW 72.01.050(2) and any similar facility hereinafter established.

Aggravated assault - an assault resulting in physical injury and requiring medical care (see definition of medical care).

Assault - a physical attack upon the body of another person. The attack may be made with any instrument including, but not limited to, weapons, body parts, food products, or bodily secretions.

Attempted suicide - an unsuccessful attempt to kill oneself as determined by a medical or mental health professional.

Attempt - putting forth an effort to commit any infraction shall be considered the same as commission of the infraction. However, attempted aggravated assault shall be considered an attempted assault.

Bodily harm - physical pain or injury, illness, or impairment of physical condition.

Cell tag - if contraband or other violation is discovered in an area under control of the inmate (such as within the confines or contents of a cell), the contraband or other violation shall be constructively attributed to the inmate(s) assigned to that area, unless the inmate(s) can establish a lack of involvement in the infraction at the disciplinary hearing.

Conspiracy - an agreement between two or more persons to commit an infraction. Conspiracy to commit an infraction shall be considered the same as commission of the infraction.

Deputy secretary - the deputy secretary of the office of correctional operations of the Washington state department of corrections, or the deputy secretary's designee.

Discovery - when a staff member discovers that an infraction has occurred or when an investigation into the incident is concluded.

Earned time - means that portion of time an offender is eligible to earn for program participation approved by the classification process and consistent with his/her case management plan.

Earned release time - means the combined earned time and good conduct time credit an offender is eligible to earn off the minimum term established by the indeterminate sentence review board or the sentencing court.

Good conduct time credits - that portion of an inmate's potential reduction to minimum term which is authorized by RCW 9.95.070 and 72.09.130 and which may be lost by receiving serious infractions.

Hearing officer - staff member(s) designated by the superintendent or hearings program administrator to conduct disciplinary hearings.

Infraction - commission of, attempt to commit, or conspiracy with another to commit any violation of rules as enumerated in this code. Aiding or abetting another to commit an infraction will be considered the same as commission of the infraction.

Infraction review officer - staff member(s) designated by the superintendent to review a serious infraction.

Lesser included offense - any infraction that must necessarily have been committed in order to commit another infraction.

Medical care - any care conducted in a medical facility/treatment center by medical staff to treat a documented, physical injury, including, but not limited to, bandaging, suturing, surgery, etc. An examination conducted by medical staff to determine whether an injury has been sustained shall not be considered medical care.

Mental health professional - an individual with a unique set of knowledge, skills and abilities that makes him/her competent in either development, research, administration, assessment, prevention, treatment, education or training aimed at affecting the onset, occurrence, and maintenance of mental, behavioral and in some cases physical health disorders.

Mitigating factors - factors to be considered by the infracting officer in deciding whether to charge a #328 general infraction rather than a #728 serious infraction. Also, factors to be considered by the infraction review officer, hearings officer, and superintendent for the purpose of deciding whether a #728 serious infraction should be reduced to a #328 general infraction. Mitigating factors may include the seriousness of the sexually explicit material involved, whether the inmate has been convicted of a sexually motivated crime, the treatment needs of the inmate, the prior history of similar behavior, and the source of the material.

Possession - established when an item(s) is found on a person or in an area which is under the control of the individual(s) charged.

Promptly - to act as soon as reasonably possible, consistent with institutional goals of safety, security, and rehabilitation.

Secretary - the secretary of the Washington state department of corrections, or the secretary's designee.

Sexual harassment - any word, action, gesture or other behavior that is sexual in nature and that would be offensive to a reasonable person.

Sexual assault - an incident in which the act occurs against the will of the victim (without his/her consent and/or he/she is unable to consent or refuse) as the result of the threat

of the force or force used to obtain compliance. A sexual assault includes one or more of the following behaviors:

- Contact between the penis and the vagina or the penis and the anus involving penetration. It does not include kicking, grabbing or punching genitals when the intent is to harm or debilitate rather than to sexually exploit;
- Contact between the mouth and the penis, vagina and/or anus;
- Penetration of the anal or genital opening of another person by hand, finger or other object.

Sexually explicit - means ~~((a depiction of one of the following))~~ any pictorial representation that is intended for sexual gratification and shows male or female genitalia, full frontal nudity, or depicts one or more of the following sexual behaviors:

- One or more of the participants ~~((in the sexual act is; or))~~ appears to be ~~((;))~~ nonconsenting;
 - One or more of the participants ~~((in the sexual act))~~ appears to be acting in a forceful, threatening, or violent manner;
 - One or more of the ~~((partners in the sexual act is))~~ participants appears to be dominating one or more of the other participants ((and one of the individuals is obviously)) or one or more of the participants appears to be in a submissive role or one or more of the participants ((is)) appears to be degraded, humiliated, or appears to willingly engage((s)) in behavior that is degrading or humiliating;
 - One of the participants ~~((in the sexual act is a minor; or))~~ appears to be a minor, or a minor alone is depicted in a sexually suggestive way;
- ~~((Actual penetration, be it penile/vaginal-oral, penile-anal, or penile-vaginal; digital-anal; digital-vaginal; or insertion of any inanimate object in the vaginal or anal cavity, and the depiction in the context presented is deemed to be a threat to legitimate penological objectives;))~~

- ~~((Any))~~ Bodily excretory ((function)) behavior which ((is)) appears to be sexual in nature;
 - Bestiality, sadomasochistic behavior, and/or bondage;
- or

~~((Material reasonably deemed to be a threat to legitimate penological objectives;))~~

- Depicts sexual behaviors including, but not limited to, intercourse/penetration, sodomy, fellatio, cunnilingus, anilingus, or masturbation.

The term sexually explicit also refers to those written materials that are intended for sexual gratification and describe one or more of the above sexual behaviors as the predominant theme of the publication or letter.

Staff member - for purposes of this chapter includes employees of the department of corrections, contract employees, and volunteers.

Superintendent - superintendent of an adult correctional institution or the superintendent's designee.

Working days - Monday through Friday, excluding weekends and holidays.

AMENDATORY SECTION (Amending WSR 06-21-054, filed 10/13/06, effective 11/13/06)

WAC 137-25-030 Serious infractions.

Category A

501 - Committing homicide.
502 - Aggravated assault on another offender.
507 - Committing an act that would constitute a felony and that is not otherwise included in these rules.
511 - Aggravated assault on a visitor or community member.
521 - Taking or holding any person hostage.
550 - Escape.
601 - Possession, manufacture, or introduction of an explosive device or any ammunition, or any components of an explosive device or ammunition.
602 - Possession, manufacture, or introduction of any gun, firearm, weapon, sharpened instrument, knife, or poison or any component thereof.
603 - Possession, introduction, use or transfer of any narcotic, controlled substance, illegal drug, unauthorized drug, mind altering substance, or drug paraphernalia.
604 - Aggravated assault on a staff member.
611 - Sexual assault on a staff member.
612 - Attempted sexual assault of staff.
613 - Abusive sexual contact with staff.
635 - Sexual assault on another offender.
636 - Attempted sexual assault of another offender.
637 - Abusive sexual contact with another offender.
650 - Rioting.
651 - Inciting others to riot.
<u>882 - Possession or unauthorized use of a cell phone.</u>

Category B - Level 1

504 - Engaging in sexual acts with others within the facility with the exception of approved conjugal visits.
553 - Setting a fire.
560 - Unauthorized possession of items or materials likely to be used in an escape attempt.
633 - Assault on another offender.
704 - Assault on a staff member.
711 - Assault on a visitor or community member.
744 - Making a bomb threat.
<u>884 - Urinating, defecating or placing feces or urine, in any location other than a toilet or authorized receptacle.</u>
<u>886 - Adulteration of any food or drinks.</u>
<u>892 - Giving, selling or trading any prescribed medication with another offender.</u>

Category B - Level 2

505 - Fighting with any person.
556 - Refusing to submit or cooperate in a search when ordered to do so by a staff member.
607 - Refusing to submit to a urinalysis and/or failure to provide a urine sample when ordered to do so by a staff member within the allotted time frame.
608 - Refusing or failing to submit to a breathalyzer or other standard sobriety test when ordered to do so by a staff member.
609 - Refusing or failing to submit to testing required by policy, statute, or court order, such as DNA blood tests when ordered to do so by a staff member.
652 - Engaging in or inciting a group demonstration.
655 - Making intoxicants, alcohol, controlled substances, narcotics, or possession of ingredients, equipment, items, formulas, or instructions that are used in making intoxicants, alcohol, controlled substances, or narcotics.
682 - Engaging in or inciting an organized work stoppage.
707 - Possession, introduction, or transfer of any alcoholic or intoxicating beverage or substance.
716 - Unauthorized use of an over the counter medication or failure to take prescribed medication as required when administered under supervision.
736 - Possession, manufacture or introduction of unauthorized keys.
750 - Indecent exposure.
752 - Receiving a positive test for use of unauthorized drugs, alcohol, or other intoxicants.
830 - Any escape from work release with voluntary return within 24 hours.

Category B - Level 3

503 - Extortion, blackmail, demanding or receiving money or anything of value in return for protection against others, or under threat of informing.
506 - Threatening another with bodily harm or with any offense against another person, property, or family.
509 - Refusing a direct order by any staff member to proceed to or disperse from a particular area.
525 - Violating conditions of a furlough.
558 - Interfering with staff members, medical personnel, fire fighters, or law enforcement personnel in the performance of their duties.
600 - Tampering with, damaging, blocking, or interfering with any locking or security device.
605 - Impersonating any staff member, contracted staff member, volunteer, other offenders or visitor.
653 - Causing an inaccurate count or interfering with count by means of unauthorized absence, hiding, concealing oneself, or other form of deception or distraction.

Category B - Level 3

654 - Counterfeiting, forgery, altering, falsification, or unauthorized reproduction of any document, article of identification, money, security, or official paper.
660 - Unauthorized possession of money or other negotiable instruments the value of which is five dollars or more.
709 - Out-of-bounds: Being in another offender's cell or being in an area in the facility with one or more offenders without authorization.
738 - Possession of clothing <u>or assigned equipment</u> of a staff member.
739 - Possession of personal information about currently employed staff, contractors, or volunteers, or their immediate family members, not voluntarily given to the offender by the individual involved; including, but not limited to: Social Security numbers, unpublished home addresses or telephone numbers, driver's license numbers, medical, personnel, financial, or real estate records, bank or credit card numbers, or other like information not authorized by the court or the superintendent.
745 - Refusing a transfer to another institution.
746 - Engaging in or inciting an organized hunger strike.
762 - Failing to complete, or administrative termination from, DOSA substance abuse treatment program. Note: <i>This infraction must be initiated by authorized staff and heard by a community corrections hearing officer in accordance with chapter 137-24 WAC.</i>
777 - Causing injury to another person by resisting orders, resisting assisted movement or physical efforts to restrain.
813 - Unauthorized/unaccounted time in the community or being in an unauthorized location in the community.
814 - While in work release, violation of an imposed special condition.
831 - While in work release, failure to return from an authorized sign out.
879 - Operating a motor vehicle without permission or in an unauthorized manner or location.
<u>889 - Unauthorized use of facility phones/related equipment or use of computer to conduct unauthorized or illegal business.</u>

Category C - Level 1

508 - Throwing objects, materials, substances, or spitting in the direction of another person(s).
517 - Committing any act that would constitute a misdemeanor and that is not otherwise included in these rules.
555 - Theft of property or possession of stolen property.
557 - Refusing to participate in an available education or work program or other mandatory programming assignment.

Category C - Level 1

563 - Making a false fire alarm or tampering with, damaging, blocking, or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other fire fighting equipment or devices.
610 - Unauthorized possession of prescribed medication greater than a single or daily dose.
620 - Receipt or possession of contraband during participation in off-grounds or outer perimeter activity or work detail.
659 - Sexual harassment.
663 - Using physical force, intimidation or coercion against any person.
702 - Possession, manufacture or introduction of an unauthorized tool.
708 - Organizing or participating in unauthorized group activity or meeting.
714 - Giving, selling, borrowing, lending, or trading money or anything of value to, or accepting or purchasing money or anything of value from, another offender or that offender's friend(s) or family, the value of which is ten dollars or more.
717 - Causing a threat of injury to another person by resisting orders, resisting assisted movement or physical efforts to restrain.
720 - Flooding a cell or other area of the institution/facility.
724 - Refusing a cell or housing assignment.
734 - Participating or engaging in the activities of any unauthorized club, organization, gang or security threat group; or wearing or possessing the symbols of an unauthorized club, organization, gang or security threat group.
810 - Failure to seek/maintain employment or training or maintain oneself financially or being terminated from a job for negative or substandard performance.

Category C - Level 2

552 - Causing an innocent person to be penalized or proceeded against by providing false information.
554 - Damaging or destroying state property or any other item the value of which is ten dollars or more and that is not the personal property of the offender.
559 - Gambling; possession of gambling paraphernalia.
656 - Giving, receiving, or offering any person a bribe or anything of value for an unauthorized favor or service.
706 - Giving false information when proposing a release plan.
710 - Being tattooed while incarcerated, tattooing another, or possessing tattoo paraphernalia.
718 - Use of mail or telephone in violation of court order or local, state, or federal law.

Category C - Level 2

725 - Any telephonic or written correspondence with any offender in a correctional facility without prior written approval of the superintendent/community corrections supervisor/designee.
726 - Telephoning or sending written communication or otherwise initiating communication with a minor without the approval of that minor's parent or guardian.
727 - Telephoning or sending written communications to any person contrary to previous written warnings or direction and/or documented disciplinary action.
728 - Possession of any sexually explicit material(s), as defined by department policy and/or WAC 137-25-020.
740 - Fraud, embezzlement, or obtaining goods, services, money, or anything of value under false pretense.
742 - A pattern of creating a false emergency by feigning illness.
778 - Providing a urine specimen that has been diluted, substituted or altered in any way.

Category C - Level 3

551 - Providing false information to the disciplinary hearings officer or on a disciplinary appeal.
606 - Possession, introduction, or transfer of any tobacco, tobacco products, matches, or tobacco paraphernalia.
657 - Being found guilty of four or more general infractions arising out of separate incidents within a 90-day period.
658 - Failing to comply with any administrative or post-hearing sanction imposed for committing any general or serious infraction.
662 - Soliciting goods or services for which the provider would expect payment when the offender knows or should know that no funds are available to pay for those goods or services.
712 - Attempted suicide as determined by mental health staff.
713 - Self-mutilation or self-harm.
741 - Theft of food the value of which is more than five dollars.
755 - Misuse or waste of issued supplies, goods, services, or property the replacement value of which is ten dollars or more.
811 - Entering into an unauthorized contract.
812 - Failure to report/turn in all earnings income.
861 - Performing or taking part in an unauthorized marriage.
890 - Failure to follow a medical directive and/or documented medical recommendations resulting in injury.

(1) In determining whether a #728 infraction or a #328 infraction pursuant to WAC 137-25-030 should be charged, the infracting officer shall consider mitigating factors as defined in WAC 137-25-020.

(2) Attempts to commit infraction #611 or #635 are now separate infractions #612 and #636 for the Prison Rape Elimination Act (PREA) reporting purposes only and do not impact the definition in WAC 137-25-020 which includes "attempts."

AMENDATORY SECTION (Amending WSR 05-16-033, filed 7/26/05, effective 8/26/05)

WAC 137-28-160 Definitions.

• For the purposes of this chapter, the following words have the following meanings:

Abusive sexual contact - an incident in which the contact occurs without his/her consent or he/she was unable to consent or refuse. Abusive sexual contact includes one or more of the following behaviors:

- Intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh, or buttocks of the victim. It does not include kicking, grabbing or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.

Adult correctional institution and institution - a facility identified in RCW 72.01.050(2) and any similar facility hereinafter established.

Aggravated assault - an assault resulting in physical injury and requiring medical care (see definition of medical care).

Assault - a physical attack upon the body of another person. The attack may be made with any instrument including, but not limited to weapons, body parts, food products or bodily secretions.

Attempted suicide - an unsuccessful attempt to kill oneself as determined by a medical or mental health professional.

Attempt - putting forth an effort to commit any infraction shall be considered the same as commission of the infraction. However, attempted aggravated assault shall be considered an attempted assault.

Bodily harm - physical pain or injury, illness, or impairment of physical condition.

Cell tag - if contraband or other violation is discovered in an area under control of the inmate (such as within the confines or contents of a cell), the contraband or other violation shall be constructively attributed to the inmate(s) assigned to that area, unless the inmate(s) can establish a lack of involvement in the infraction at the disciplinary hearing.

Conspiracy - an agreement between two or more persons to commit an infraction. Conspiracy to commit an infraction shall be considered the same as commission of the infraction.

Deputy secretary - the deputy secretary of the office of correctional operations of the Washington state department of corrections, or the deputy secretary's designee.

Discovery - when a staff member discovers that an infraction has occurred or when an investigation into the incident is concluded.

Earned time - means that portion of time an offender is eligible to earn for program participation approved by the classification process and consistent with his/her case management plan.

Earned release time - means the combined earned time and good conduct time credit an offender is eligible to earn

off the minimum term established by the indeterminate sentence review board or the sentencing court.

Good conduct time credits - that portion of an inmate's potential reduction to minimum term which is authorized by RCW 9.95.070 and 72.09.130 and which may be lost by receiving serious infractions.

Hearing officer - Staff member(s) designated by the superintendent to conduct disciplinary hearings.

Infraction - commission of, attempt to commit, or conspiracy with another to commit any violation of prison rules as enumerated in this code. Aiding or abetting another to commit an infraction will be considered the same as commission of the infraction.

Infraction review officer - staff member(s) designated by the superintendent to review a serious infraction.

Lesser included offense - any infraction that must necessarily have been committed in order to commit another infraction.

Medical care - any care conducted in a medical facility/treatment center by medical staff to treat a documented, physical injury, including, but not limited to bandaging, suturing, surgery, etc. An examination conducted by medical staff to determine whether an injury has been sustained shall not be considered medical care.

Mental health professional - an individual with a unique set of knowledge, skills and abilities that makes him/her competent in either development, research, administration, assessment, prevention, treatment, education or training aimed at effecting the onset, occurrence, and maintenance of mental, behavioral and in some cases physical health disorders.

Mitigating factors - factors to be considered by the infracting officer in deciding whether to charge a #328 general infraction rather than a #728 serious infraction. Also, factors to be considered by the infraction review officer, hearings officer, and superintendent for the purpose of deciding whether a #728 serious infraction should be reduced to a #328 general infraction. Mitigating factors may include the seriousness of the sexually explicit material involved, whether the inmate has been convicted of a sexually motivated crime, the treatment needs of the inmate, the prior history of similar behavior, and the source of the material.

Possession - established when an item(s) is found on a person or in an area which is under the control of the individual(s) charged.

Promptly - to act as soon as reasonably possible, consistent with institutional goals of safety, security, and rehabilitation.

Secretary - the secretary of the Washington state department of corrections, or the secretary's designee.

Sexual harassment - any word, action, gesture or other behavior that is sexual in nature and that would be offensive to a reasonable person.

Sexually explicit - means ~~((a depiction of one of the following))~~ any pictorial representation that is intended for sexual gratification and shows male or female genitalia, full frontal nudity, or depicts one or more of the following sexual behaviors:

• One or more of the participants ~~((in the sexual act is, or))~~ appears to be ~~((:))~~ nonconsenting;

• One or more of the participants ~~((in the sexual act))~~ appears to be acting in a forceful, threatening, or violent manner;

• One or more of the ~~((partners in the sexual act is))~~ participants appears to be dominating one or more of the other participants ~~((and one of the individuals is obviously))~~ or one or more of the participants appears to be in a submissive role or one or more of the participants ~~((is))~~ appears to be degraded, humiliated, or appears to willingly engage~~((s))~~ in behavior that is degrading or humiliating;

• One of the participants ~~((in the sexual act is a minor, or))~~ appears to be a minor, or a minor alone is depicted in a sexually suggestive way;

~~((Actual penetration, be it penile/vaginal-oral, penile-anal, or penile-vaginal; digital-anal; digital-vaginal; or insertion of any inanimate object in the vaginal or anal cavity, and the depiction in the context presented is deemed to be a threat to legitimate penological objectives;))~~

• ~~((Any))~~ Bodily excretory ((function)) behavior which ~~((is))~~ appears to be sexual in nature;

• Bestiality, sadomasochistic behavior, and/or bondage; or

~~((Material reasonably deemed to be a threat to legitimate penological objectives;))~~

• Depicts sexual behaviors including, but not limited to, intercourse/penetration, sodomy, fellatio, cunnilingus, anilingus, or masturbation.

The term sexually explicit also refers to those written materials that are intended for sexual gratification and describe one or more of the above sexual behaviors as the predominant theme of the publication or letter.

Staff member - for purposes of this chapter includes employees of the department of corrections, contract employees, and volunteers.

Superintendent - superintendent of an adult correctional institution or the superintendent's designee.

Working days - Monday through Friday, excluding weekends and holidays.

AMENDATORY SECTION (Amending WSR 00-10-079, filed 5/2/00, effective 6/2/00)

WAC 137-28-230 General infraction procedure.
Infraction report.

(1) In the event of a general infraction, a staff member may make an on-site adjustment. An on-site adjustment may consist of counselling, warning, or reprimanding the inmate and/or causing the inmate to remove him/herself from the situation immediately. An on-site adjustment under this rule cannot be considered a general infraction for the purposes of determining whether a #657 serious infraction has occurred.

(2) In the event of a general infraction where a staff member does not make an on-site adjustment, the staff member may prepare and submit an infraction report. The infraction report shall include:

- Name, number and housing location of the offender;
- A description of the incident;
- The time and place of the incident;
- The names of witnesses, victims, and other persons involved;

- (e) The specific rule(s) alleged to have been violated;
- (f) A description of any action taken and copies of any relevant documentation or supplemental reports;
- (g) Name and signature of reporting staff.

(3) The general infraction report shall be submitted promptly to the supervisor or unit team designated by the superintendent to receive such reports. The supervisor or unit team may upgrade the general infraction to a serious infraction. If the infraction is upgraded, the supervisor or unit team shall forward the serious infraction report to the hearing clerk for preparation for a hearing on the serious infraction.

(4) The supervisor or unit team receiving a general infraction report shall decide whether the inmate is guilty or not guilty within five working days of receipt of the report. An extension to the five days may be granted by the disciplinary hearing officer. This decision of the supervisor or unit team can be reached by((:

~~(a) Taking no further action, in which case the report shall not be retained in the inmate's files, but may be retained in other institutional files designated for statistical, record-keeping, or litigation purposes;~~

~~(b) Deciding the infraction without a hearing upon a determination that the inmate is guilty, the supervising employee or unit team may impose any appropriate sanction; or~~

~~(e))~~ scheduling an informal hearing with the inmate present at which the supervising employee or unit team may allow witnesses and documentary evidence. Upon finding that an inmate is guilty, the supervising employee or unit team may impose any appropriate sanction.

AMENDATORY SECTION (Amending WSR 00-10-079, filed 5/2/00, effective 6/2/00)

WAC 137-28-270 Serious infraction procedure.
Infraction report.

(1) In the event of a serious infraction, the staff member who discovers such violation shall prepare and submit an infraction report. The infraction report shall be submitted promptly upon discovery of the incident or upon completion of an investigation. The infraction report must include:

- (a) Name, number and housing assignment of offender;
- (b) A description of the incident;
- (c) The time and place of the incident;
- (d) The names of witnesses, victims, and other persons involved;
- (e) The specific rule alleged to have been violated;
- (f) A description of any action taken;
- (g) A summary of any confidential information;
- (h) Copies of any relevant documentation or supplemental reports. Confidential information and the identities of confidential informants shall not be included;

~~((H))~~ (i) Name and signature of reporting staff.

(2) The infracting staff member may recommend action to be taken on the infraction to the hearing officer. This may include a recommendation that the inmate be referred for a mental health consultation.

(3) Serious infraction reports may be reviewed by the infraction review officer who may:

(a) Approve the report and forward it to the hearing clerk;

(b) Require the report be revised, rewritten or reinvestigated by the reporting staff member to ensure that the alleged facts support the charges;

(c) Add, dismiss, delete or reduce the indicated WAC violations as appropriate, based upon the information and/or evidence provided by the reporting staff member and any mitigating factors;

(d) Recommend referral to a mental health professional for consultation if there is a question whether:

(i) Mental illness contributed to the behavior that led to the infraction; or

(ii) The inmate's mental health status may need to be monitored.

(4) If a negotiated hearing process is in place in the facility, the report may be forwarded to the designated hearings officer.

AMENDATORY SECTION (Amending WSR 95-15-044, filed 7/13/95, effective 8/15/95)

WAC 137-28-280 Temporary prehearing confinement. (1) Before a hearing, an inmate may be temporarily confined to his/her cell or demoted to a higher custody level or housing assignment, such as segregation, when it is reasonably believed that the inmate presents a risk to the security of the institution, a risk of escape, danger to themselves or to others, or is in danger from others.

(2) Confinement decisions under this rule shall be made by the shift commander in writing. All segregation placement must be approved by the superintendent within one working day of the confinement.

(3) Confinement imposed under this section may not be for more than three working days unless either the inmate or the institution, for good cause, requires additional time to prepare for the disciplinary hearing, or there is an administrative segregation hearing.

(4) An inmate confined under this section shall be subject to the same rules and restrictions as other inmates in the unit or status.

(5) An inmate confined under this rule shall be afforded reasonable opportunities to prepare a defense to the charges against him/her.

(6) An inmate confined on prehearing confinement or restricted under this rule by administrative segregation placement shall receive credit against the sanction for time served if found guilty of the infraction.

(7) If an inmate is on prehearing confinement and a sanction of further segregation or isolation is given and the inmate indicates he/she wishes to appeal, the inmate may remain on prehearing confinement status pending disposition of the appeal, unless released by the superintendent.

AMENDATORY SECTION (Amending WSR 02-12-023, filed 5/28/02, effective 6/28/02)

WAC 137-28-350 Sanctions—Authority to impose. (1) If the hearing officer determines that an inmate is guilty of a serious infraction, he/she may impose one or more of the following sanctions:

- (a) Any of the sanctions available for general infractions;
- (b) Any of the sanctions available under DOC 320.150;
- (c) Loss of a privilege or privileges as specified by the hearing officer not to exceed: Thirty days on a first offense, ninety days on a second offense, and one hundred eighty days on a third offense, within a one-year period;
- (d) Evening lockup or confinement to quarters for ten days;
- (e) Weekend and/or holiday lockup or confinement to quarters for a period of one or more weekends but not to exceed twelve consecutive weekends per incident. For purposes of this rule, a "weekend" shall begin at the end of the Friday workday and terminate at the beginning of the Monday workday;
- (f) Confinement to quarters except for meals, or with meals in cell, with or without curtailment of job assignment for a period not to exceed thirty days;
- (g) Recommendation to the unit team/classification committee/assignment officer for reconsideration of custody classification or program change;
- (h) Recommendations to the classification committee/classification officer for transfer to another institution when, as a result of the infraction committed, the inmate is unable to function in the institution of present confinement, or if other disciplinary methods have been attempted and failed;
- (i) Confinement on segregation status for a period not to exceed thirty consecutive days;
- (j) Confinement on isolation status for a period not to exceed ten consecutive days; however, where a serious infraction occurs during a period of isolation imposed under this rule, additional periods of isolation not to exceed ten days may be imposed. In situations where an inmate is in isolation for more than ten consecutive days, the director's prior approval is required unless the inmate is released from isolation for at least seventy-two consecutive hours between the end of one isolation sanction and the beginning of another;
- (k) Restitution;
- (l) Recommendation to the superintendent that he/she not certify good conduct time credit for an inmate subject to the jurisdiction of the indeterminate sentence review board, pursuant to RCW 9.95.070 or that he/she approve the denial of good conduct time credit for those inmates not under the jurisdiction of the board.
- (i) The recommendation will be consistent with guidelines established by the secretary of the department of corrections.
- (ii) Any sanctions for loss of good conduct credits in excess of the guidelines established by the secretary of the department of corrections must have final approval by the deputy secretary.
- (iii) For inmates not under the board's jurisdiction, all awards of good conduct time shall be considered tentative and therefore all good conduct time credits earned or to be earned may be addressed under this rule;
- (m) Recommendation to the indeterminate sentence review board for a disciplinary hearing or reconsideration of minimum term should occur only with infractions providing for actual time loss of twelve months or more and consistent with guidelines established by the department;

(n) Interruption of visitation between the offender and a specified individual(s) for a period of up to one hundred eighty consecutive days when there has been an infraction for visit related behavior or behavior that presents a security or safety threat. In cases of multiple or very serious offenses, recommendations may be made to the superintendent for extended or permanent loss of the privilege of visitation with a specified individual(s);

(o) Restrictions, interruption or termination of correspondence, and/or telephone privileges with specified individuals. Sanctions for offense(s) within any one-year period may not exceed: Up to ninety consecutive days for the first offense, one hundred eighty consecutive days for the second offense and permanent loss for the third offense. Termination of correspondence and/or telephone privileges may be permanent for the first offense if:

- (i) The recipient so requests; or
- (ii) A parent or guardian of the recipient, if a minor or an incompetent person, so requests; or
- (iii) A felony was involved in the incident; or
- (iv) If the contact violates a court order;

(p) The sanction for infraction #557 and #810 shall be the loss of available earned release credits and other privileges as outlined in ~~((division directives))~~ department policy. Progressively more severe sanctions will be utilized for subsequent infractions #557 and #810.

(q) The sanction for infraction #882 shall include a mandatory loss of telephone privileges, with the exception of legal calls, for sixty consecutive days for the first offense, ninety consecutive days for the second offense and one hundred eighty consecutive days for a third or subsequent offense within any one-year period.

(2) If the hearing officer determines that more than one infraction occurred as a result of the same incident, he/she shall not impose consecutive sanctions for the separate infractions but shall consider them together and impose penalties for the group of infractions.

(3) The hearing officer may suspend the execution of a disciplinary sanction for a fixed period of time, not to exceed three hundred sixty-five consecutive days, subject to the good behavior of the inmate or to meeting other conditions as specified by the hearing officer. If the subsequent behavior of the inmate is appropriate, the hearing officer may, at or before the end of the fixed period, cancel the sanction. A suspended sanction may be imposed if the inmate has been found guilty of a general or serious infraction or of violating the conditions attached to the original suspension. A suspended sanction may be imposed by the hearing officer following notice to, and an in-person meeting with, the inmate.

(4) The hearing officer may review any decision he/she previously made and may modify downward any sanction previously imposed.

(5) In all cases, regardless whether an appeal is taken, the superintendent may review a sanction imposed and may reduce its severity.

(6) Nothing in this section limits the superintendent's discretion to grant, deny, suspend, or revoke any privilege.

WSR 08-23-084
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed November 18, 2008, 1:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-15-143.

Title of Rule and Other Identifying Information: Outdoor heat exposure amendments to chapter 296-307 WAC, Safety standards for agriculture.

Hearing Location(s): Comfort Inn and Conference Center, 1620 74th Avenue, Tumwater, WA 98501, on January 6, 2009, at 1:00 p.m.; at the Hilton Garden Inn Seattle North/Everett, 8401 Paine Field Boulevard, Mukilteo, WA 98275, on January 8, 2009, at 1:00 p.m.; at the Clarion Hotel and Conference Center, 1507 North First Street, Yakima, WA 98901, on January 13, 2009, at 1:00 p.m.; at the Courtyard by Marriott Richland, 480 Columbia Point Drive, Richland, WA 99352, on January 14, 2009, at 1:00 p.m.; and at the Doubletree Hotel Spokane City Center, 322 North Spokane Falls Court, Spokane, WA 99201, on January 15, 2009, at 1:00 p.m.

Date of Intended Adoption: March 18, 2009.

Submit Written Comments to: Jamie Scibelli, Project Manager, Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98507-4620, by 5:00 p.m. on January 16, 2009. In addition to written comments, the department will accept comments submitted to fax (360) 902-5619. Comments submitted by fax must be ten pages or less.

Assistance for Persons with Disabilities: Contact Beverly Clark by December 23, 2008, (360) 902-5516 or clah235@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **AMENDED SECTIONS:** WAC 296-307-030 What are the required elements of an accident prevention program?, 296-307-09512 What potable water sources must an employer provide?, 296-307-11015 Violations of this part—Worker protection standards—40 C.F.R., § 170.9, 296-307-12020 Entry restrictions—Standards for workers—40 C.F.R., § 170.112, 296-307-13045 Personal protective equipment—Standards for pesticide handlers—40 C.F.R., § 170.240.

NEW SECTIONS: WAC 296-307-097 Outdoor heat exposure, 296-307-09710 Scope and purpose, 296-307-09720 Definitions, 296-307-09730 Employer and employee responsibility, 296-307-09740 Drinking water, 296-307-09750 Responding to signs and symptoms of heat-related illness, and 296-307-09760 Information and training.

The purpose of this project is to include the adopted outdoor heat exposure rule in chapter 296-307 WAC, Safety standards for agriculture.

During the public comment period for the outdoor heat exposure rule, the department received comments from stakeholders who believed that chapter 296-62 WAC, General occupational health standards does not apply currently to chapter 296-307 WAC, Safety standards for agriculture.

Although it was determined that the department is permitted by RCW 49.17.041 to specifically reference the general industry safety rules, the department agreed to initiate

rule making to incorporate outdoor heat exposure requirements into chapter 296-307 WAC.

RCW 49.17.041 requires the department to establish an agricultural safety rule that includes two parts: (1) Agricultural-specific rules for agricultural employers; and (2) specific references to the general industry safety rule adopted under chapter 49.17 RCW.¹ Furthermore, agricultural employers are to be exempt from the general industry safety rule adopted under chapter 49.17 RCW for all rules *not specifically referenced* in the agricultural safety rule.²

¹ RCW 49.17.041 (2)(a).

² RCW 49.17.041 (2)(b) (emphasis added).

Currently, the agricultural safety rule, chapter 296-307 WAC, specifically states agricultural employers are covered by the requirements of chapter 296-62 WAC, General occupational health standards. WAC 296-307-006(3) states, "All agricultural operations are also covered by the requirements of chapter 296-62 WAC, general occupational health rules."

While the department has determined that the requirements in chapter 296-62 WAC apply to agricultural employers, the department has decided to add the language from WAC 296-62-095 to chapter 296-307 WAC per stakeholder requests.

Reasons Supporting Proposal: See Purpose above.

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

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, Washington, (360) 902-5530; Implementation and Enforcement: Stephen M. Cant, Tumwater, Washington, (360) 902-5495.

No small business economic impact statement has been prepared under chapter 19.85 RCW. WAC 296-62-095 currently applies to agriculture employers. This identical language from WAC 296-62-095 is being adopted into chapter 296-307 WAC, Safety standards for agriculture. As a result, no new or additional requirements or costs will be created for agriculture employers.

A cost-benefit analysis is not required under RCW 34.05.328. WAC 296-62-095 currently applies to agriculture employers. This identical language from WAC 296-62-095 is being adopted into chapter 296-307 WAC, Safety standards for agriculture. As a result, no new or additional requirements or costs will be created for agriculture employers.

November 18, 2008

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 98-24-096, filed 12/1/98, effective 3/1/99)

WAC 296-307-030 What are the required elements of an accident prevention program? (1) You must instruct all employees in safe working practices at the beginning of

employment. Your instruction must be tailored to the types of hazards to which employees are exposed.

(2) You must develop a written accident prevention program tailored to the needs of your agricultural operation and to the types of hazards involved.

(3) Your accident prevention program must contain at least the following elements:

(a) How, when, and where to report injuries and illnesses, and the location of first-aid facilities.

(b) How to report unsafe conditions and practices.

(c) The use and care of personal protective equipment.

(d) What to do in emergencies. See WAC 296-307-35015 for emergency action plan requirements.

(e) Identification of hazardous chemicals or materials and the instruction for their safe use.

(f) An on-the-job review of the practices necessary to perform job assignments in a safe and healthful manner.

(4) At least once a month, you must conduct a walk-around safety inspection of active job sites, the materials and equipment involved, and operating procedures. A representative chosen by employees must be invited and allowed to accompany you.

Note: Additional requirements in Part G-1, WAC 296-307-097, Outdoor heat exposure, may apply. Employers may address their outdoor heat exposure safety program either in their written accident prevention program (APP) or as a stand-alone written document. See Part G-1.

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-09512 What potable water sources must an employer provide? You must provide potable water for employees engaged in hand-labor operations in the field, without cost to the employee. Potable water must meet the following requirements:

(1) Potable water is in locations that are accessible to all employees.

(2) Potable water containers are refilled daily or more often as necessary.

(3) Potable water dispensers are designed, constructed, and serviced so that sanitary conditions are maintained. They are closeable and equipped with a tap.

(4) Open containers such as barrels, pails, or tanks for drinking water from which water must be dipped or poured, whether or not they are fitted with a cover, are prohibited.

(5) Any container used to distribute drinking water is clearly marked in English and with the appropriate international symbol describing its contents.

(6) Any container used to distribute drinking water is only used for that purpose.

(7) Potable water is suitably cool and provided in sufficient amounts, taking into account the air temperature, humidity, and the nature of the work performed, to meet employees' needs.

Note: Suitably cool water should be sixty degrees Fahrenheit or less. During hot weather, employees may require up to three gallons of water per day. Additional requirements may be found in the outdoor heat exposure standard in Part G-1, WAC 296-307-09740 Drinking water, which applies between May 1st and September 30th of each year.

(8) The use of common drinking cups or dippers is prohibited. Water is dispensed in single-use drinking cups, personal containers, or by water fountains.

"Single-use drinking cups" means containers of any type or size, disposable or not, and including personal containers if the choice to use a personal container is made by the employee, not the employer.

(9) Employees must be prohibited from drinking from irrigation ditches, creeks or rivers. Potable water must meet the quality standards for drinking purposes of the state or local authority, or must meet quality standards of the United States Environmental Protection Agency's National Interim—Primary Drinking Water Regulations, published in 40 CFR Part 141 and 40 CFR 147.2400.

AMENDATORY SECTION (Amending WSR 05-01-166, filed 12/21/04, effective 4/2/05)

WAC 296-307-11015 Violations of this part—Worker protection standards—40 CFR, § 170.9. (1) RCW 15.58.150 (2)(c) provides that it is unlawful for any person ". . . to use or cause to be used any pesticide contrary to label directions . . ." When 40 CFR, Part 170 is referenced on a label, users must comply with all of its requirements except those that are inconsistent with product specific instructions on the labeling. For purposes of this chapter, the term "use" is interpreted to include:

(a) Preapplication activities, including, but not limited to:

(i) Arranging for the application of the pesticide;

(ii) Mixing and loading the pesticide; and

(iii) Making necessary preparations for the application of the pesticide, including responsibilities related to worker notification, training of handlers, decontamination, use and care of personal protective equipment, emergency information, and heat stress management.

Note: Additional requirements in WAC 296-307-097, Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.

(b) Application of the pesticide.

(c) Post-application activities necessary to reduce the risks of illness and injury resulting from handlers' and workers' occupational exposures to pesticide residues during the restricted-entry interval plus thirty days. These activities include, but are not limited to, responsibilities related to worker training, notification, and decontamination.

(d) Other pesticide-related activities, including, but not limited to, providing emergency assistance, transporting or storing pesticides that have been opened, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.

(2) A person who has a duty under this chapter, as referenced on the pesticide product label, and who fails to perform that duty, violates RCW 15.58.330 and 17.21.315, and is subject to civil penalties under RCW 15.58.335, 15.58.260 and 17.21.315.

(3) FIFRA section 14 (b)(4) provides that a person is liable for a penalty under FIFRA if another person employed by or acting for that person violates any provision of FIFRA.

The term "acting for" includes both employment and contractual relationships.

(4) The requirements of this chapter, including the decontamination requirements, shall not, for the purposes of section 653 (b)(1) of Title 29 of the U.S. Code, be deemed to be the exercise of statutory authority to prescribe or enforce standards or regulations affecting the general sanitary hazards addressed by Field Sanitation, WAC 296-307-095, or other agricultural, nonpesticide hazards.

AMENDATORY SECTION (Amending WSR 98-24-096, filed 12/1/98, effective 3/1/99)

WAC 296-307-12020 Entry restrictions—Standards for workers—40 CFR, § 170.112. (1) General restrictions.

(a) After the application of any pesticide on an agricultural establishment, the agricultural employer shall not allow or direct any worker to enter or to remain in the treated area before the restricted-entry interval specified on the pesticide labeling has expired, except as provided in this section.

(b) Entry-restricted areas in greenhouses are specified in column D in Table 2 under WAC 296-307-12015 (3)(d).

(c) When two or more pesticides are applied at the same time, the restricted-entry interval shall be the longest of the applicable intervals.

(d) The agricultural employer shall assure that any worker who enters a treated area under a restricted-entry interval as permitted by subsections (3), (4), and (5) of this section uses the personal protective equipment specified in the product labeling for early entry workers and follows any other requirements on the pesticide labeling regarding early entry.

(2) Exception for activities with no contact. A worker may enter a treated area during a restricted-entry interval if the agricultural employer assures that both of the following are met:

(a) The worker will have no contact with anything that has been treated with the pesticide to which the restricted-entry interval applies, including, but not limited to, soil, water, air, or surfaces of plants; and

(b) No such entry is allowed until any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by WAC 296-307-12015 (3)(c) or in the labeling have been met.

(3) Exception for short-term activities. A worker may enter a treated area during a restricted-entry interval for short-term activities if the agricultural employer assures that the following requirements are met:

(a) No hand labor activity is performed.

(b) The time in treated areas under a restricted-entry interval for any worker does not exceed one hour in any twenty-four-hour period.

(c) No such entry is allowed for the first four hours following the end of the application, and no such entry is allowed thereafter until any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by WAC 296-307-12015 (3)(c) or in the labeling have been met.

(d) The personal protective equipment specified on the product labeling for early entry is provided to the worker.

Such personal protective equipment shall conform to the following standards:

(i) Personal protective equipment (PPE) means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

(ii) Long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, socks, and other items of work clothing are not considered personal protective equipment for the purposes of this section and are not subject to the requirements of this section, although pesticide labeling may require that such work clothing be worn during some activities.

(iii) When "chemical-resistant" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of the pesticide being used through the material during use.

(iv) When "waterproof" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of water or aqueous solutions through the material during use.

(v) When a "chemical-resistant suit" is specified by the product labeling, it shall be a loose-fitting, one-piece or two-piece, chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(vi) When "coveralls" are specified by the product labeling, they shall be a loose-fitting, one-piece or two-piece garment, such as a cotton or cotton and polyester coverall, that covers, at a minimum, the entire body except head, hands, and feet. The pesticide product labeling may specify that the coveralls be worn over a layer of clothing. If a chemical-resistant suit is substituted for coveralls, it need not be worn over a layer of clothing.

(vii) Gloves shall be of the type specified by the product labeling. Gloves or glove linings made of leather, cotton, or other absorbent materials must not be worn for early entry activities unless these materials are listed on the product labeling as acceptable for such use. If chemical-resistant gloves with sufficient durability and suppleness are not obtainable for tasks with roses or other plants with sharp thorns, leather gloves may be worn over chemical-resistant liners. However, once leather gloves have been worn for this use, thereafter they shall be worn only with chemical-resistant liners and they shall not be worn for any other use.

(viii) When "chemical-resistant footwear" is specified by the product labeling, it shall be one of the following types of footwear: Chemical-resistant shoes, chemical-resistant boots, or chemical-resistant shoe coverings worn over shoes or boots. If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable for workers, then leather boots may be worn in such terrain.

(ix) When "protective eyewear" is specified by the product labeling, it shall be one of the following types of eyewear: Goggles; face shield; safety glasses with front, brow, and temple protection; or a full-face respirator.

(x) When "chemical-resistant headgear" is specified by the product labeling, it shall be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

(e) The agricultural employer shall assure that the worker, before entering the treated area, either has read the product labeling or has been informed, in a manner that the worker can understand, of all labeling requirements related to human hazards or precautions, first aid, symptoms of poisoning, personal protective equipment specified for early entry, and any other labeling requirements related to safe use.

(f) The agricultural employer shall assure that:

(i) Workers wear the personal protective equipment correctly for its intended purpose and use personal protective equipment according to manufacturer's instructions.

(ii) Before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(iii) Personal protective equipment that cannot be cleaned properly is disposed of in accordance with any applicable federal, state, and local regulations.

(iv) All personal protective equipment is cleaned according to manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it shall be washed thoroughly in detergent and hot water.

(v) Before being stored, all clean personal protective equipment is dried thoroughly or is put in a well-ventilated place to dry.

(vi) Personal protective equipment contaminated with pesticides is kept separately and washed separately from any other clothing or laundry.

(vii) Any person who cleans or launders personal protective equipment is informed that such equipment may be contaminated with pesticides, of the potentially harmful effects of exposure to pesticides, and of the correct way(s) to handle and clean personal protective equipment and to protect themselves when handling equipment contaminated with pesticides.

(viii) All clean personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(ix) Each worker is instructed how to put on, use, and remove the personal protective equipment and is informed about the importance of washing thoroughly after removing personal protective equipment.

(x) Each worker is instructed in the prevention, recognition, and first-aid treatment of heat-related illness.

Note: Additional requirements in WAC 296-307-097, Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.

(xi) Workers have a clean place(s) away from pesticide-storage and pesticide-use areas for storing personal clothing not in use; putting on personal protective equipment at the start of any exposure period; and removing personal protective equipment at the end of any exposure period.

(g) When personal protective equipment is required by the labeling of any pesticide for early entry, the agricultural employer shall assure that no worker is allowed or directed to perform the early entry activity without implementing, when appropriate, measures to prevent heat-related illness.

Note: Additional requirements in WAC 296-307-097, Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.

(h) During any early entry activity, the agricultural employer shall provide a decontamination site in accordance with WAC 296-307-12050.

(i) The agricultural employer shall not allow or direct any worker to wear home or to take home personal protective equipment contaminated with pesticides.

(4) Declaration of an agricultural emergency.

(a) The director of the Washington state department of agriculture may declare the existence of circumstances causing an agricultural emergency on a particular establishment or establishments.

(b) The director may declare an agricultural emergency based on the reasonably expected certainty of circumstances occurring based on weather or other forecasts that would create conditions that would normally be anticipated to cause an agricultural emergency.

(c) The agricultural employer may determine if the establishment under his/her control is subject to the agricultural emergency declared by the director.

(d) Emergency repair of equipment that is in use and sited within a pesticide treated area under a restricted-entry interval, such as frost protection devices, shall be considered to be an agricultural emergency. The conditions in WAC 16-228-655 shall be met.

(e) Activities that require immediate response such as fire suppression, relocation of greenhouse plants due to power failure, and similar conditions, shall be considered to be agricultural emergencies. The conditions in WAC 16-228-655 shall be met.

(5) Agricultural activities permitted under an agricultural emergency.

(a) A worker may enter a pesticide treated area under a restricted-entry interval in an agricultural emergency to perform tasks, including hand labor tasks, necessary to mitigate the effects of the agricultural emergency if the agricultural employer assures that all the following requirements are met:

(i) No entry is permitted for the first four hours after the pesticide application or the minimum reentry interval allowed by EPA for that product, whichever is less;

(ii) The personal protective equipment specified on the product labeling for early entry is provided to the worker;

(iii) The agricultural employer shall assure that the worker, before entering the treated area, either has read the product labeling or has been informed, in a manner the worker can understand, of all labeling requirements related to human hazards or precautions, first aid, symptoms of poisoning, personal protective equipment specified for early entry, and any other labeling requirements related to safe use;

(iv) The agricultural employer shall assure that the worker wears the proper PPE and that the PPE is in operable condition and that the worker has been trained in its proper use;

(v) The agricultural employer shall assure that measures have been taken, when appropriate, to prevent heat-related illness;

Note: Additional requirements in WAC 296-307-097, Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.

(vi) A decontamination site has been provided in accordance with EPA regulations;

(vii) The agricultural employer shall not allow or direct any worker to wear home or take home personal protective equipment contaminated with pesticides.

(b) If the agricultural emergency is due to equipment failure, then the agricultural employer shall assure that all the requirements in subsection (1) of this section are met plus the following additional requirement. The only permitted activity until the restricted-entry interval has elapsed is equipment repair that would mitigate the effect of the equipment failure.

(6) Recordkeeping required for agricultural emergencies.

(a) If the employer declares that his/her establishment is affected by an agricultural emergency and that activities regulated by the worker protection standard have been performed, the employer shall keep the following records for seven years from the date of the agricultural emergency:

- (i) Date of the agricultural emergency;
- (ii) Time of the agricultural emergency, start and end;
- (iii) Reason for the agricultural emergency, such as frost, fire, equipment failure, etc.;
- (iv) Crop/site;
- (v) Pesticide(s) - name, EPA number, REI;
- (vi) Name, date, time of entry and exit of early entry person(s);

(vii) Estimated potential of economic loss which would have occurred had no early entry been allowed.

(b) Records shall be completed within twenty-four hours of the early entry exposure and be available to the department and/or department of health and/or medical facility or treating physician if requested by the above or the employee.

(7) Exception to entry restrictions requiring EPA approval. EPA may in accordance with 40 CFR, Part 170.112 (e) grant an exception from the requirements of this section. A request for an exception must be submitted to the Director, Office of Pesticide Programs (H-7501C), Environmental Protection Agency, 401 "M" Street SW, Washington, DC 20460 and must be accompanied by two copies of the information specified in 40 CFR, Part 170.112(e).

AMENDATORY SECTION (Amending WSR 05-01-166, filed 12/21/04, effective 4/2/05)

WAC 296-307-13045 Personal protective equipment—Standards for pesticide handlers—40 CFR, § 170.240. (1) Requirement. Any person who performs tasks as a pesticide handler shall use the clothing and personal protective equipment specified on the labeling for use of the product.

(2) Definition.

(a) Personal protective equipment (PPE) means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection

devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

(b) Long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, socks, and other items of work clothing are not considered personal protective equipment for the purposes of this section and are not subject to the requirements of this section, although pesticide labeling may require that such work clothing be worn during some activities.

(3) Provision. When personal protective equipment is specified by the labeling of any pesticide for any handling activity, the handler employer shall provide the appropriate personal protective equipment in clean and operating condition to the handler.

(a) When "chemical-resistant" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of the pesticide being used through the material during use.

(b) When "waterproof" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of water or aqueous solutions through the material during use.

(c) When a "chemical-resistant suit" is specified by the product labeling, it shall be a loose-fitting, one-piece or two-piece chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(d) When "coveralls" are specified by the product labeling, they shall be a loose-fitting, one-piece or two-piece garment, such as a cotton or cotton and polyester coverall, that covers, at a minimum, the entire body except head, hands, and feet. The pesticide product labeling may specify that the coveralls be worn over another layer of clothing.

(e) Gloves shall be of the type specified by the product labeling. Gloves or glove linings made of leather, cotton, or other absorbent material shall not be worn for handling activities unless such materials are listed on the product labeling as acceptable for such use.

(f) When "chemical-resistant footwear" is specified by the product labeling, one of the following types of footwear must be worn:

- (i) Chemical-resistant shoes.
- (ii) Chemical-resistant boots.
- (iii) Chemical-resistant shoe coverings worn over shoes or boots.

(g) When "protective eyewear" is specified by the product labeling, one of the following types of eyewear must be worn:

- (i) Goggles.
- (ii) Face shield.
- (iii) Safety glasses with front, brow, and temple protection.

(iv) Full-face respirator.

(h) When a "chemical-resistant apron" is specified by the product labeling, an apron that covers the front of the body from mid-chest to the knees shall be worn.

(i) When a respirator is specified by the product labeling, it shall be appropriate for the pesticide product used and for the activity to be performed. The handler employer shall assure that the respirator fits correctly by using the procedures consistent with chapter 296-307 WAC, Part Y-5. If the label does not specify the type of respirator to be used, it shall

meet the requirements of chapter 296-307 WAC, Part Y-5. The respiratory protection requirements of chapter 296-307 WAC, Part Y-5, shall apply.

(j) When "chemical-resistant headgear" is specified by the product labeling, it shall be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

(4) Exceptions to personal protective equipment specified on product labeling.

(a) Body protection.

(i) A chemical-resistant suit may be substituted for "coveralls," and any requirement for an additional layer of clothing beneath is waived.

(ii) A chemical-resistant suit may be substituted for "coveralls" and a chemical-resistant apron.

(b) Boots. If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable, then leather boots may be worn in such terrain.

(c) Gloves. If chemical-resistant gloves with sufficient durability and suppleness are not obtainable, then during handling activities with roses or other plants with sharp thorns, leather gloves may be worn over chemical-resistant glove liners. However, once leather gloves are worn for this use, thereafter they shall be worn only with chemical-resistant liners and they shall not be worn for any other use.

(d) Closed systems. If handling tasks are performed using properly functioning systems that enclose the pesticide to prevent it from contacting handlers or other persons, and if such systems are used and are maintained in accordance with that manufacturer's written operating instructions, exceptions to labeling-specified personal protective equipment for the handling activity are permitted as provided in (d)(i) and (ii) of this subsection.

(i) Persons using a closed system to mix or load pesticides with a signal word of DANGER or WARNING may substitute a long-sleeved shirt, long pants, shoes, socks, chemical-resistant apron, and any protective gloves specified on the labeling for handlers for the labeling-specified personal protective equipment.

(ii) Persons using a closed system to mix or load pesticides other than those in (d)(i) of this subsection or to perform other handling tasks may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment.

(iii) Persons using a closed system that operates under pressure shall wear protective eyewear.

(iv) Persons using a closed system shall have all labeling-specified personal protective equipment immediately available for use in an emergency.

(e) Enclosed cabs. If handling tasks are performed from inside a cab that has a nonporous barrier which totally surrounds the occupants of the cab and prevents contact with pesticides outside of the cab, exceptions to personal protective equipment specified on the product labeling for that handling activity are permitted as provided in (e)(i) through (iv) of this subsection.

(i) Persons occupying an enclosed cab may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If a respiratory

protection device is specified on the pesticide product labeling for the handling activity, it must be worn.

(ii) Persons occupying an enclosed cab that has a properly functioning ventilation system which is used and maintained in accordance with the manufacturer's written operating instructions and which is declared in writing by the manufacturer and by the Washington state department of labor and industries to provide respiratory protection equivalent to or greater than a dust/mist filtering respirator may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If a respiratory protection device other than a dust/mist-filtering respirator is specified on the pesticide product labeling, it must be worn.

(iii) Persons occupying an enclosed cab that has a properly functioning ventilation system which is used and maintained in accordance with the manufacturer's written operating instructions and which is declared in writing by the manufacturer and by the Washington state department of labor and industries to provide respiratory protection equivalent to or greater than the vapor-removing or gas-removing respirator specified on pesticide product labeling may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If an air-supplying respirator or a self-contained breathing apparatus (SCBA) is specified on the pesticide product labeling, it must be worn.

(iv) Persons occupying an enclosed cab shall have all labeling-specified personal protective equipment immediately available and stored in a chemical-resistant container, such as a plastic bag. They shall wear such personal protective equipment if it is necessary to exit the cab and contact pesticide-treated surfaces in the treated area. Once personal protective equipment is worn in the treated area, it must be removed before reentering the cab.

(f) Aerial applications.

(i) Use of gloves. Chemical-resistant gloves shall be worn when entering or leaving an aircraft contaminated by pesticide residues. In the cockpit, the gloves shall be kept in an enclosed container to prevent contamination of the inside of the cockpit.

(ii) Open cockpit. Persons occupying an open cockpit shall use the personal protective equipment specified in the product labeling for use during application, except that chemical-resistant footwear need not be worn. A helmet may be substituted for chemical-resistant headgear. A visor may be substituted for protective eyewear.

(iii) Enclosed cockpit. Persons occupying an enclosed cockpit may substitute a long-sleeved shirt, long pants, shoes, and socks for labeling-specified personal protective equipment.

(g) Crop advisors. Crop advisors entering treated areas while a restricted-entry interval is in effect may wear the personal protective equipment specified on the pesticide labeling for early entry activities instead of the personal protective equipment specified on the pesticide labeling for handling activities, provided:

(i) Application has been completed for at least four hours.

(ii) Any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by WAC 296-307-12015 (3)(c) or in the labeling have been met.

(5) Use of personal protective equipment.

(a) The handler employer shall assure that personal protective equipment is used correctly for its intended purpose and is used according to the manufacturer's instructions.

(b) The handler employer shall assure that, before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(6) Cleaning and maintenance.

(a) The handler employer shall assure that all personal protective equipment is cleaned according to the manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it shall be washed thoroughly in detergent and hot water.

(b) If any personal protective equipment cannot be cleaned properly, the handler employer shall dispose of the personal protective equipment in accordance with any applicable federal, state, and local regulations. Coveralls or other absorbent materials that have been drenched or heavily contaminated with an undiluted pesticide that has the signal word DANGER or WARNING on the label shall be not be reused.

(c) The handler employer shall assure that contaminated personal protective equipment is kept separately and washed separately from any other clothing or laundry.

(d) The handler employer shall assure that all clean personal protective equipment shall be either dried thoroughly before being stored or shall be put in a well ventilated place to dry.

(e) The handler employer shall assure that all personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(f) The handler employer shall assure that when dust/mist filtering respirators are used, the filters shall be replaced:

- (i) When breathing resistance becomes excessive.
- (ii) When the filter element has physical damage or tears.
- (iii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.
- (iv) In the absence of any other instructions or indications of service life, at the end of each day's work period.

(g) The handler employer shall assure that when gas-removing or vapor-removing respirators are used, the gas-removing or vapor-removing canisters or cartridges shall be replaced:

- (i) At the first indication of odor, taste, or irritation.
- (ii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.
- (iii) In the absence of any other instructions or indications of service life, at the end of each day's work period.

(h) The handler employer shall inform any person who cleans or launders personal protective equipment:

- (i) That such equipment may be contaminated with pesticides.
- (ii) Of the potentially harmful effects of exposure to pesticides.

(ii) Of the correct way(s) to clean personal protective equipment and to protect themselves when handling such equipment.

(i) The handler employer shall assure that handlers have a clean place(s) away from pesticide storage and pesticide use areas where they may:

- (i) Store personal clothing not in use.
- (ii) Put on personal protective equipment at the start of any exposure period.
- (iii) Remove personal protective equipment at the end of any exposure period.

(j) The handler employer shall not allow or direct any handler to wear home or to take home personal protective equipment contaminated with pesticides.

(7) Heat-related illness. When the use of personal protective equipment is specified by the labeling of any pesticide for the handling activity, the handler employer shall assure that no handler is allowed or directed to perform the handling activity unless appropriate measures are taken, if necessary, to prevent heat-related illness.

Note: Additional requirements in WAC 296-307-097, Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.

PART G-1

NEW SECTION

WAC 296-307-097 Outdoor heat exposure.

NEW SECTION

WAC 296-307-09710 Scope and purpose. (1) WAC 296-307-097 through 296-307-09760 applies to all employers with employees performing work in an outdoor environment.

(2) The requirements of WAC 296-307-097 through 296-307-09760 apply to outdoor work environments from May 1 through September 30, annually, only when employees are exposed to outdoor heat at or above an applicable temperature listed in Table 1.

Table 1

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

Outdoor Temperature Action Levels

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

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

(3) WAC 296-307-097 through 296-307-09760 does not apply to incidental exposure which exists when an employee is not required to perform a work activity outdoors for more

than fifteen minutes in any sixty-minute period. This exception may be applied every hour during the work shift.

(4) WAC 296-307-097 through 296-307-09760 supplement all industry-specific standards with related requirements. Where the requirements under these sections provide more specific or greater protection than the industry-specific standards, the employer shall comply with the requirements under these sections. Additional related requirements are found in chapter 296-305 WAC, Safety standards for fire fighters and chapter 296-307 WAC, Safety standards for agriculture.

NEW SECTION

WAC 296-307-09720 Definitions. (1) **Acclimatization** means the body's temporary adaptation to work in heat that occurs as a person is exposed to it over time.

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

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

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

(5) **Environmental factors for heat-related illness** means working conditions that increase susceptibility for heat-related illness such as air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload (i.e., heavy, medium, or low) and duration, and personal protective equipment worn by employees. Measurement of environmental factors is not required by WAC 296-307-097.

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

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

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

NEW SECTION

WAC 296-307-09730 Employer and employee responsibility. (1) Employers of employees exposed at or above temperatures listed in WAC 296-307-09710(2) Table 1 must:

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

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

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

NEW SECTION

WAC 296-307-09740 Drinking water. (1) Keeping workers hydrated in a hot outdoor environment requires that more water be provided than at other times of the year. Federal OSHA and research indicate that employers should be prepared to supply at least one quart of drinking water per employee per hour. When employee exposure is at or above an applicable temperature listed in WAC 296-307-09710(2) Table 1:

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

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

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

NEW SECTION

WAC 296-307-09750 Responding to signs and symptoms of heat-related illness. (1) Employees showing signs or demonstrating symptoms of heat-related illness must be relieved from duty and provided with a sufficient means to reduce body temperature.

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

NEW SECTION

WAC 296-307-09760 Information and training. All training must be provided to employees and supervisors, in a language the employee or supervisor understands, prior to outdoor work which exceeds a temperature listed in WAC 296-307-09710(2) Table 1, and at least annually thereafter.

(1) Employee training. Training on the following topics must be provided to all employees who may be exposed to outdoor heat at or above the temperatures listed in WAC 296-307-09710(2) Table 1:

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

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

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

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

(e) The importance of acclimatization;

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

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

(2) Supervisor training. Prior to supervising employees working in outdoor environments with heat exposure at or above the temperature levels listed in WAC 296-307-09710(2) Table 1, supervisors must have training on the following topics:

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

(b) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-307-097 through 296-307-09760;

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

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

WSR 08-23-097

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 05-19—Filed November 19, 2008, 11:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-03-135.

Title of Rule and Other Identifying Information: This action amends the two rules that regulate new or modified sources of toxic air pollutants, WAC 173-400-110 General regulations for air pollution sources, new source review, and chapter 173-460 WAC, Controls for new sources of toxic air pollutants.

Hearing Location(s): Department of Ecology, 300 Desmond Drive S.E., Lacey, WA 98503, on January 13, 2009, at 7:00 p.m.; and at the Eastern Regional Office, Department of Ecology, 4601 North Monroe Street, Spokane, WA 99205, on January 14, 2009, at 4:00 p.m.

Date of Intended Adoption: March 1, 2009.

Submit Written Comments to: Linda Whitcher, P.O. Box 47600, Olympia, WA 98504-7600, e-mail liwh461@ecy.wa.gov, fax (360) 407-7534, by 5:00 p.m. on January 24, 2009.

Assistance for Persons with Disabilities: Contact Tami Dahlgren at (360) 407-6830, by January 3, 2009. Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call 877-833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This programmatic action involves a general update of chapter 173-460 WAC and a limited update of WAC 173-400-110. The revision to chapter 173-460 WAC includes an update of the list of toxic air pollutants, recalculation of the acceptable source impact levels and small quantity emission rates to reflect current scientific findings, setting the de minimis values for emissions of toxic air pollutants, and deleting out of date control technologies for best available control technologies. The revisions to WAC 173-200-110 are focused on integrating the new source review process in the two rules. Both WACs regulate new or modified sources of air pollution.

This rule making has three major goals: To update the toxic air pollutant list; to establish acceptable source impact levels for emission, small quantity emission rates, and de minimis emission levels to reflect current scientific information, and to increase the consistency between chapters 173-400 and 173-460 WAC. In the new rule the permit process and exemptions have been consolidated in WAC 173-400-110.

Since the conclusion of the advisory committee meetings ecology has added to the rule making a new de minimis level for PM^{2.5}. The method of determining this level is the same as was used in developing the other criteria pollutant de minimis values. We invite comments on this revision in addition to the other changes to the two rules.

Reasons Supporting Proposal: Ecology has made a commitment to periodically update this rule, in order to reflect the most current scientific understanding of the toxic effects of industrial air emissions.

Statutory Authority for Adoption: Chapter 70.94 RCW, Washington Clean Air Act.

Statute Being Implemented: Chapter 70.94 RCW, Washington Clean Air Act.

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

Name of Proponent: Air quality program, department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Linda Whitcher, Lacey, Washington, (360) 407-6875; **Implementation and Enforcement:** Richard Hibbard, Lacey, Washington, (360) 407-6896.

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

Small Business Economic Impact Statement

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

Executive Summary: Based on research and analysis required by the Regulatory Fairness Act, RCW 19.85.070, ecology has determined that the amendments to chapters 173-400 and 173-460 WAC have a disproportionate impact on

small business. Therefore, we must include cost-minimizing features in the rule where it is legal and feasible to do so.

1. Background:

General Air Pollution Regulations and New Source

Review: In order to protect air quality in the state, Washington law requires permitting of significant sources of criteria pollutants, and new sources of toxic air pollutants (TAPs). Criteria pollutants are pollutants for which EPA has set national ambient air quality standards to protect human health and welfare. TAPs are airborne chemicals that have been shown to be hazardous to human health. These chemicals are associated with a wide variety of ailments and disorders when people are exposed to them.

Washington state has been regulating new sources of these pollutants since 1991 via the permitting process. The regulation was last updated in 1994 to reflect scientific knowledge current at that time. Proposed projects which will establish a new source of air pollution may be required to obtain a new source review (air quality) permit prior to beginning construction.

Ecology or the local clean air agency with jurisdiction is responsible for reviewing projects that will install a new source or modify an existing source of TAPs. Applicants proposing to install a new source - or modify an existing source - of TAPs are required to submit a notice of construction (NOC) application to ecology or the local air authority.

The application must include a detailed description of the project, and include process equipment information, type and amount of air contaminants that would be emitted, air pollution control practices, and air pollution control equipment. Some types of projects - such as residential uses, or projects emitting less than specific emission thresholds of particular TAPs - are exempt.

Criteria Air Pollutant Exemption Limits: The existing rule (WAC 173-400-110(5)) describes the criteria for defining exempt sources of criteria air pollutants. Listed sources emitting below these levels are exempt from program requirements for criteria air pollutants. The current rule contains exemption limits (essentially de minimis limits) for carbon monoxide, nitrogen oxides, sulfur dioxide, particulate matter, fine particulate, and volatile organic compounds.

Exemption limits in the existing regulation were calculated by dividing the Environmental Protection Agency's (EPA's) prevention of significant deterioration (PSD) increment levels by twenty (setting them at 5% of the EPA's PSD increment levels). Increment is the maximum amount of pollutant (measured in tons per year) that a PSD permit can allow to be emitted and not break the modeled ambient concentrations. PSD increment levels are designed to:

- Protect public health and welfare;
- Preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value;
- Insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources; and
- Assure that any decision to permit increased air pollution in any area to which this section applies is

made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decision-making process.¹

Three Existing Tiers of Toxic Air Permitting: There are three levels of review when processing a permit application for a new or modified emissions unit emitting TAPs:

- Toxic screening (first tier).
- Health impacts assessment (second tier).
- Risk management decision (third tier).²

First Tier Analysis: All projects are required to undergo a first tier toxic screening analysis as required by WAC 173-460-040. There are two ways to perform a first tier analysis:

- Determine if proposed emissions are below the small quantity emission rate (SQER) tables. If yes, then further analysis is not required.
- If emissions of a TAP are greater than the relevant SQER, those emissions must be modeled, and the resultant ambient concentration is compared to the appropriate acceptable source impact level (ASIL). If the ambient concentration is below the ASIL, then no further analysis is required.
- If the modeled ambient concentration of a TAP is above the relevant ASIL, the permit moves to second tier review, below.

It is most common for NOC permit applications to require only first tier review. Based on recent permitting data, approximately 400 - 450 first tier permits are issued in Washington state each year.³

Second Tier Analysis: A second tier analysis (WAC 173-460-090) is a site-specific health impacts assessment of the emissions resulting from a proposed project. The objective of a second tier analysis is to quantify:

- The increase in lifetime cancer risk for persons exposed to the increased concentration of any carcinogenic TAP.
- The increased health hazard from any noncarcinogenic TAP in ambient air.

Once quantified, the cancer risk is compared to the maximum risk allowed by a second tier analysis (one in one hundred thousand). The concentration of any noncarcinogenic TAP that would result from the proposed project is compared to a risk-based concentration.

This level of permitting is considerably less common than first tier analysis. Based on recent permitting data, approximately six second tier permits are issued in Washington state each year.⁴

Third Tier Analysis: If the emissions of a carcinogenic TAP result in a cancer risk of greater than one in one hundred thousand, then an applicant may request ecology headquarters to perform a third tier analysis. A third tier analysis is basically a risk management decision, in which the director of ecology makes a decision that the risk of the project is acceptable, based on determination that emissions will be maximally reduced through:

- Available preventive measures.
- Assessment of environmental benefit.
- Disclosure of risk at a public hearing.

- Related factors associated with the facility and the surrounding community.

There has never been an NOC permit application that has required third tier review.

Regulatory Baseline: The baseline for all analyses of the proposed rule amendments is the regulatory environment in the absence of any changes. Under the current regulatory framework, the permitting process for new source review would remain as is described above (see new source review). Without the adoption of the proposed rule amendments, the existing permitting process would remain in place.

Changes under the Proposed Rule Amendments: The proposed amendments to chapters 173-400 and 173-460 WAC make a number of changes to the permitting process, air quality screening standards, applicability, and organization and consistency of regulatory language. Each of these actions is authorized by the Clean Air Act (chapter 70.94 RCW).

Specific changes under the proposed amendments include:

- Updating the TAPs and screening levels (acceptable source impact level, or ASIL; small quantity emissions rate, or SQER) involved in the permitting process with current scientific knowledge.
- Establishing de minimis values for emissions.
- Adding exemption emissions level for particulate matter - 2.5 (PM-2.5) as a criteria pollutant.
- Optional emissions netting within and across facilities.
- Expanding applicability of new source review.
- Streamlining language and procedures.

Each of these is describe [described] in detail, below.⁵

Updating TAPs, ASIL Values, and SQER Values:

The proposed rule amendments update the list of regulated TAPs and their associated ASIL values based on a four-step procedure and three established sources of toxicological and health information. The process ecology used in selecting ASIL values and which TAPs to include in the amended list sourced risk-based concentrations from:

- United States Environmental Protection Agency.
- Agency for toxic substances and disease registry.
- California Office of Environmental Health Hazard Assessment.

Ecology determined that if TAPs were not addressed by these sources, they did not have an ASIL, and therefore did not include them in the amended regulatory list for this rule.

Ecology updated SQERs based on the relevant amended ASIL values. Like ASILs, SQERs are additional screening levels, used to determine the necessary level of review.

Establishing De Minimis Values for Emissions: Ecology calculated de minimis emissions rates based on the relevant amended ASIL values. De minimis emissions values are minimum emissions rates for first tier review. If a proposed new source of TAPs has expected emissions below de minimis levels for a TAP, the NOC permit application does not require first tier review for that TAP. For new sources of TAPs with expected emissions below de minimis levels for all TAPs, no evaluation by ecology or a local clean air authority is necessary.

Adding Exemption Emissions Level for Particulate Matter - 2.5 (PM-2.5): The proposed rule amendments include the addition of an exemption level for PM-2.5 to the exempt emissions rates for criteria air pollutants. Since this rule was last revised, the EPA established a prevention of significant deterioration (PSD) emissions rate and increment level for PM-2.5. Ecology proposed updating the rule to reflect this change.

Ecology calculated the proposed emissions rate of 0.5 tons/year in the same way that it calculated existing exemption levels for the other criteria pollutants. Ecology multiplied the PSD increment level recently set for PM-2.5 by the EPA (ten tons/year) by 5%, resulting in an exempt level of emissions of 0.5 tons/year.

Under the baseline, new sources are required to calculate emissions rates for the criteria pollutants, and compare them to the exemption levels. If all emissions - including PM-2.5 are below exemption levels (for PM-2.5, the baseline exempt emissions rate is zero), then the project is exempt from registration program requirements. This means, if any PM-2.5 is going to be emitted, the project cannot be exempt under the existing rule.

Emissions Netting: Where proposed new sources of TAPs are required to install emissions controls, the proposed rule amendments allow permit applicants to generate an equivalent net reduction in emissions across multiple emissions units or sources, including existing sources. Emissions netting is constrained by the type of TAP emissions that must be reduced, and the source location. This option does not exist under the baseline rule.

Expanding Applicability: The baseline rule for new sources of TAPs applies to those types of sources specifically listed in the rule. The proposed rule amendments expand new source review to all new sources, except those that qualify for exemption - either categorically, or by de minimis emissions standards. Under the baseline, new source review only applies to new sources that are listed categorically in the rule.

Streamlining Language and Procedures: The baseline new source review permitting process involves multiple regulations, with TAPs listed across separate tables, in separate sections of the code. In addition, the baseline permitting process applies to select industries, and can apply differently across industries and attributes of proposed new TAP sources. The proposed rule amendments streamline applicability, and clarify the regulation and permitting process.

2. Compliance Costs for Washington Businesses: Ecology calculated in the cost-benefit analysis (Ecology Publication No. 08-02-023) for the proposed rule amendments, that the proposed rule would result in both quantifiable costs and benefits to Washington businesses. These impacts on Washington businesses are as follows:

- Avoided cost: \$2.7 million annually in reduced costs to first tier permittees. Range \$1.8 - \$3.6 million.
- Avoided cost: \$125 thousand annually in reduced costs to second tier permittees. Range \$0 - \$300 thousand.

- Increased cost: \$2.9 million annually in increased costs to first tier permittees. Range \$1.8 - \$7.1 million.

Ecology also determined that additional cost reductions to Washington businesses were likely, due to rule amendments that streamlined the rule, and the addition of optional netting of emissions across facilities. As these benefits to businesses were not quantifiable, ecology focused on the most conservative quantified net costs, as based on quantified benefits and costs from the cost-benefit analysis.

The broadest range of net compliance costs, when accounting for the full possible range of costs and benefits of the proposed rule, is between the sets of (lowest cost, highest benefit) and (highest cost, lowest benefit). This range of net compliance costs is large, from an annual net cost of \$5 million, to an annual net benefit of \$2.1 million in avoided compliance costs.

Alternately, using the average expected costs and benefits, the proposed rule amendments generate a net quantified cost of \$75 thousand to Washington businesses.

3. Quantification of Costs and Ratios: Ecology based its aggregate calculations on estimates of the annual number of NOC permits impacted by the proposed rule amendments, in Washington state. The expected number of impacted NOC permits each year is one hundred forty-three, after accounting for permits that do not include any TAP emissions, and permits that are not expected to change in the number of TAP emissions exceeding the relevant SQER values.

Dividing the range of annual net compliance costs to Washington businesses, ecology calculated that the impact of the proposed rule amendments is between a net compliance cost of \$35 thousand per affected NOC permit, and a net compliance benefit (avoided cost) of \$15 thousand per affected NOC permit. At the average expected net cost, the per-NOC-permit cost is \$525.

This cost is expected to be **constant** for any typical new source of TAPs, as ecology could not determine whether there is a significant correlation between business size, new source size, the TAPs emitted, and the impacts of the proposed rule amendments. Therefore, ecology concluded that on a per-employee basis, the proposed rule amendments have a disproportionate impact on small businesses.

4. Action Taken to Reduce Small Business Impacts: As the proposed rule amendments either update the rule's scientific content to current scientific standards, or serve to make compliance with the rule easier or less expensive, ecology determined that the existing provisions in the rule (these also remain in the amended rule) were otherwise sufficient to aid small businesses in compliance. The primary compliance costs to businesses are (1) analysis costs and (2) fees.

For analysis costs, these depend, to some extent, on the number of TAPs emitted by a new source, in excess of the relevant de minimis levels and SQERs. If there is a correlation between business size and the size of a new source's emissions of TAPs, then small businesses are more likely to emit below the proposed rule amendments' new de minimis emissions levels, or revised SQER values for all TAPs. This makes it more likely that small businesses will not require new source review, or will at most require first tier review.

For fees (to local clean air agencies and/or ecology), existing provisions in the rule, which remain in the proposed amended rule, aid small businesses in compliance by attempting to reduce their disproportionate burden by offering fee reductions. The proposed rule amendments retain fees determined by reference to another section of the code.

WAC 173-455-120 New source review fees, allows for a fee reduction for small businesses. The definition of small business is, "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees." This corresponds to the definition used for SBEIS.

The new source review fee for small businesses that apply for a fee reduction is then the greater of:

- 50% of the new source review fee; or
- Two hundred fifty dollars.

An extreme hardship fee reduction is also available for small businesses. This reduction would further reduce fees, to a level determined by ecology, for small businesses with "special economic circumstances." See WAC 173-455-120 (4)(e) for determinants of "special economic circumstances" and the extreme hardship fee.

5. Small Business Involvement: In the rule development process for the proposed rule amendments, ecology held stakeholder meetings that included direct and indirect small business representation. Two small businesses were directly represented by employees participating in the stakeholder process. Other small businesses were represented in the stakeholder process by the Independent Business Association and the Association of Washington Business.

6. NAICS Codes of Impacted Industries: The proposed rule amendments expand applicability of the new source review rule to all new sources of TAPs. Many of these sources are not expected to experience an impact from the rule due to exemption or size of TAP emissions, although ecology cannot be certain of all businesses that will be newly affected, as this data does not exist. Based on a review of past NOC permits requiring first tier or second tier review, ecology expects the proposed rule amendments to generate cost impacts for new sources in *at least* the industries listed in Table 1.

NAICS Code	Total Businesses in WA	Small Businesses
337110	689	670
811121	1,111	1100
811490	842	841
221320	14	14
212312	2	2
325211	14	13
327310	5	3
311920	29	27
517210	604	598
321113	44	31

NAICS Code	Total Businesses in WA	Small Businesses
511210	15	13
519130	0	0
562219	29	26
423920	189	183
221112	7	6
324110	22	18

Source: Washington state employment security department industry and employer data. Note that this includes only businesses or parts of businesses operated in Washington. The actual number of small businesses may be smaller, as this dataset does not reflect Washington-based subsidiary operations of larger interstate or international corporations.

7. Impact on Jobs: By creating additional compliance costs to some businesses, in the form of payments to regulatory agencies, environmental consultants, and emissions control manufacturers and installers, the proposed rule amendments create transfers of money between these industries. These financial impacts can then filter through the economy (additional or reduced resources to employ individuals, purchase inputs, etc.).

Ecology used the 2002 Washington state office of financial management input-output model to estimate the impacts of financial transfers created by the proposed rule amendments. Based on payments made by impacted industries going entirely to the consulting and analysis industry (as in the most conservative estimate of costs), the proposed rule amendments generate a net gain in employment of twenty-seven jobs each year. Table 2 summarizes the distribution of job impacts across industry categories.

Natural Resources and Utilities	-3.211
Construction and Manufacturing	-13.651
Retail and Wholesale Trade	1.021
Producer and Transport Services	33.696
Consumer Services	9.461
Total	27.316

¹ EPA prevention of significant deterioration (PSD) basic information web site <http://www.epa.gov/nsr/psd.html#air>.

² The proposed rule amendments change the names of these levels of review to the names in parentheses. For clarity, this document uses "first tier," "second tier" and "third tier" throughout when referring to these levels of review.

³ Based on a survey of clean air authorities in Washington state. Clean air authorities/agencies: Benton, Northwest, Olympic Region, Puget Sound, Southwest, Spokane Regional, and Yakima. Ecology regional offices administering NOC permits: Central Regional Office and Eastern Regional Office. Most recent, or averaged most recent number of completed NOC permits, and number involving TAPs, if available.

⁴ Second tier NOC permit review is performed by ecology. Average of six permits annually based on completed NOC permits.

⁵ Third tier analysis is only performed for carcinogens under the existing baseline, and all risks of noncarcinogenic TAPs are evaluated in the second tier analysis. Under the proposed rule amendments, both carcinogens and noncarcinogens are included in third tier analysis. As there has never been an NOC permit application that has required third tier review, ecology does

not expect future third tier review, and therefore does not expect an impact from this rule amendment.

A copy of the statement may be obtained by contacting Kasia Patora, Economic and Regulatory Research, Department of Ecology, P.O. Box 47600, Lacey, WA 98504-7600, phone (360) 407-6184, fax (360) 407-6989, e-mail kpat461@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kasia Patora, Economic and Regulatory Research, Department of Ecology, P.O. Box 47600, Lacey, WA 98504-7600, phone (360) 407-6184, fax (360) 407-6989, e-mail kpat461@ecy.wa.gov.

November 18, 2008

Polly Zehm

Deputy Director

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

WAC 173-400-110 New source review (NSR). In lieu of filing a notice of construction application under this section, the owner or operator may apply for coverage under an applicable general order of approval issued under WAC 173-400-560. Coverage under a general order of approval satisfies the requirement for new source review under RCW 70.94-152.

(1) Applicability.

(a) This section, WAC 173-400-112 and 173-400-113 apply statewide except where an authority has adopted its own new source review rule.

(b) This section applies to sources as defined in RCW 70.94.030(~~((21))~~) (22), but does not include nonroad engines. Nonroad engines are regulated under WAC 173-400-035.

(2) Projects subject to NSR - notice of construction application.

(a) A notice of construction application must be filed by the owner or operator and an order of approval issued by the permitting authority prior to ~~((the establishment))~~ beginning actual construction of any new source, except for the following:

(i) Those sources exempt under subsection (4) or (5) of this section; and

(ii) A source regulated under WAC 173-400-035.

For purposes of this section (~~((“establishment” shall mean to begin actual construction, as that term is defined in WAC 173-400-030, and))~~) "new source" (~~((shall))~~) includes any modification to an existing stationary source, as defined in WAC 173-400-030, and any new or modified toxic air pollutant source, as defined in WAC 173-460-020.

(b) Regardless of any other subsection of this section, a notice of construction application must be filed and an order of approval issued by the permitting authority prior to ~~((establishment))~~ beginning actual construction of any of the following new sources:

(i) 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 ~~((Part))~~ subpart AAA, Wood stoves (~~((in effect on February 20, 2004))~~) and except subpart IIII (Standards of

Performance for Stationary Compression Ignition Internal Combustion Engines) and subpart JJJ (Standards of Performance for Stationary Spark Ignition Internal Combustion Engines) as they apply to emergency stationary internal combustion engines with a maximum engine power less than or equal to 500 brake horsepower (federal rules in effect on April 30, 2008);

(ii) 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) (in effect on July 1, 2004), except for asbestos demolition and renovation projects subject to 40 CFR 61.145, and except from sources or emission units emitting only radionuclides, which are required to obtain a license under WAC 246-247-060, and are subject to 40 CFR Part 61, subparts H and/or I;

(iii) Any project that qualifies as a new source within the meaning of 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories) (~~(in effect on October 1, 2006))~~ except subpart ZZZZ (National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines) as it applies to emergency or limited use stationary reciprocating internal combustion engines with a maximum engine power less than or equal to 500 brake horsepower (federal rules in effect on April 30, 2008);

(iv) Any project that qualifies as a new major stationary source, or a major modification to a major stationary source subject to the requirements of WAC 173-400-112;

(v) Any modification to a stationary source that requires an increase either in a plant-wide cap or in a unit specific emission limit.

(c) An applicant filing a notice of construction application for a project described in WAC 173-400-117(2), Special protection requirements for Class I areas, must send a copy of the application to the responsible federal land manager.

(3) **Modifications.** New source review of a modification (~~(shall be))~~ is limited to the emission unit or units proposed to be added to an existing source or modified and the air contaminants whose emissions would increase as a result of the modification; provided, however, that review of a major modification must comply with WAC 173-400-112 and/or 173-400-720, as applicable.

(4) Emission unit and activity exemptions.

Except as provided in subsection (2) of this section, (~~(establishment of a new emission unit that falls within))~~ the construction or modification of emission units in one of the categories listed below is exempt from new source review(~~(Modification of any emission unit listed below is exempt from new source review))~~), provided that the modified unit continues to fall within one of the listed categories. The (~~(installation))~~ construction or modification of ((a) an emission unit exempt under this subsection does not require the filing of a notice of construction application.

(a) Maintenance/construction:

- (i) Cleaning and sweeping of streets and paved surfaces;
- (ii) Concrete application, and installation;
- (iii) Dredging wet spoils handling and placement;
- (iv) Paving application and maintenance, excluding asphalt plants;

(v) Plant maintenance and upkeep activities (grounds keeping, general repairs, routine house keeping, routine plant painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);

(vi) Plumbing installation, plumbing protective coating application and maintenance activities;

(vii) Roofing application;

(viii) Insulation application and maintenance, excluding products for resale;

(ix) Janitorial services and consumer use of janitorial products.

(b) Storage tanks:

Note: It can be difficult to determine requirements for storage tanks. Ecology strongly recommends that an owner or operator contact the permitting authority to determine the exemption status of storage tanks prior to their installation.

(i) Lubricating oil storage tanks except those facilities that are wholesale or retail distributors of lubricating oils;

(ii) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;

(iii) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;

(iv) Process and white water storage tanks;

(v) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than 260 gallon capacity (35 cft);

(vi) Operation, loading and unloading of storage tanks, ≤ 1100 gallon capacity, with lids or other appropriate closure, not for use with materials containing toxic air pollutants, as defined in chapter 173-460 WAC, max. VP 550 mm Hg @ 21°C;

(vii) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas with a vessel capacity less than 40,000 gallons;

(viii) Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids.

(c) A project with combined aggregate heat inputs of combustion units, ≤ all of the following:

(i) ≤ 500,000 Btu/hr using coal with ≤ 0.5% sulfur or other fuels with ≤ 0.5% sulfur;

(ii) ≤ 500,000 Btu/hr used oil, per the requirements of RCW 70.94.610;

(iii) ≤ 400,000 Btu/hr wood waste or paper;

(iv) < 1,000,000 Btu/hr using kerosene, #1, or #2 fuel oil and with ≤ 0.05% sulfur;

(v) ≤ 4,000,000 Btu/hr using natural gas, propane, or LPG.

(d) Material handling:

(i) Continuous digester chip feeders;

(ii) Grain elevators not licensed as warehouses or dealers by either the Washington state department of agriculture or the U.S. Department of Agriculture;

(iii) Storage and handling of water based lubricants for metal working where organic content of the lubricant is ≤ 10%;

(iv) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallon, material with initial atmospheric boiling point not less than 150°C or vapor pressure not more than 5 mm Hg @21°C, with lids or other appropriate closure.

(e) Water treatment:

(i) Septic sewer systems, not including active wastewater treatment facilities;

(ii) NPDES permitted ponds and lagoons used solely for the purpose of settling suspended solids and skimming of oil and grease;

(iii) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;

(iv) Process water filtration system and demineralizer vents;

(v) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems;

(vi) Demineralizer tanks;

(vii) Alum tanks;

(viii) Clean water condensate tanks.

(f) Environmental chambers and laboratory equipment:

(i) Environmental chambers and humidity chambers not using toxic air pollutant gases, as regulated under chapter 173-460 WAC;

(ii) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;

(iii) Installation or modification of a single laboratory fume hood;

(iv) Laboratory research, experimentation, analysis and testing at sources whose primary purpose and activity is research or education. To be exempt, these sources must not engage in the production of products, or in providing commercial services, for sale or exchange for commercial profit except in a de minimis manner. Pilot-plants or pilot scale processes at these sources are not exempt.

(v) Laboratory calibration and maintenance equipment.

(g) Monitoring/quality assurance/testing:

(i) Equipment and instrumentation used for quality control/assurance or inspection purpose;

(ii) Hydraulic and hydrostatic testing equipment;

(iii) Sample gathering, preparation and management;

(iv) Vents from continuous emission monitors and other analyzers.

(h) Miscellaneous:

(i) Single-family residences and duplexes;

(ii) Plastic pipe welding;

(iii) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;

(iv) Comfort air conditioning;

(v) Flares used to indicate danger to the public;

(vi) Natural and forced air vents and stacks for bathroom/toilet activities;

(vii) Personal care activities;

(viii) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;

(ix) Tobacco smoking rooms and areas;

(x) Noncommercial smokehouses;

(xi) Blacksmith forges for single forges;

(xii) Vehicle maintenance activities, not including vehicle surface coating;

(xiii) Vehicle or equipment washing (see (c) of this subsection for threshold for boilers);

(xiv) Wax application;

(xv) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;

(xvi) Ozone generators and ozonation equipment;

(xvii) Solar simulators;

(xviii) Ultraviolet curing processes, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted;

(xix) Electrical circuit breakers, transformers, or switching equipment installation or operation;

(xx) Pulse capacitors;

(xxi) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives;

(xxii) Fire suppression equipment;

(xxiii) Recovery boiler blow-down tank;

(xxiv) Screw press vents;

(xxv) Drop hammers or hydraulic presses for forging or metal working;

(xxvi) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;

(xxvii) Kraft lime mud storage tanks and process vessels;

(xxviii) Lime grits washers, filters and handling;

(xxix) Lime mud filtrate tanks;

(xxx) Lime mud water;

(xxxi) Stock cleaning and pressurized pulp washing down process of the brown stock washer;

(xxxii) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;

(xxxiii) Nontoxic air pollutant, as defined in chapter 173-460 WAC, solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm Hg @21°C;

(xxxiv) Surface coating, aqueous solution or suspension containing $\leq 1\%$ (by weight) VOCs, and/or toxic air pollutants as defined in chapter 173-460 WAC;

(xxxv) Cleaning and stripping activities and equipment using solutions having $\leq 1\%$ VOCs (by weight); on metallic substances, acid solutions are not exempt;

(xxxvi) Dip coating operations, using materials less than 1% VOCs (by weight) and/or toxic air pollutants as defined in chapter 173-460 WAC.

(xxxvii) Abrasive blasting performed inside a booth or hangar designed to capture the blast grit or overspray.

(xxxviii) For structures or items too large to be reasonably handled indoors, abrasive blasting performed outdoors that employs control measures such as curtailment during windy periods and enclosure of the area being blasted with tarps and uses either steel shot or an abrasive containing less than one percent (by mass) which would pass through a No. 200 sieve.

(xxxix) Emergency generators powered by internal combustion engines with a maximum power of less than or equal to 500 brake horsepower.

(xl) Gasoline dispensing facilities (GDFs) regulated by chapter 173-491 WAC.

(5) Exemptions based on emissions.

(a) Except as provided in subsection (2) of this section and in this subsection:

(i) Construction of a new emissions unit that has a potential to emit below each of the levels listed in the table contained in (d) of this subsection is exempt from new source review provided that the conditions of (b) of this subsection are met.

(ii) A modification to an existing emissions unit that increases the unit's actual emissions by less than each of the threshold levels listed in the table contained in (d) of this subsection is exempt from new source review provided that the conditions of (b) of this subsection are met.

(b) The owner or operator seeking to exempt a project from new source review under this section ~~((shall))~~ must notify, and upon request, file a brief project summary with the permitting authority prior to beginning actual construction on the project. If the permitting authority determines that the project will have more than a de ~~((minus))~~ minimis impact on air quality, the permitting authority may require the filing of a notice of construction application. The permitting authority may require the owner or operator to demonstrate that the emissions increase from the new or modified emission~~(s)~~ unit is smaller than all of the levels listed below.

(c) The owner/operator may begin actual construction on the project thirty-one days after the permitting authority receives the summary, unless the permitting authority notifies the owner/operator within thirty days that the proposed new source requires a notice of construction application.

(d) Exemption level table:

POLLUTANT	LEVEL (TONS PER YEAR)
(a) Total Suspended Particulates	1.25
(b) PM-10	0.75
(c) <u>PM-2.5</u>	<u>0.5</u>
((d)) (d) Sulfur Oxides	2.0
((e)) (e) Nitrogen Oxides	2.0
((f)) (f) Volatile Organic Compounds, total	2.0
((g)) (g) Carbon Monoxide	5.0
((h)) (h) Lead	0.005
((i)) (i) Ozone Depleting Substances (in effect on July 1, 2000), total	1.0
((j)) (j) Toxic Air Pollutants	((As specified in chapter 173-460-WAC-)) <u>The de minimis emission rate specified for each TAP in WAC 173-460-150.</u>

(6) Application processing - completeness determination.

(a) Within thirty days after receiving a notice of construction application, the permitting authority ~~((shall))~~ must either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application.

(b) For a project subject to the Special protection requirements for federal Class I areas in WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3).

(7) Final determination.

(a) Within sixty days of receipt of a complete notice of construction application, the permitting authority ~~((shall))~~ must either issue a final decision on the application or for those projects subject to public notice under WAC 173-400-171(1), initiate notice and comment on a proposed decision, followed as promptly as possible by a final decision.

(b) A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required under chapter 173-401 WAC and the notice of construction application required by this section. A notice of construction application designated for integrated review ~~((shall))~~ must be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC and must also comply with WAC 173-400-171.

(c) Every final determination on a notice of construction application ~~((shall))~~ must be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority.

(d) If the new source is a major stationary source or the change is a major modification subject to the requirements of WAC 173-400-112, the permitting authority ~~((shall))~~ must:

(i) Submit any control technology determination included in a final order of approval for a major source or a major modification to a major stationary source in a nonattainment area to the RACT/BACT/LAER clearinghouse maintained by EPA; and

(ii) Send a copy of the final approval order to EPA.

(8) Appeals. Any conditions contained in an order of approval, or the denial of a notice of construction application may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW. The permitting authority ~~((shall))~~ must promptly mail copies of each order approving or denying a notice of construction application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the pollution control hearings board.

(9) Construction time limitations. Approval to construct or modify a stationary source becomes invalid if construction is not commenced within eighteen months after receipt of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The permitting authority may extend the eighteen-month period upon a satisfactory showing that an extension is justified. The extension of a project that is either a major stationary source in a nonattainment area or a major modification in a nonattainment area must also require LAER as it exists at the time of the extension.

sion. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commencement construction date.

(10) Change of conditions.

(a) The owner or operator may request, at any time, a change in conditions of an approval order and the permitting authority may approve the request provided the permitting authority finds that:

(i) The change in conditions will not cause the source to exceed an emissions standard;

(ii) No ambient air quality standard will be exceeded as a result of the change;

(iii) The change will not adversely impact the ability of ecology or the authority to determine compliance with an emissions standard;

(iv) The revised order will continue to require BACT, as defined at the time of the original approval, for each new source approved by the order except where the Federal Clean Air Act requires LAER; and

(v) The revised order meets the requirements of WAC 173-400-110, 173-400-112, 173-400-113 ~~((and)), 173-400-720 and 173-460-040(3)~~, as applicable.

(b) Actions taken under this subsection are subject to the public involvement provisions of WAC 173-400-171 or the permitting authority's public notice and comment procedures.

(c) This rule does not prescribe the exact form such requests must take. However, if the request is filed as a notice of construction application, that application must be acted upon using the timelines found in subsections (6) and (7) of this section. The fee schedule found in WAC ~~((173-400-116 shall also apply))~~ 173-455-120 applies to requests filed with ecology as notice of construction applications.

(11) Enforcement. All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.

AMENDATORY SECTION (Amending Order 90-62, filed 6/18/91, effective 9/18/91)

WAC 173-460-010 Purpose. (1) Pursuant to chapter 70.94 RCW, Washington Clean Air Act, the purpose of this chapter is to establish the systematic control of new or modified sources emitting toxic air pollutants (TAPs) in order to prevent air pollution, reduce emissions to the extent reasonably possible, and maintain such levels of air quality as will protect human health and safety. Toxic air pollutants include carcinogens and noncarcinogens listed in WAC 173-460-150 ~~((and 173-460-160))~~.

(2) This chapter establishes three major requirements:

(a) Best available control technology for toxics;

(b) Toxic air pollutant emission quantification;

(c) Human health and safety protection demonstration.

(3) Policy. It is the policy of ecology to reduce, avoid, or eliminate toxic air pollutants prior to their generation whenever economically and technically practicable.

AMENDATORY SECTION (Amending Order 93-19, filed 1/14/94, effective 2/14/94)

WAC 173-460-020 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. ~~((In the event of a conflict between the definitions provided in chapter 173-400 WAC and the definitions provided in this section, the definitions in this section shall govern. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter shall have the following meanings: Note: For copies of the above mentioned rule and any other rule cited in this chapter, contact the Department of Ecology, Records Section, P.O. Box 47600, Olympia, WA 98504-7600.))~~ Terms specific to this chapter are defined as follows:

(1) "Acceptable source impact analysis" means a procedure for demonstrating compliance with WAC 173-460-070 ~~((and 173-460-080))~~, that compares maximum incremental ambient air impacts with applicable acceptable source impact levels (ASIL).

(2) "Acceptable source impact level (ASIL)" means a screening concentration of a toxic air pollutant in the ~~((outdoor atmosphere in any area which does not have restricted or controlled public access that is used to evaluate the air quality impacts of a single source. There are three types of acceptable source impact levels: Risk based, threshold based, and special. Concentrations for these three types of ASILs are determined as provided in WAC 173-460-110. ASILs are listed in WAC 173-460-150 and 173-460-160.~~

(3) "Authority" means an air pollution control authority activated pursuant to chapter 70.94 RCW that has jurisdiction over the subject source. Ecology is the authority if an air pollution control authority has not been activated or if ecology has jurisdiction over the source pursuant to RCW 70.94.395.

(4) ambient air. The ASIL for each toxic air pollutant is listed in WAC 173-460-150.

(3) "Best available control technology for toxics ~~((T-BACT))~~ tBACT" ~~((applies to each toxic air pollutant (TAP) discharged or mixture of TAPs, taking in account the potency quantity and toxicity of each toxic air pollutant or mixture of TAPs discharged in addition to the meaning given in WAC 173-400-030(10).~~

(5) "Carcinogenic potency factor" means the upper 95th percentile confidence limit of the slope of the dose-response curve and is expressed in units of (mg/kg-day)⁻¹.

(6) "Class A toxic air pollutant (Class A TAP)" means a substance or group of substances listed in WAC 173-460-150.

(7) "Class B toxic air pollutant (Class B TAP)" means any substance that is not a simple asphyxiant or nuisance particulate and that is listed in WAC 173-460-160.

(8) "EPA's Dispersion Modeling Guidelines" means the United States Environmental Protection Agency Guideline on Air Quality Models, EPA (Revised) 40 CFR Part 51 Appendix W, and is hereby incorporated by reference.

(9) "EPA's Risk Assessment Guidelines" means the United States Environmental Protection Agency's Guidelines for Carcinogenic Risk Assessment, 51 FR 33992 (September 24, 1986) and is hereby incorporated by reference.

(10)) means best available control technology, as that term is defined in WAC 173-400-030, as applied to toxic air pollutants.

(4) "De minimis emissions" means trivial levels of emissions that do not pose a threat to human health or the environment. The de minimis emission threshold values are listed in WAC 173-460-150.

(5) "Increased cancer risk of one in one hundred thousand" means the 95th percent upper bound on the estimated risk of one additional cancer above the background cancer rate per one hundred thousand individuals continuously exposed to a ((Class A)) carcinogenic toxic air pollutant at a given average dose for a specified time.

~~((11) "Increased cancer risk of one in one million" means the 95th percent upper bound on the estimated risk of one additional cancer above the background cancer rate per one million individuals continually exposed to a Class A toxic air pollutant at a given average dose for a specified time.~~

(12) "Inhalation Reference Concentration (Inhalation RFC)" means a reference concentration published in the United States Environmental Protection Agency Integrated Risk Information System (IRIS).

(13) "Mixture" means a combination of two or more substances mixed in arbitrary proportions.

(14) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in Section 7411, Title 42, United States Code, and with rules implementing that section. For purposes of this chapter, the term "air contaminant" shall mean "toxic air contaminant" or "toxic air pollutant" as defined in subsection (20) of this section.

(15)) (6) "New or modified toxic air pollutant source" means(=

(a)) the construction or modification of a stationary source that increases the amount of any toxic air pollutant emitted by such source or that results in the emission of any toxic air pollutant not previously emitted(= and

(b) Any other project that constitutes a new source under section 112 of the Federal Clean Air Act.

(16) "Second Tier Analysis" means an optional procedure used after T-BACT and acceptable source impact analysis for demonstrating compliance with WAC 173-460-070. The second tier analysis uses a health impact assessment as provided in WAC 173-460-090, instead of an acceptable source impact level.

(17) "Simple asphyxiant" means a physiologically inert gas or vapor that acts primarily by diluting atmospheric oxygen below the level required to maintain proper levels of oxygen in the blood. Examples of simple asphyxiants are given in Appendix X of the TLV Booklet referred to in subsection (19) of this section and incorporated by reference.

(18) "Threshold limit value-time weighted average (TLV-TWA)" means a concentration limit recommended by the American Conference of Governmental Industrial

Hygienists (ACGIH) for a normal eight-hour workday and forty-hour workweek.

(19) "TLV Booklet" means "TLVs, Threshold Limit Values and Biological Exposure Indices for 1991-92," published by the American Conference of Governmental Industrial Hygienists and is hereby incorporated by reference.

(20)) (7) "Small quantity emission rate (SQER)" means a level of emissions below which dispersion modeling is not required to demonstrate compliance with acceptable source impact levels. SQERs are listed in WAC 173-460-150.

(8) "Toxic air pollutant (TAP)" ((or "toxic air contaminant")) means any ((Class A or Class B)) toxic air pollutant listed in WAC 173-460-150 ((and 173-460-160. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 and/or 173-460-160. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

(21) "Upper bound unit risk factor" means the 95 percent upper confidence limit of an estimate of the extra risk of cancer associated with a continuous 70-year exposure to 1 ug/m³ of a Class A toxic air pollutant)).

AMENDATORY SECTION (Amending Order 93-19, filed 1/14/94, effective 2/14/94)

WAC 173-460-030 ((Requirements,)) Applicability ((and exemptions)). ((1) Applicability:

(a)) The provisions of this chapter ((shall)) apply statewide. ((The authority shall enforce WAC 173-460-010, 173-460-020, 173-460-030, 173-460-040, 173-460-050, 173-460-060, 173-460-070, 173-460-080, 173-460-130, 173-460-140, 173-460-150, and 173-460-160.

(b) Except as provided in this chapter, any new toxic air pollutant source listed in (b)(i), (ii), or (iii) of this subsection that may emit a Class A or Class B TAP into the ambient air is subject to these regulations:

(i) Standard industrial classifications:

(A) Major group 10-Metal mining.

(B) Major group 12-Bituminous coal and lignite mining.

(C) Major group 13-Oil and gas extraction.

(D) Manufacturing industries major groups 20-39.

(E) Major group 49-Electric, gas, and sanitary services except 4971 irrigation systems.

(F) Dry cleaning plants, 7216.

(G) General medical surgical hospitals, 8062.

(H) Specialty hospitals, 8069.

(I) National security, 9711.

(ii) Any source or source category listed in WAC 173-400-100, 173-400-115(2), or 173-490-030(1) except WAC 173-490-030(1)(e) gasoline dispensing facilities.

(iii) Any of the following sources:

(A) Landfills.

(B) Sites subject to chapter 173-340 WAC Model Toxics Control Act—Cleanup regulation.

(2) Exempt sources:

(a) Containers such as tanks, barrels, drums, cans, and buckets are exempt from the requirements of this chapter

unless equipped with a vent other than those required solely as safety pressure release devices:

(b) Nonprocess fugitive emissions of toxic air pollutants from stationary sources, such as construction sites, unpaved roads, coal piles, waste piles, and fuel and ash handling operations are exempt from WAC 173-460-060.

(c) The following sources are generally exempt from the requirements of WAC 173-460-050, 173-460-070, 173-460-080, and 173-460-090. However, the authority may on a case-by-case basis, require compliance with these sections if the authority determines that the amount of emissions, nature of pollutant, or source location indicate that the ambient impact should be evaluated:

(i) Perchloroethylene dry cleaners

(ii) Petroleum solvent dry cleaning systems

(iii) Solvent metal cleaners

(iv) Chromic acid plating and anodizing

(v) Abrasive blasting

(d) Demolition and renovation projects involving asbestos removal and disposal are exempt from the requirements of this chapter.

(e) Process vents subject to 40 C.F.R. Parts 264 and 265, Subpart AA are exempt from the requirements of this chapter.) WAC 173-460-090 and 173-460-100 must be implemented solely by ecology.

AMENDATORY SECTION (Amending Order 93-19, filed 1/14/94, effective 2/14/94)

WAC 173-460-040 New source review. (1) Applicability and exemptions. This chapter supplements the new source review requirements of WAC 173-400-110 by adding ((additional new source)) review requirements for new and modified toxic air pollutant sources. ((If a notice of construction is required under both chapter 173-400 WAC and this chapter, the written applications shall be combined. A notice of construction is a written application to permit construction of a new source.

(a) The owner or operator of a new toxic air pollutant source listed in WAC 173-460-030(1) shall notify the authority prior to the construction, installation, or establishment of a new toxic air pollutant source and shall file a notice of construction application with the authority for the proposed emission unit(s). Notification and notice of construction are not required if the source is an exempt source listed in WAC 173-460-030(2) or subsection (2) of this section.

(b) The notice of construction and new source review applies only to the affected emission unit(s) and the contaminants emitted from the emission unit(s).

(c) New source review of a modification shall be limited to the emission unit or units proposed to be modified and the toxic air contaminants whose emissions would increase as a result of the modification.

(2) The owner or operator of a new toxic air pollutant source listed in WAC 173-460-030(1) is not required to notify or file a notice of construction with the authority if any of the following conditions are met:

(a) Routine maintenance or repair requires equivalent replacement of air pollution control equipment; or

(b) The new source is a minor process change that does not increase capacity and total toxic air pollutant emissions do not exceed the emission rates specified in small quantity emission rate tables in WAC 173-460-080; or

(c) The new source is the result of minor changes in raw material composition and the total toxic air pollutant emissions do not exceed the emission rates specified in the small quantity emission rate tables in WAC 173-460-080.

(3) Additional information. Within thirty days of receipt of a notice of construction, the authority may require the submission of additional plans, specifications, and other information necessary for the review of the proposed new or modified source.

(4) Requirements for new toxic air pollutant sources. The authority shall review notice(s) of construction, plans, specifications, and other associated information to determine that:

(a) The source will be in accord with applicable federal, state, and authority air pollution control rules and regulations;

(b) The source will) An action that is exempt from new source review under WAC 173-400-110 (4) or (5) is exempt under this chapter as well, except that a local air authority may adopt its own list of exemptions in accordance with RCW 70.94.331 (2)(b) to operate in lieu of or in addition to the exemptions in WAC 173-400-110 (4) and (5). An action that requires a notice of construction application under WAC 173-400-110 is subject to the review requirements of this chapter, unless the emissions before control equipment of each toxic air pollutant from a new source or the increase in emissions from each modification is less than the applicable de minimis emission threshold for that TAP listed in WAC 173-460-150.

(2) New source review of a modification is limited to the emission unit or units proposed to be modified and the TAPs whose emissions would increase as a result of the modification.

(3) The permitting authority that is reviewing a notice of construction application for a new or modified toxic air pollutant source must ensure that:

(a) The new or modified emission units use ((T-BACT)) tBACT for emissions control for the toxic air pollutants which are likely to increase; and

((e) Sources required to use T-BACT for emission control demonstrate compliance)) (b) The project complies with WAC 173-460-070 as demonstrated by using the procedures established in WAC 173-460-080 or, failing that, demonstrates compliance((;)) by using the additional procedures in WAC 173-460-090 and/or 173-460-100.

((5) Preliminary determination. Within thirty days after receipt of all information required, the authority shall:

(a) Make preliminary determinations on the matters set forth in this section; and

(b) Initiate compliance with the provisions of WAC 173-400-171 relating to public notice and public comment, as applicable.

(6) Final determination. If, after review of all information received including public comment, the authority finds that all the conditions in this section are satisfied, the authority shall issue a regulatory order to approve the notice of construction for the proposed new source or modification. If the

authority finds that the conditions in this section are not satisfied, the authority shall issue an order for the prevention of construction, installation, or establishment of the toxic air pollution source(s). Where ecology has jurisdiction, it will endeavor to make final determinations as promptly as possible.

(7) Appeal of decision. A final notice of construction decision may be appealed to the pollution control hearings board pursuant to chapter 43.21B RCW.

(8) Commencement of construction. The owner(s) or operator(s) of the new source shall not commence construction until the applicable notice of construction has been approved.

(9) Operation and maintenance plan. As a condition of notice of construction approval, prior to start up, the authority may require a plan for the operation and maintenance of all equipment and procedures to assure continuous compliance with this chapter.

(a) A copy of the plan shall be filed with the authority upon request.

(b) The plan shall reflect good industrial practice and may include operating parameters and maintenance procedures, and shall be updated to reflect any changes in good industrial practice.

(c) Submittal of all plans should coincide with the authorities reporting requirements where applicable.

(10) Jurisdiction. Emission of toxic air pollutants that exceed the acceptable source impact levels listed in WAC 173-460-150 and 173-460-160 requires ecology and, if applicable, authority approval as specified in WAC 173-460-090 and 173-460-100.

AMENDATORY SECTION (Amending Order 93-19, filed 1/14/94, effective 2/14/94)

WAC 173-460-050 Requirement to quantify emissions. (1) New sources.

((a) When applying for a notice of construction, an owner or operator of) A notice of construction application for a new or modified toxic air ((pollution)) pollutant source ((shall)) must quantify ((those emissions of each TAP or combination of TAPs that:

(i) Will be used for the modeling procedures in WAC 173-460-080; and

(ii) That may be discharged after applying required control technology. The information shall be submitted to the authority.

(b) Emissions shall be quantified in sufficient detail to determine whether the source complies with the requirements of this chapter) the increase in the emissions of each TAP, after application of tBACT, emitted by the new or modified emission units.

(2) Small quantity ((sources)) emission rates.

((Sources that choose to use small quantity emission rate tables instead of using) A notice of construction application that relies on SQERs rather than dispersion modeling ((shall)) to demonstrate compliance with WAC 173-460-070 must quantify the aggregate increase in emissions ((as required under WAC 173-460-080, in)) of each TAP emitted by the new or modified emission units after application of

tBACT. The quantification must contain sufficient detail to demonstrate to the satisfaction of the permitting authority that the emissions are less than the applicable small quantity emission rates listed in WAC ((173-460-080)) 173-460-150.

(3) Level of detail.

An acceptable source impact level analysis under WAC 173-460-080((;)) may be based on a conservative estimate of emissions that represents good engineering judgment. If compliance with WAC 173-460-070 and 173-460-080 cannot be demonstrated, more precise emission estimates ((shall)) may be used to demonstrate compliance with WAC 173-460-090.

((4) Mixtures of toxic air pollutants.

(a) An owner or operator of a source that may discharge more than one toxic air pollutant may demonstrate compliance with WAC 173-460-070 and 173-460-080 by:

(i) Quantifying emissions and performing modeling for each TAP individually; or

(ii) Calculating the sum of all TAP emissions and performing modeling for the total TAP emissions and comparing maximum ambient levels to the smallest ASIL; or

(iii) Equivalent procedures may be used if approved by ecology.

(b) Dioxin and furan emissions shall be considered together as one TAP and expressed as an equivalent emission of 2,3,7,8 TCDD based on the relative potency of the isomers in accordance with United States Environmental Protection Agency (EPA) guidelines.

Note: Copies of EPA "Interim procedures for estimating risks associated with exposures to mixtures of chlorinated dibenzo-p-dioxins and dibenzofurans (CDDs and CDFs). 1989 Update" are available by requesting EPA /625/3-89/016, March 1989 from ORD Publications (513) 684-7562.

(c) Polyaromatic hydrocarbon (PAH) emissions. The owner or operator of a source that may emit a mixture of polyaromatic hydrocarbon emissions shall quantify the following PAHs and shall consider them together as one TAP equivalent in potency to benzo(a)pyrene: benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, benzo(a)pyrene. The acceptable source impact analysis shall be conducted using the polyaromatic hydrocarbon emission ASIL contained in WAC 173-460-150(3).

(d) Uncontrolled roof vent emissions from primary aluminum smelters. The owner or operator of a primary aluminum smelter that may emit a mixture of polyaromatic hydrocarbons from uncontrolled roof vents shall quantify PAH emissions using either of the following methods:

(i) Quantify PAH emissions using the procedures in (c) of this subsection; or

(ii) Multiply the total particulate emission mass from the uncontrolled roof vents by the percent of the particulate that is extractable organic matter. The percent extractable organic matter shall be considered one percent of total particulate matter unless ecology determines that there is compelling scientific data which demonstrates that the use of this value is inappropriate. The acceptable source impact analysis shall be conducted using the primary aluminum smelter uncontrolled roof vent PAH emission ASIL contained in WAC 173-460-150(3). Note: For example, 100 grams of particulate air

emission mass times one percent yields one gram of PAH emissions:))

AMENDATORY SECTION (Amending Order 98-04, filed 7/21/98, effective 8/21/98)

WAC 173-460-060 Control technology requirements.

(1) Except as provided for in WAC 173-460-040, a person shall not establish, operate, or cause to be established or operated any new or modified toxic air pollutant source which is likely to increase TAP emissions without installing and operating ((T-BACT)) tBACT. ((Satisfaction of the performance requirements listed below fulfill the T-BACT requirement for those particulate sources. Local air pollution authorities may develop and require performance requirements in lieu of T-BACT provided that ecology approves the performance requirements as equivalent to T-BACT.

(1) Perchloroethylene dry cleaners.—The requirements for perchloroethylene dry cleaners found in WAC 173-400-075 are considered T-BACT.

(2) Petroleum solvent dry cleaning systems. A petroleum solvent dry cleaning system shall include the following:

(a) All cleaned articles are dried in a solvent recovery dryer or the entire dryer exhaust is vented through a properly functioning control device which will reduce emissions to no more than 3.5 kg of VOC per 100 kg dry weight of cleaned articles; and

(b) All cartridge filtration systems are drained in their sealed housing or other enclosed container before discarding the cartridges; and

(c) All leaking components shall be repaired immediately.

(3) Chromic acid plating and anodizing. The facility-wide uncontrolled hexavalent chromium emissions from plating or anodizing tanks shall be reduced by at least ninety-five percent using either of the following control techniques:

(a) An antimist additive or other equally effective control method approved by ecology or authority; or

(b) The tank is equipped with:

(i) A capture system which represents good engineering practice and which shall be in place and in operation at all times electrical current is applied to the tank; and

(ii) An emission control system which limits hexavalent chromium emissions to no more than 0.15 milligrams per ampere-hour of electrical charge applied to the tank or uncontrolled emissions shall be reduced by ninety-five percent.

(4) Chromic acid plating and anodizing (greater than 1 kilogram). If the facility-wide hexavalent chromium emissions from chromic acid plating and anodizing are greater than 1 kilogram per year after the application of control techniques required by subsection (3) of this section, the facility-wide hexavalent chromium emissions shall be reduced by at least ninety-nine percent using either of the following control techniques:

(a) An antimist additive or other equally effective control method approved by ecology or authority; or

(b) The tank is equipped with:

(i) A capture system which represents good engineering practice and which shall be in place and in operation at all times electrical current is applied to the tank; and

(ii) An emissions control system which limits hexavalent chromium emissions to no more than 0.03 milligrams per ampere-hour of electrical charge applied to the tank or uncontrolled emissions shall be reduced by ninety-nine percent.

(5) Solvent metal cleaners.

(a) Any solvent metal cleaner shall include all of the following equipment:

(i) A cover for the solvent tank which shall be closed at all times except when processing work in the degreaser. However, the cover shall be closed to the maximum extent possible when parts are being degreased;

(ii) A facility for draining cleaned parts such that the drained solvent is returned to the solvent tank;

(iii) For cold solvent cleaners, a freeboard ratio greater than or equal to 0.75;

(iv) Vapor degreasers shall have:

(A) A high vapor cutoff thermostat with manual reset; and

(B) For degreasers with spray devices, a vapor-up thermostat which will allow spray operation only after the vapor zone has risen to the design level; and

(C) Either a freeboard ratio greater than or equal to 1.00 or a refrigerated freeboard chiller; and

(v) Conveyorized vapor degreasers shall have:

(A) A drying tunnel or a rotating basket sufficient to prevent cleaned parts from carrying liquid solvent out of the degreaser; and

(B) A high vapor cutoff thermostat with manual reset; and

(C) A vapor-up thermostat which will allow conveyor movement only after the vapor zone has risen to the design vapor level.

(b) The operation of any solvent metal cleaner shall meet the following requirements:

(i) Solvent shall not leak from any portion of the degreasing equipment;

(ii) Solvent, including waste solvent, shall be stored in closed containers and shall be disposed of in such a manner as to prevent its evaporation into the atmosphere;

(iii) For cold cleaners, cleaned parts shall be drained until dripping ceases; and

(iv) Degreasers shall be constructed to allow liquid solvent from cleaned parts to drain into a trough or equivalent device and return to the solvent tank.

(c) For open top vapor degreasers, solvent drag-out shall be minimized by the following measures:

(i) Racked parts shall be allowed to drain fully;

(ii) The work load shall be degreased in the vapor zone until condensation ceases;

(iii) Spraying operations shall be done within the vapor layer;

(iv) When using a powered hoist, the vertical speed of parts in and out of the vapor zone shall be less than three meters per minute (ten feet per minute);

(v) When the cover is open, the lip of the degreaser shall not be exposed to steady drafts greater than 15.3 meters per minute (fifty feet per minute); and

(vi) When equipped with a lip exhaust, the fan shall be turned off when the cover is closed.

(d) For conveyerized vapor degreasers, solvent drag-out shall be minimized by the following measures:

(i) Racked parts shall be allowed to drain fully; and

(ii) Vertical conveyor speed shall be maintained at less than three meters per minute (ten feet per minute).

(6) Abrasive blasting.

(a) Abrasive blasting shall be performed inside a booth or hangar designed to capture the blast grit or overspray.

(b) Outdoor blasting of structures or items too large to be reasonably handled indoors shall employ control measures such as curtailment during windy periods and enclosure of the area being blasted with tarps.

(c) Outdoor blasting shall be performed with either steel shot or an abrasive containing less than one percent (by mass) which would pass through a No. 200 sieve.

(d) All abrasive blasting with sand shall be performed inside a blasting booth or cabinet.)

(2) A notice of construction application for a new or modified toxic air pollutant source must demonstrate that the new or modified emission units will employ tBACT for all TAPs for which the increase in emissions will exceed de minimis emission values as found in WAC 173-460-150. TAP emission increases from nonprocess fugitive emissions activities such as construction or demolition sites, unpaved and paved roads, coal piles, waste piles and fuel and ash handling operations are exempt from the requirement to apply tBACT.

AMENDATORY SECTION (Amending Order 90-62, filed 6/18/91, effective 9/18/91)

WAC 173-460-070 Ambient impact requirement. ((When applying for)) A notice of construction ((under WAC 173-460-040, the owner or operator of a new toxic air pollutant source which is likely to increase TAP emissions shall)) application must demonstrate that the increase in emissions of toxic air pollutants from the new or modified emission units at the source are sufficiently low to protect human health and safety from potential carcinogenic and/or other toxic effects. Compliance ((shall)) must be demonstrated in any area to which the applicant does not ((have restricted)) restrict or ((controlled public)) control access. The ((source shall)) application must demonstrate compliance by using procedures established in this chapter after complying with the control technology requirements in WAC 173-460-060.

NEW SECTION

WAC 173-460-071 Voluntary limits on emissions. (1) If requested by an applicant, the permitting authority may issue a regulatory order that limits emissions of a particular TAP to a level that is lower than the potential emissions of that particular TAP otherwise allowed under all applicable requirements of chapter 70.94 RCW and the federal Clean Air Act.

(2) Any order issued under this section is subject to the notice and comment procedures in WAC 173-400-171 or the permitting authority's public notice and commenting procedures.

(3) Any order issued under this section must include monitoring, recordkeeping, and reporting requirements sufficient to ensure that the applicant complies with any condi-

tions established under this section. Monitoring requirements must use terms, test methods, units, averaging periods, and other statistical conventions consistent with the requirements of WAC 173-400-105.

AMENDATORY SECTION (Amending Order 93-19, filed 1/14/94, effective 2/14/94)

WAC 173-460-080 ((Demonstrating ambient impact compliance.)) First tier review. (1) ((When applying for)) A notice of construction ((under WAC 173-460-040, the owner or operator of)) application for a new or modified toxic air pollutant source ((which is likely to increase TAP emissions shall complete)) must include an acceptable source impact level analysis for ((Class A and Class B)) each TAP((s)) emitted by the new or modified emission units with an emission increase greater than the de minimis emission level specified in WAC 173-460-150. The permitting authority may complete this analysis.

((2) Acceptable source impact analysis.

(a) Carcinogenic effects. The owner or operator shall use dispersion modeling to estimate the maximum incremental ambient impact of each Class A TAP from the source and compare the estimated incremental ambient values to the Class A acceptable source impact levels in WAC 173-460-150. If applicable, the source may use the small quantity emission rate tables in (c) of this subsection.

(b) Other toxic effects. The owner or operator shall use dispersion modeling to estimate the maximum incremental ambient impact of each Class B TAP from the source and compare the estimated ambient values to the Class B acceptable source impact levels in WAC 173-460-160. If applicable, the source may use the small quantity emission rate tables in (c) of this subsection.

(c) Dispersion modeling. The owner or operator shall use dispersion modeling techniques in accordance with EPA guidelines. If concentrations predicted by dispersion screening models exceed applicable acceptable source impact levels, more refined modeling and/or emission estimation techniques shall be used. Refined modeling techniques shall be approved by ecology and the authority. (Note: EPA's Guideline on Air Quality Models, EPA 450/2-78-027R, can be obtained through NTIS (703) 487-4650 or can be downloaded from the OAQPS Technology Transfer Network electronic bulletin board system).

(d) Averaging times. The owner or operator shall use the averaging times in (d)(i), (ii), (iii) of this subsection unless alternate averaging times are approved by ecology. Ecology may allow the use of an alternate averaging time if it determines that the operating procedures of the source may cause a high concentration of a TAP for a short period and that consideration of potential health effects due to peak exposures may be warranted for the TAP.

(i) An annual average shall be used for Class A TAPs listed in WAC 173-460-150(2).

(ii) The averaging times specified in WAC 173-460-150(3) shall be used for Class A TAPs listed in WAC 173-460-150(3).

(iii) A twenty-four hour averaging time shall be used for Class B TAPs listed in WAC 173-460-160.

(e) ~~Small quantity emission rates. Instead of using dispersion modeling to show compliance with ambient impact demonstration requirements in WAC 173-460-080 and 173-460-090, a source may use the small quantity emission rate tables for all toxic air pollutants with acceptable source impact levels equal to or greater than 0.001 ug/m3. A source must first meet control technology and emission quantification requirements of WAC 173-460-050 and 173-460-060, then demonstrate that the source emission rate does not exceed the rates specified in the appropriate table below.~~

SMALL QUANTITY EMISSION RATES
CLASS A TOXIC AIR POLLUTANTS

Acceptable Source Impact Level (Annual ug/m3)	TAP Emissions Pounds per Year (10-meter stack and downwash)
0.001 to 0.0099	0.5
0.01 to 0.06	-10
0.07 to 0.12	-20
0.13 to 0.99	-50
1.0 to 10	500

SMALL QUANTITY EMISSION RATES
CLASS B TOXIC AIR POLLUTANTS

Acceptable Source Impact Level (24 hour ug/m3)	TAP Emissions	
	Pounds per Year	Pounds per Hour
Less than 1	175	0.02
1 to 9.9	175	0.02
10 to 29.9	1,750	0.20
30 to 59.9	5,250	0.60
60 to 99.9	10,500	1.20
100 to 129.9	17,500	2.0
130 to 250	22,750	2.6
Greater than 250	43,748	5.0

~~(3) Criteria for compliance. Compliance with WAC 173-460-070 is demonstrated if the authority determines that, on the basis of the acceptable source impact analysis, the source's maximum incremental ambient air impact levels do not exceed the Class A or Class B acceptable source impact levels in WAC 173-460-150 and 173-460-160; or, if applicable, the source TAP emission rates do not exceed the rates specified in subsection (2)(e) of this section.) The acceptable source impact analysis requirement of WAC 173-460-070 can be satisfied for any TAP using either dispersion modeling or the small quantity emission rate.~~

(a) Dispersion modeling. The applicant who relies on dispersion modeling must model the aggregate increase in the emissions of each TAP emitted by the new or modified emission units, after application of tBACT. The notice of construction application must demonstrate that the modeled ambient impact of the aggregate emissions increase of each TAP does not exceed the ASIL for that TAP as listed in WAC 173-460-150. If concentrations predicted by dispersion screening models exceed applicable acceptable source impact levels, more refined modeling and/or emission techniques must be used. Refined modeling techniques must be approved by the permitting authority.

(b) Small quantity emission rates. An applicant may show for any TAP that the aggregate increase in emissions of

that TAP, after application of tBACT, is less than the small quantity emission rate listed for that TAP in WAC 173-460-150.

(3) Reduction of TAPs from existing emission units. An applicant may include in a acceptable source impact analysis proposed reductions in actual emissions of a particular TAP from emission units at the source that are not new or modified for the purpose of offsetting emissions of that TAP caused by the new or modified source. The reductions in TAP emissions authorized by this subsection must be included in the approval order as enforceable emission limits and must meet all the requirements of WAC 173-460-071.

(4) Decision criteria.

(a) If the permitting authority finds that the modeled impact of the increase in emissions of a TAP from the new or modified emission units does not exceed the ASIL for that TAP then the authority may approve the notice of construction application.

(b) If the permitting authority finds that the modeled impact of the increase in emissions of a TAP from the new or modified emission units exceeds the ASIL for that TAP then the permitting authority may not approve the project. The applicant may file a second tier review application in compliance with WAC 173-460-090.

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 Order 93-19, filed 1/14/94, effective 2/14/94)

WAC 173-460-090 Second tier ((analysis)) review. (1) Applicability.

~~((a) The owner or operator)) An applicant who cannot demonstrate ((class A or class B TAP source)) compliance with WAC 173-460-070 ((and 173-460-080)) using an acceptable source impact level analysis as provided in WAC 173-460-080((2)), may submit a petition requesting that ecology perform a second tier ((analysis evaluation)) review to determine a means of compliance with WAC 173-460-070 ((and 173-460-080 by establishing allowable emissions for the source)). Petitions for second tier ((analysis evaluation shall)) review must be submitted to ecology with a copy to the ((local)) permitting authority ((or ecology if ecology has jurisdiction over the source. Petitions received by local authorities shall be submitted to ecology within ten days of receipt. A second tier analysis evaluation may be requested when a source wishes to more accurately characterize risks, to justify risks greater than acceptable source impact levels, or to otherwise modify assumptions to more accurately represent risks. Risks may be more accurately characterized by utilizing updated EPA unit risk factors, inhalation reference concentrations, or other EPA recognized or approved methods. Ecology shall specify the maximum allowable emissions of any class A or class B TAP source based on ecology's second tier analysis evaluation.~~

~~((b)) with jurisdiction.~~

(2) Second tier petition submittal requirements. Ecology ((shall)) will evaluate a ((source's)) second tier ((analysis)) petition only if:

~~((i)) (a) The permitting authority (has advised ecology that other conditions for processing the notice of construction have been met) submits to ecology a preliminary order of approval that addresses all applicable new source review issues with the exception of the outcome of the second tier review, State Environmental Policy Act review, public notification, and prevention of significant deterioration review; and~~

~~((ii)) (b) The emission controls contained in the (conditional notice of construction) preliminary order of approval represent at least (T-BACT) tBACT; and~~

~~((iii)) (c) The applicant has developed a health impact assessment protocol that has been approved by ecology;~~

~~(d) The ambient (concentrations) impact of the aggregate emissions increase of each TAP that exceeds acceptable source impact levels (after) has been quantified using (more) refined (emission quantification and) air dispersion modeling techniques as approved in the health impact assessment protocol; and~~

~~(e) The petition contains a health impact assessment conducted in accordance with the approved health impact assessment protocol.~~

Note: Contact ecology's air quality program for a copy of a guidance document to assist in the preparation of the health impact assessment protocol.

~~((e) Ecology shall determine whether the conditions in (b)(i), (ii), and (iii) of this subsection for a second tier analysis have been satisfied within ten working days of receipt of all information needed to make the determination. The matter shall be returned to the authority if ecology finds the conditions for a second tier analysis evaluation have not been met.~~

~~(2) Jurisdiction.~~

~~(a) Any second tier analysis application submitted by a source wishing to emit toxic air pollutants at levels greater than the acceptable source impact level contained in WAC 173-460-150 or 173-460-160 shall be approved or rejected by ecology.~~

~~(b) Any new emission limits approved by ecology as a result of the second tier analysis evaluation shall be enforced by the authority provided the authority approves the new emission limits.~~

~~(3) Approval criteria.~~

~~(a) Based on the second tier analysis, ecology may approve the emissions of TAPs from a source where ambient concentrations exceed acceptable source impact levels only if it determines that emission controls represent at least T-BACT and the source demonstrates that emissions of Class A TAPs are not likely to result in an increased cancer risk of more than one in one hundred thousand. The emission of Class A TAPs at levels likely to result in an increased cancer risk of more than one in one hundred thousand requires the approval of the director after complying with WAC 173-460-100.~~

~~(b) Ecology shall consider the second tier analysis and other information submitted by the applicant as well as department of health comments.~~

~~(i) Comments from other agencies and universities with appropriate expertise may also be considered in the decision to approve emissions that exceed acceptable source impact levels.~~

~~(ii) Public comments shall be considered if the source applies for a risk management decision under WAC 173-460-100.~~

~~(4) Contents of the second tier analysis.~~

~~(a) The second tier analysis consists of a health impact assessment. The applicant shall complete and submit a health impact assessment to ecology which includes the following information. Ecology may approve the submittal of less information if it determines that such information is sufficient to perform the second tier analysis evaluation. The health impact assessment shall be prepared in accordance with EPA's risk assessment guidelines as defined in WAC 173-460-020(9).~~

~~(i) Demographics such as population size, growth, and sensitive subgroups;~~

~~(ii) Toxicological profiles of all toxic air pollutants that exceed the ASIL;~~

~~(iii) Characterization of existing pathways and total daily intake for toxic air pollutants that exceed the ASIL;~~

~~(iv) Contribution of the proposed source toward total daily intake for toxic air pollutants that exceed the ASIL;~~

~~(v) Using existing data, characterization of risk from current exposure to the toxic air pollutants that exceed the ASIL. This includes existing TAP sources in the area, and anticipated risk from the new source;~~

~~(vi) Additive cancer risk for all Class A toxic air pollutants which may be emitted by the source;~~

~~(vii) Other information requested by ecology and pertinent to ecology's decision to approve the second tier application;~~

~~(viii) Uncertainty in the data; and~~

~~(ix) Length of exposure and persistence in the environment.~~

~~(b)) (3) Health impact assessment (HIA) protocol. The HIA presents data about the new or modified source and its built and natural environment. A HIA includes but is not limited to: Site description, TAP concentrations and toxicity, identification of exposed populations and an exposure assessment. The HIA protocol must be reviewed and approved by ecology prior to development of the HIA.~~

~~(4) The health impact assessment (shall) must utilize current scientific information. New scientific information on the toxicological characteristics of toxic air pollutants may be used by ecology to justify modifications of (upper bound unit risk factors used to calculate ASILs in WAC 173-460-150 and/or absorption rates of individual toxic air pollutants if ecology determines there is compelling scientific data which demonstrates that the use of EPA recognized or approved methods are inappropriate.~~

~~(5) Additional information.~~

~~(a) If approved by ecology, newly discovered scientific information which was unavailable at the time of the original submission of the health assessment may be used to justify modifications of the original health assessment. Ecology may approve the additional information if the source exercised due diligence at the time of original submission.~~

~~(b) Within thirty days after receipt of the second tier analysis and all supporting data and documentation, ecology may require the submission of additional information needed to evaluate the second tier analysis.~~

(6) Determination.

~~(a) If the second tier analysis is approved by ecology, ecology will return the petition to the authority and the authority may approve the notice of construction.~~

~~(b) The authority shall specify allowable emissions consistent with ecology's second tier analysis evaluation determination expressed in weight of pollutant per unit time for each emissions unit involved in the application. The notice of construction shall also include all requirements necessary to assure that conditions of this chapter and chapter 173-400 WAC are satisfied.~~

(7) Public notification requirements.

~~Ecology decisions regarding second tier analysis or decisions under WAC 173-460-100 shall comply with public notification requirements contained in WAC 173-400-171.) risk-based concentrations.~~

(5) Background concentrations of TAPs will be considered as part of a second tier review. Background concentrations can be estimated using:

(a) The latest National Ambient Toxics Assessment data for the appropriate census tracts; or

(b) Ambient monitoring data for the project's location; or

(c) Modeling of emissions of the TAPs subject to second tier review from all stationary sources within 1.5 kilometers of the source location.

(6) Reduction of TAPs from existing emission units. For the purpose of offsetting emissions of a particular TAP, an applicant may propose reductions in actual emissions of that TAP from existing, unmodified emission units at the source or existing, unmodified emission units at other nearby sources. The health impact analysis must evaluate the benefits of the emission reductions. The reductions in TAP emissions authorized by this subsection must be included in an approval order as enforceable emission limits and must meet all requirements of WAC 173-460-071.

(7) Approval criteria for second tier review. Ecology may recommend approval of a project that is likely to cause an exceedance of acceptable source impact levels for one or more TAPs only if it determines that the emission controls for the new and modified emission units represent tBACT and the applicant demonstrates that the increase in emissions of TAPs is not likely to result in an increased cancer risk of more than one in one hundred thousand and ecology determines that the noncancer hazard is found to be acceptable.

(8) Application processing. Within thirty days after receiving a second tier petition ecology must either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information required to make it complete.

(9) Public involvement. All notice of construction approval orders with a second tier component are subject to the public notice and comment requirements of WAC 173-400-171, which may be integrated with the permitting authority's public notice and comment procedures.

(10) Recommendation. Within sixty days of determining that a petition is complete ecology must make a recommendation to the permitting authority.

(a) If ecology recommends approval of the second tier petition, the permitting authority may approve the notice of construction application. Any new emission limits or condi-

tions specified by ecology must be incorporated into the approval order.

(b) If ecology recommends denial of the second tier petition, then the permitting authority may not approve the project.

AMENDATORY SECTION (Amending Order 93-19, filed 1/14/94, effective 2/14/94)

WAC 173-460-100 ((Request for risk management decision-)) Third tier review. (1) Applicability. ~~((The owner or operator of a source that emits Class A TAPs that are likely to result in an increased cancer risk of more than one in one hundred thousand may request))~~ An applicant for a project that exceeds the second tier review thresholds may submit a third tier petition requesting that the director of ecology ((establish allowable emissions for the source)) approve the project based on a risk management analysis.

(2) Contents of the ~~((application))~~ petition.

The ~~((applicant shall))~~ petition must meet the submittal requirements of WAC 173-460-090~~((1) and submit all materials required under WAC 173-460-090 (4) and (5))~~. The applicant may submit the request for a risk management decision concurrently with the second tier ~~((analysis application))~~ petition. Prior denial of ~~((the))~~ a second tier ((analysis application)) petition submitted under WAC 173-460-090((6)) (8) is not required.

(3) Criteria for approval. ~~((Ecology may approve the emissions of TAPs from a source where ambient concentrations are likely to result in an increased cancer risk of more than one in one hundred thousand only if the source first demonstrates the following))~~ Ecology's director must find that the following conditions are met before approving a third tier petition:

(a) Proposed emission controls represent ~~((all known available and reasonable technology))~~ at least tBACT; and

(b) ~~((Application of all known available toxic air pollution prevention methods to reduce, avoid, or eliminate toxic air pollutants prior to their generation including recycling, chemical substitution, and efforts to redesign processes))~~ A HIA has been completed as described in WAC 173-460-090(3); and

(c) ~~((The proposed changes))~~ Approval of the project will result in a greater environmental benefit to the ((environment as a whole)) state of Washington.

(4) Additional methods to reduce toxic air pollutants. In addition to the requirements in subsection (3) of this section, the ~~((owner or operator))~~ applicant may propose and ecology may consider measures that would reduce community exposure, especially exposure of that portion of the community subject to the greatest additional risk, to comparable toxic air pollutants provided that such measures are not already required.

(5) Application processing. Within thirty days of receiving a third tier petition ecology must determine if the petition includes the information required in WAC 173-460-090. If the petition is deemed complete, ecology must begin substantive review. If the petition is deemed incomplete, ecology must give written notification to the applicant of the information that is required to make the petition complete.

(6) Public involvement. Ecology will initiate public notice and comment within ~~((thirty))~~ sixty days of ~~((receipt of a completed risk management decision application))~~ determining that a third tier petition is complete. In addition to the public notice and comment requirements of WAC 173-400-171, the ~~((owner or operator shall))~~ applicant must hold a public hearing to:

(a) Present the results of the ~~((second tier))~~ health impact analysis, the proposed emission controls, pollution prevention methods, additional proposed measures, and remaining risks; and

(b) Participate in discussions and answer questions.

~~((6) Time limitation. The owner or operator shall commence construction within eighteen months of the director's approval.))~~ (7) Recommendation.

(a) If ecology recommends approval of the third tier petition, the permitting authority may approve the notice of construction application. Any new emission limits or conditions specified by ecology must be incorporated into the approval order.

(b) If ecology recommends denial of the third tier petition then the permitting authority may not approve the project.

AMENDATORY SECTION (Amending Order 93-19, filed 1/14/94, effective 2/14/94)

WAC 173-460-150 ((Class A toxic air pollutants: Known, probable and potential human carcinogens and acceptable source impact levels.)) Table of ASIL, SOER and de minimis emission values.

((1) TABLE 1
CLASS A TOXIC AIR POLLUTANTS
Known and Probable Carcinogens

CAS #	SUBSTANCE
75-07-0	Acetaldehyde
53-96-3	2-Acetylaminofluorene
79-06-1	Acrylamide
107-13-1	Acrylonitrile
309-00-2	Aldrin
—	Aluminum smelter polyaromatic hydrocarbon emissions
117-79-3	2-Aminoanthraquinone
97-56-3	o-Aminoazotoluene
92-67-1	4-Aminobiphenyl
61-82-5	Amitrole
62-53-3	Aniline
90-04-0	o-Anisidine
C7440-38-2	Arsenic and inorganic arsenic compounds
1332-21-4	Asbestos
2465-27-2	Auramine (technical grade)
71-43-2	Benzene
92-87-5	Benzidine and its salts
56-55-3	Benzo(a)anthracene
50-32-8	Benzo(a)pyrene
205-99-2	Benzo(b)fluoranthene
205-82-3	Benzo(j)fluoranthene
207-08-9	Benzo(k)fluoranthene
1694-09-3	Benzyl violet 4b

CAS #	SUBSTANCE
7440-41-7	Beryllium and compounds
111-44-4	Bis(2-chloroethyl)ether
117-81-7	Bis(2-ethylhexyl)phthalate (DEHP)
542-88-1	Bis(chloromethyl)ether
75-25-2	Bromoform
106-99-0	1,3-Butadiene
3068-88-0	B-Butyrolactone
7440-43-9	Cadmium and compounds
56-23-5	Carbon tetrachloride
57-74-9	Chlordane
510-15-6	Chlorobenzilate
67-66-3	Chloroform
107-30-2	Chloromethyl-methyl-ether (technical grade)
108-43-0	Chlorophenols
126-99-8	Chloroprene
C7440-47-3	Chromium, hexavalent metal and compounds
—	Coke oven emissions
8001-58-9	Creosote
135-20-6	Cupferron
94-75-7	2,4-D and esters
3547-04-4	DDE (p,p'-Dichlorodiphenyldichloroethylene)
50-29-3	DDT (1,1,1-Trichloro-2,2-Bis(p-chlorophenyl)-ethane)
613-35-4	N,N-Diacetylbenzidine
101-80-4	4,4'-Diaminodiphenyl ether
226-36-8	Dibenz(a,h)acridine
53-70-3	Dibenz(a,h)anthracene
224-42-0	Dibenz(a,j)acridine
132-64-9	Dibenzofurans
189-64-0	Dibenzo(a,h)pyrene
191-30-0	Dibenzo(a,l)pyrene
189-55-9	1,2,7,8-Dibenzopyrene (dibenzo(a,i)pyrene)
192-65-4	Dibenzo(a,e)pyrene
764-41-0	1,4-Dichloro-2-butene
28434-86-8	3,3'-Dichloro-4,4'-diaminodiphenyl ether
106-46-7	1,4-Dichlorobenzene
91-94-1	3,3'-Dichlorobenzidine
107-06-2	1,2-Dichloroethane (ethylene chloride)
75-09-2	Dichloromethane (methylene chloride)
696-28-6	Dichlorophenylarsine (arsenic group)
78-87-5	1,2-Dichloropropane
60-57-1	Dieldrin
1615-80-1	1,2-Diethylhydrazine
101-90-6	Diglycidyl resorcinol ether
119-90-4	3,3'-Dimethoxybenzidine (ortol-dianisidine)
119-93-7	3,3-Dimethyl-benzidine
77-78-1	Dimethyl sulfate
540-73-8	1,2-Dimethylhydrazine
123-91-1	1,4-Dioxane
—	Dioxins and furans
122-66-7	1,2-Diphenylhydrazine
106-89-8	Epichlorohydrin
106-93-4	Ethylene dibromide (dibromethane)
75-21-8	Ethylene oxide
96-45-7	Ethylene thiourea
50-00-0	Formaldehyde

CAS #	SUBSTANCE
67-45-8	Furazolidone
	Furium (nitrofuran-group)
765-34-4	Glycidialdehyde
76-44-8	Heptachlor
118-74-1	Hexachlorobenzene
319-84-6	Hexachlorocyclohexane (Lindane)-Alpha-BHC
319-85-7	Hexachlorocyclohexane (Lindane)-Beta-BHC
58-89-9	Hexachlorocyclohexane (Lindane)-Gamma-BHC
680-31-9	Hexamethylphosphoramide
302-01-2	Hydrazine
193-39-5	Indeno(1,2,3-cd)pyrene
—	Isopropyl oils
—	Lead compounds
301-04-2	Lead acetate
7446-27-7	Lead phosphate
129-15-7	2-Methyl-1-nitroanthraquinone
592-62-1	Methyl azoxymethyl acetate
3697-24-3	5-Methylchrysene
101-14-4	4,4'-Methylenebis(2-chloroaniline) (MBOCA)
838-88-0	4,4'-Methylenebis(2-methylaniline)
101-77-9	4,4-Methylene dianiline
13552-44-8	4,4-Methylenedianiline dihydrochloride
64091-91-4	4-(Methylnitrosamino)-1-(3-pyridyl)-1-butanone
2385-85-5	Mirex
139-91-3	5-(Morpholinomethyl)-3-amino-2-oxazolidinone (furaltudone)
134-32-7	1-Naphthylamine
C7440-02-0	Nickel and compounds (as nickel subsulfide or nickel refinery dust)
531-82-8	N-(4-(5-Nitro-2-furyl)-2-thiazolyl)acetamide
602-87-9	5-Nitroacenaphthene
1836-75-5	Nitrofen Nitrofurans-
59-87-0	Nitrofurazone
555-84-9	1-(5-Nitrofururylidene)amino)-2-imidazolidinone
126-85-2	Nitrogen mustard N-oxide
302-70-5	Nitrogen mustard N-oxide hydrochloride
79-46-9	2-Nitropropane
924-16-3	N-Nitrosodi-n-butylamine
759-73-9	N-Nitroso-N-ethylurea (NEU)
615-53-2	N-Nitroso-N-methylurethane
621-64-1	N-Nitrosodi-n-propylamine
10595-95-6	N-Nitrosomethylethylamine
59-89-2	N-Nitrosomorpholine
86-30-6	N-Nitrosodiphenylamine
55-18-5	N-Nitrosodiethylamine (diethylnitrosoamine) (DEN)
62-75-9	N-Nitrosodimethylamine
2646-17-5	Oil orange-SS
794-93-4	Panfuran S (dihydroxymethylfuratrizine)
87-86-5	Pentachlorophenol
127-18-4	Perchloroethylene (tetrachloroethylene)
63-92-3	Phenoxybenzamine hydrochloride N-Phenyl-2-naphthylamine
—	Polyaromatic hydrocarbons (PAH)
1336-36-3	Polychlorinated biphenyls (PCBs)
3761-53-3	Ponceau-MX P(p)(alpha, alpha, alpha)-Tetra-chlorotoluene

CAS #	SUBSTANCE
1120-71-4	1,3-Propane sultone
75-56-9	Propylene oxide
1746-01-6	2,3,7,8-Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD)
139-65-1	4,4'-Thiodianiline
1314-20-1	Thorium dioxide
95-80-7	2,4-Toluene diamine
584-84-9	2,4-Toluene diisocyanate
95-53-4	o-Toluidine-
636-21-5	o-Toluidine hydrochloride
8001-35-2	Toxaphene
55738-54-0	Trans-2((Dimethylamino)methylimino)-5-(2-(5-nitro-2-furyl) vinyl)-1,3,4-oxadiazole
79-01-6	Trichloroethylene
88-06-2	2,4,6-Trichlorophenol-
75-01-4	Vinyl chloride

(2) TABLE II
CLASS A TOXIC AIR POLLUTANTS
WITH ESTABLISHED
ACCEPTABLE SOURCE IMPACT LEVELS

CAS #	SUBSTANCE	10-6 RISK ASIL MICRO- GRAMS/M ³ ANNUAL AVERAGE
75-07-0	Acetaldehyde	0.4500000
79-06-1	Acrylamide	0.0007700
107-13-1	Acrylonitrile	0.0150000
309-00-2	Aldrin	0.0002000
62-53-3	Aniline	6.3000000
C7440-38-2	Arsenic and inorganic arsenic compounds	0.0002300
1332-21-4	Asbestos (Note: fibers/ml)	0.0000044
71-43-2	Benzene	0.1200000
92-87-5	Benzidine and its salts	0.0000150
50-32-8	Benzo(a)pyrene	0.0004800
7440-41-7	Beryllium and compounds	0.0004200
111-44-4	Bis(2-chloroethyl)ether	0.0030000
117-81-7	Bis(2-ethylhexyl)phthalate (DEHP)	2.5000000
542-88-1	Bis(chloromethyl)ether	0.0000160
75-25-2	Bromoform	0.9100000
106-99-0	1,3-Butadiene	0.0036000
7440-43-9	Cadmium and compounds	0.0005600
56-23-5	Carbon tetrachloride	0.0670000
57-74-9	Chlordane	0.0027000
510-15-6	Chlorobenzilate	0.2000000
67-66-3	Chloroform	0.0430000
108-43-0	Chlorophenols	0.1800000
C7440-47-3	Chromium, hexavalent metal and compounds	0.0000830
—	Coke oven emissions	0.0016000
3547-04-4	DDE (p,p'-dichlorodiphenyldichloroethylene)	0.1000000
50-29-3	DDT (1,1,1-Trichloro-2,2-Bis-(p-chlorophenyl)-ethane)	0.0100000
764-41-0	1,4-Dichloro-2-butene	0.0003800
106-46-7	1,4-Dichlorobenzene	1.5000000
91-94-1	3,3'-Dichlorobenzidine	0.0770000
107-06-2	1,2-Dichloroethane (ethylene chloride)	0.0380000

CAS #	SUBSTANCE	10-6 RISK ASIL MICRO- GRAMS/M ³ ANNUAL- AVERAGE
75-09-2	Dichloromethane (methylene chloride)	0.5600000
60-57-1	Dieldrin	0.0002200
119-93-7	3,3-Dimethyl-benzidine	0.0038000
123-91-1	1,4-Dioxane	0.0320000
122-66-7	1,2-Diphenylhydrazine	0.0045000
106-89-8	Epichlorohydrin	0.8300000
106-93-4	Ethylene dibromide (dibromethane)	0.0045000
75-21-8	Ethylene oxide	0.0100000
96-45-7	Ethylene thiourea	1.0000000
50-00-0	Formaldehyde	0.0770000
76-44-8	Heptachlor	0.0007700
118-74-1	Hexachlorobenzene	0.0022000
58-89-9	Hexachlorocyclohexane (Lindane) gamma-BHC	0.0026000
302-01-2	Hydrazine	0.0002000
C7440-02-0	Nickel and compounds (as nickel sulfide or nickel refinery dust)	0.0021000
924-16-3	N-Nitrosodi-n-butylamine	0.0006300
55-18-5	N-Nitrosodiethylamine (diethylnitrosoamine) (DEN)	0.0000230
62-75-9	N-Nitrosodimethylamine	0.0000710
79-46-9	2-Nitropropane	0.0003700
87-86-5	Pentachlorophenol	0.3300000
127-18-4	Perchloroethylene (tetrachloroethylene)	1.1000000
1336-36-3	Polychlorinated biphenyls (PCB)	0.0045000
75-56-9	Propylene oxide	0.2700000
1746-01-6	2,3,7,8-Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD)	0.00000003
95-80-7	2,4-Toluene diamine	0.0110000
95-53-4	o-Toluidine	0.1400000
636-21-5	o-Toluidine hydrochloride	0.1400000
8001-35-2	Toxaphene	0.0031000
79-01-6	Trichloroethylene	0.5900000
88-06-2	2,4,6-Trichlorophenol	0.3200000
75-01-4	Vinyl chloride	0.0120000

(3) TABLE III
CLASS A TOXIC AIR POLLUTANTS
WITH SPECIAL ACCEPTABLE SOURCE
IMPACT LEVELS

CAS #	SUBSTANCE	ASIL MICRO- GRAMS/M ³	AVERAGING TIME
---	Primary aluminum-smelter uncontrolled roof-vent polyaromatic hydrocarbon (PAH) emissions (Note: Quantify according to WAC 173-460-050-(4)(d))	0.0013	Annual
61-82-5	Amitrole	0.06	24-hour
90-04-0	o-Anisidine	1.7	24-hour
126-99-8	β-Chloroprene	120	24-hour
94-75-7	2,4-D and esters	33	24-hour
78-87-5	1,2-Dichloropropane	4.0	24-hour
77-78-1	Dimethyl sulfate	1.7	24-hour
540-73-8	1,2-Dimethylhydrazine	4.0	24-hour
319-84-6	Hexachlorocyclohexane (Lindane) alpha-BHC	1.7	24-hour
319-85-7	Hexachlorocyclohexane (Lindane) beta-BHC	1.7	24-hour
---	Lead compounds	0.5	24-hour
101-14-4	4,4'-Methylenebis (2-Chloroaniline) (MBOCA)	0.7	24-hour
101-77-9	4,4-Methylene dianiline	2.7	24-hour
---	Polyaromatic hydrocarbon (PAH) emissions (Note: Quantify according to WAC 173-460-050-(4)(d))	0.00048	Annual
584-84-9	2,4-Toluene diisocyanate	0.12	24-hour

The following table lists the common name of toxic air pollutants, the chemical abstract service (CAS) number, the averaging period, the acceptable source impact level (ASIL); the small quantity emission rate (SQER); and de minimis emission values.

Common Name	CAS #	Averaging Period	ASIL (ug/m ³)	SOER (lb/averaging period)	De Minimis (lb/averaging period)
1,1,1,2-Tetrachloroethane	630-20-6	year	0.135	25.9	1.3
1,1,1,2-Tetrafluoroethane	811-97-2	24-hr	8.00E+04	438	21.9
1,1,1-Trichloroethane	71-55-6	24-hr	1000	5.48	0.274
1,1,2,2-Tetrachloroethane	79-34-5	year	0.0172	3.3	0.165
1,1,2-Trichloroethane	79-00-5	year	0.0625	12	0.6
1,1-Dichloroethane	75-34-3	year	0.625	120	6
1,1-Dichloroethylene	75-35-4	24-hr	200	1.1	0.0548
1,1-Difluoroethane	75-37-6	24-hr	4.00E+04	219	11
1,1-Dimethylhydrazine	57-14-7	24-hr	0.5	0.00274	0.000137
1,2,3,4,6,7,8,9-Octachlorodibenzofuran	39001-02-0	year	0.000263	0.0505	0.00252
1,2,3,4,6,7,8,9-Octachlorodibenzo-p-Dioxin	3268-87-9	year	0.000263	0.0505	0.00252
1,2,3,4,6,7,8-Heptachlorodibenzofuran	67562-39-4	year	2.63E-06	0.000505	2.52E-05
1,2,3,4,7,8,9-Heptachlorodibenzofuran	55673-89-7	year	2.63E-06	0.000505	2.52E-05
1,2,3,4,7,8-Hexachlorodibenzofuran	70648-26-9	year	2.63E-07	5.05E-05	2.52E-06
1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin	39227-28-6	year	2.63E-07	5.05E-05	2.52E-06

Common Name	CAS #	Averaging Period	ASIL ($\mu\text{g}/\text{m}^3$)	SOER (lb/averaging period)	De Minimis (lb/averaging period)
1,2,3,6,7,8-Hexachlorodibenzo-p-dioxin	57653-85-7	year	2.63E-07	5.05E-05	2.52E-06
1,2,3,6,7,8-Hexachlorodibenzofuran	57117-44-9	year	2.63E-07	5.05E-05	2.52E-06
1,2,3,7,8,9-Hexachlorodibenzofuran	72918-21-9	year	2.63E-07	5.05E-05	2.52E-06
1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin	19408-74-3	year	2.63E-07	5.05E-05	2.52E-06
1,2,3,7,8-Pentachlorodibenzofuran	57117-41-6	year	5.26E-07	0.000101	5.05E-06
1,2,3,7,8-Pentachlorodibenzo-p-dioxin	40321-76-4	year	2.63E-08	5.05E-06	2.52E-07
1,2,3-Trichloropropane	96-18-4	24-hr	1.84	0.0101	0.000504
1,2-Dibromo-3-chloropropane	96-12-8	year	0.000526	0.101	0.00505
1,2-Dibromoethane	106-93-4	year	0.0141	2.71	0.135
1,2-Dichloroethane	107-06-2	year	0.0385	7.39	0.369
1,2-Dichloropropane	78-87-5	year	0.1	19.2	0.959
1,2-Dimethylhydrazine	540-73-8	year	6.25E-06	0.0012	6.00E-05
1,2-Diphenylhydrazine	122-66-7	year	0.004	0.768	0.0384
1,2-Epoxybutane	106-88-7	24-hr	20	0.11	0.00548
1,3-Butadiene	106-99-0	year	0.00588	1.13	0.0564
1,3-Dichloropropene	542-75-6	year	0.0625	12	0.6
1,3-Propane Sultone	1120-71-4	year	0.00145	0.278	0.0139
1,4-Dichlorobenzene	106-46-7	year	0.0909	17.4	0.872
1,4-Dioxane	123-91-1	year	0.13	24.9	1.25
1,6-Dinitropyrene	42397-64-8	year	9.09E-05	0.0174	0.000872
1,6-Hexamethylene diisocyanate	822-06-0	24-hr	0.07	0.000383	1.92E-05
1,8-Dinitropyrene	42397-65-9	year	0.000909	0.174	0.00872
1-[(5-Nitrofurfurylidene)-amino]-2-imidazolidinone	555-84-0	year	0.00196	0.376	0.0188
1-Amino-2-methylanthraquinone	82-28-0	year	0.0233	4.47	0.224
1-Chloro-1,1-difluoroethane	75-68-3	24-hr	5.00E+04	274	13.7
1-Nitropyrene	5522-43-0	year	0.00909	1.74	0.0872
2,3,3',4,4',5'-Hexachlorobiphenyl	69782-90-7	year	5.26E-05	0.0101	0.000505
2,3,3',4,4',5'-Hexachlorobiphenyl	38380-08-4	year	5.26E-05	0.0101	0.000505
2,3,3',4,4'-Tetrachlorobiphenyl	32598-14-4	year	0.000263	0.0505	0.00252
2,3,3',4,4',5,5'-Heptachlorobiphenyl	39635-31-9	year	0.000263	0.0505	0.00252
2',3,4,4',5-Pentachlorobiphenyl	65510-44-3	year	0.000263	0.0505	0.00252
2,3',4,4',5-Pentachlorobiphenyl	31508-00-6	year	0.000263	0.0505	0.00252
2,3,4,4',5-Pentachlorobiphenyl	74472-37-0	year	5.26E-05	0.0101	0.000505
2,3,4,6,7,8-Hexachlorodibenzofuran	60851-34-5	year	2.63E-07	5.05E-05	2.52E-06
2,3,4,7,8-Pentachlorodibenzofuran	57117-31-4	year	5.26E-08	1.01E-05	5.05E-07
2,3,7,8-Tetrachlorodibenzo-p-dioxin	C1746-01-6	year	2.63E-08	5.05E-06	2.52E-07
Related Compounds (TCDD)					
2,3,7,8-Tetrachlorodibenzofuran	51207-31-9	year	2.63E-07	5.05E-05	2.52E-06
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746-01-6	year	2.63E-08	5.05E-06	2.52E-07
2,3',4,4',5,5'-Hexachlorobiphenyl	52663-72-6	year	0.000263	0.0505	0.00252
2,4,6-Trichlorophenol	88-06-2	year	0.05	9.59	0.48
2,4-Diaminoanisole	615-05-4	year	0.152	29.2	1.46
2,4-Diaminoanisole Sulfate	39156-41-7	year	0.27	51.8	2.59
2,4-Diaminotoluene	95-80-7	year	0.000909	0.174	0.00872
2,4-Dinitrotoluene	121-14-2	year	0.0112	2.15	0.107
2-Acetylaminofluorene	53-96-3	year	0.000769	0.148	0.00738
2-Amino-3-methyl-9H-pyrido[2,3-b]indole	68006-83-7	year	0.00294	0.564	0.0282
2-Amino-3-methylimidazo[4,5-f]quinoline	76180-96-6	year	0.0025	0.48	0.024
2-Amino-5-(5-Nitro-2-Furyl)-1,3,4-Thiadiazol	712-68-5	year	0.000217	0.0416	0.00208
2-Aminoanthraquinone	117-79-3	year	0.106	20.3	1.02
2-Chloroacetophenone	532-27-4	24-hr	0.03	0.000164	8.21E-06
2-Ethoxyethanol	110-80-5	24-hr	70	0.383	0.0192
2-Methoxyethanol	109-86-4	24-hr	60	0.329	0.0164
2-Methyl-1-nitroanthraquinone	129-15-7	year	0.000833	0.16	0.00799

<u>Common Name</u>	<u>CAS #</u>	<u>Averaging Period</u>	<u>ASIL ($\mu\text{g}/\text{m}^3$)</u>	<u>SOER (lb/averaging period)</u>	<u>De Minimis (lb/averaging period)</u>
2-Methylphenol	95-48-7	24-hr	600	3.29	0.164
2-Naphthylamine	91-59-8	year	0.00196	0.376	0.0188
2-Nitrofluorene	607-57-8	year	0.0909	17.4	0.872
2-Nitropropane	79-46-9	24-hr	20	0.11	0.00548
3,3',4,4',5,5'-Tetrachlorobiphenyl	32774-16-6	year	0.000263	0.0505	0.00252
3,3',4,4',5-Pentachlorobiphenyl	57465-28-8	year	2.63E-07	5.05E-05	2.52E-06
3,3',4,4'-Tetrachlorobiphenyl	32598-13-3	year	0.000263	0.0505	0.00252
3,3'-Dichlorobenzidine	91-94-1	year	0.00294	0.564	0.0282
3,4,4',5-Tetrachlorobiphenyl	70362-50-4	year	0.000263	0.0505	0.00252
3-Amino-9-ethylcarbazole hydrochloride	6109-97-3	year	0.0455	8.73	0.437
3-Chloro-2-methyl-propene	563-47-3	year	0.025	4.8	0.24
3-Methylcholanthrene	56-49-5	year	0.000159	0.0305	0.00153
3-Methylphenol	108-39-4	24-hr	600	3.29	0.164
4,4'-Diaminodiphenyl Ether	101-80-4	year	0.025	4.8	0.24
4,4-Methylene bis(2-chloroaniline)	101-14-4	year	0.00233	0.447	0.0224
4,4-Methylene bis(2-Methylaniline)	838-88-0	year	0.00385	0.739	0.0369
4,4'-Methylene bis(n,n'-dimethyl)aniline	101-61-1	year	0.0769	14.8	0.738
4,4'-Methylenedianiline	101-77-9	year	0.00217	0.416	0.0208
4,4-Methylenedianiline Dihydrochloride	13552-44-8	year	0.00294	0.564	0.0282
4,4-Thiodianiline	139-65-1	year	0.000233	0.0447	0.00224
4-Aminobiphenyl	92-67-1	year	0.000167	0.032	0.0016
4-Chloro-o-phenylenediamine	95-83-0	year	0.217	41.6	2.08
4-Dimethylaminoazobenzene	60-11-7	year	7.69E+04	1.48E+07	7.38E+05
4-Methylphenol	106-44-5	24-hr	600	3.29	0.164
4-Nitropyrene	57835-92-4	year	0.00909	1.74	0.0872
5-Methylchrysene	3697-24-3	year	0.000909	0.174	0.00872
5-Nitroacenaphthene	602-87-9	year	0.027	5.18	0.259
5-Nitro-o-Anisidine	99-59-2	year	0.0714	13.7	0.685
6-Nitrochrysene	7496-02-8	year	9.09E-05	0.0174	0.000872
7,12-Dimethylbenz[a]anthracene	57-97-6	year	1.41E-05	0.00271	0.000135
7h-Dibenzo[c,g]carbazole	194-59-2	year	0.000909	0.174	0.00872
A-alpha-c(2-amino-9h-pyrido[2,3-b]indole)	26148-68-5	year	0.00877	1.68	0.0841
Acetaldehyde	75-07-0	year	0.37	71	3.55
Acetamide	60-35-5	year	0.05	9.59	0.48
Acetonitrile	75-05-8	year	60	1.15E+04	576
Acrolein	107-02-8	24-hr	0.06	0.000329	1.64E-05
Acrylamide	79-06-1	year	0.000769	0.148	0.00738
Acrylic Acid	79-10-7	24-hr	1	0.00548	0.000274
Acrylonitrile	107-13-1	year	0.00345	0.662	0.0331
Actinomycin D	50-76-0	year	4.00E-07	7.68E-05	3.84E-06
Alar	1596-84-5	year	0.196	37.6	1.88
Aldrin	309-00-2	year	0.000204	0.0391	0.00196
Allyl Chloride	107-05-1	year	0.167	32	1.6
alpha-Hexachlorocyclohexane	319-84-6	year	0.0013	0.249	0.0125
Amitrole	61-82-5	year	0.0037	0.71	0.0355
Ammonia	7664-41-7	24-hr	70.8	0.388	0.0194
Ammonium bisulfate	7803-63-6	1-hr	120	0.263	0.0131
Ammonium sulfate	7783-20-2	1-hr	120	0.263	0.0131
Aniline	62-53-3	year	0.625	120	6
Antimony Trioxide	1309-64-4	24-hr	0.2	0.0011	5.48E-05
Aramite	140-57-8	year	0.116	22.3	1.11
Arsenic & Inorganic Arsenic Compounds	C7440-38-2	year	0.000303	0.0581	0.00291
Arsine	7784-42-1	24-hr	0.05	0.000274	1.37E-05
Asbestos	1332-21-4	year	1.59E-05	0.00305	0.000153

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Auramine	492-80-8	year	0.004	0.768	0.0384
Azaserine	115-02-6	year	0.000323	0.062	0.0031
Azathioprine	446-86-6	year	0.00196	0.376	0.0188
Azobenzene	103-33-3	year	0.0323	6.2	0.31
Barium Chromate	10294-40-3	year	1.49E-05	0.00286	0.000143
Benz[a]anthracene	56-55-3	year	0.00909	1.74	0.0872
Benzene	71-43-2	year	0.0345	6.62	0.331
Benzidine	92-87-5	year	7.14E-06	0.00137	6.85E-05
Benzo[a]pyrene	50-32-8	year	0.000909	0.174	0.00872
Benzo[b]fluoranthene	205-99-2	year	0.00909	1.74	0.0872
Benzo[j]fluoranthene	205-82-3	year	0.00909	1.74	0.0872
Benzo[k]fluoranthene	207-08-9	year	0.00909	1.74	0.0872
Benzyl Chloride	100-44-7	year	0.0204	3.91	0.196
Benzyl Violet 4B	1694-09-3	year	0.175	33.6	1.68
Beryllium & Compounds (NOS)	C7440-41-7	year	0.000417	0.08	0.004
Beryllium Oxide	1304-56-9	year	0.000417	0.08	0.004
Beryllium Sulfate	13510-49-1	year	1.16E-06	0.000223	1.11E-05
beta-Butyrolactone	3068-88-0	year	0.00345	0.662	0.0331
Beta-hexachlorocyclohexane	319-85-7	year	0.00233	0.447	0.0224
beta-Propiolactone	57-57-8	year	0.00025	0.048	0.0024
Bis(chloroethyl)ether	111-44-4	year	0.00141	0.271	0.0135
Bis(chloromethyl)ether	542-88-1	year	7.69E-05	0.0148	0.000738
Bromodichloromethane	75-27-4	year	0.027	5.18	0.259
Bromoform	75-25-2	year	0.909	174	8.72
Butylated hydroxyanisole	25013-16-5	year	17.5	3360	168
C.I. Basic Red 9 Monohydrochloride	569-61-9	year	0.0141	2.71	0.135
Cadmium & Compounds	7440-43-9	year	0.000238	0.0457	0.00228
Captafol	2425-06-1	year	0.0233	4.47	0.224
Captan	133-06-2	year	1.52	292	14.6
Carbon disulfide	75-15-0	24-hr	800	4.38	0.219
Carbon monoxide	630-08-0	1-hr	2.30E+04	50.4	2.52
Carbon Tetrachloride	56-23-5	year	0.0238	4.57	0.228
Chlorambucil	305-03-3	year	7.69E-06	0.00148	7.38E-05
Chlordane	57-74-9	year	0.00294	0.564	0.0282
Chlordecone	143-50-0	year	0.000217	0.0416	0.00208
Chlorendic Acid	115-28-6	year	0.0385	7.39	0.369
Chlorinated Paraffins	108171-26-2	year	0.04	7.68	0.384
Chlorine	7782-50-5	24-hr	0.2	0.0011	5.48E-05
Chlorine dioxide	10049-04-4	24-hr	0.2	0.0011	5.48E-05
Chlorobenzene	108-90-7	24-hr	1000	5.48	0.274
Chlorobenzilate	510-15-6	year	0.0323	6.2	0.31
Chlorodifluoromethane	75-45-6	24-hr	5.00E+04	274	13.7
Chloroform	67-66-3	year	0.0435	8.35	0.417
Chloromethyl methyl ether	107-30-2	year	0.00145	0.278	0.0139
Chloropicrin	76-06-2	24-hr	0.4	0.00219	0.00011
Chlorothalonil	1897-45-6	year	1.12	215	10.7
Chlorozotocin	54749-90-5	year	1.45E-05	0.00278	0.000139
Chromic Acid	11115-74-5	year	1.51E-05	0.0029	0.000145
Chromic Trioxide	1333-82-0	year	1.28E-05	0.00246	0.000123
Chromic(VI) Acid	7738-94-5	year	1.51E-05	0.0029	0.000145
Chromium Hexavalent: Soluble, except Chromic Trioxide	C7440-47-3	year	6.67E-06	0.00128	6.40E-05
Chromium(VI)	18540-29-9	year	6.67E-06	0.00128	6.40E-05
Chrysene	218-01-9	year	0.0909	17.4	0.872
Cinnamyl Anthranilate	87-29-6	year	0.769	148	7.38

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Cobalt	7440-48-4	24-hr	0.1	0.000548	2.74E-05
Coke Oven Emissions	8007-45-2	year	0.00162	0.311	0.0155
Copper & Compounds	C7440-50-8	1-hr	100	0.219	0.011
Cumene	98-82-8	24-hr	400	2.19	0.11
Cupferron	135-20-6	year	0.0159	3.05	0.153
Cyclohexane	110-82-7	24-hr	6000	32.9	1.64
Cyclophosphamide (anhydrous)	50-18-0	year	0.00588	1.13	0.0564
Cyclophosphamide (Hydrated)	6055-19-2	year	0.00625	1.2	0.06
D & C Red No. 9	5160-02-1	year	0.667	128	6.4
Dacarbazine	4342-03-4	year	7.14E-05	0.0137	0.000685
Dantron	117-10-2	year	0.0455	8.73	0.437
DDD	72-54-8	year	0.0145	2.78	0.139
DDE	72-55-9	year	0.0103	1.98	0.0988
DDT	50-29-3	year	0.0103	1.98	0.0988
Di(2-ethylhexyl)phthalate	117-81-7	year	0.0417	8	0.4
Diazinon	333-41-5	24-hr	9	0.0493	0.00246
Dibenz[a,h]acridine	226-36-8	year	0.00909	1.74	0.0872
Dibenz[a,h]anthracene	53-70-3	year	0.000833	0.16	0.00799
Dibenz[a,j]acridine	224-42-0	year	0.00909	1.74	0.0872
Dibenzof[a,e]pyrene	192-65-4	year	0.000909	0.174	0.00872
Dibenzof[a,h]pyrene	189-64-0	year	9.09E-05	0.0174	0.000872
Dibenzof[a,i]pyrene	189-55-9	year	9.09E-05	0.0174	0.000872
Dibenzof[a,l]pyrene	191-30-0	year	9.09E-05	0.0174	0.000872
Dibromochloromethane	124-48-1	year	0.037	7.1	0.355
Dichloromethane	75-09-2	year	1	192	9.59
Dichlorvos	62-73-7	year	0.012	2.3	0.115
Dieldrin	60-57-1	year	0.000217	0.0416	0.00208
Diesel Engine Exhaust, Particulate	CAS-NA-1	year	0.00333	0.639	0.032
Diethanolamine	111-42-2	24-hr	3	0.0164	0.000821
Diethyl mercury	627-44-1	24-hr	0	0.00E+00	0.00E+00
Diethylstilbestrol	56-53-1	year	1.00E-05	0.00192	9.59E-05
Diglycidyl Resorcinol Ether	101-90-6	year	0.00204	0.391	0.0196
Dihydrosafrole	94-58-6	year	0.0769	14.8	0.738
Dimethyl Mercury	593-74-8	24-hr	0	0.00E+00	0.00E+00
Dimethylcarbamoyl Chloride	79-44-7	year	0.00027	0.0518	0.00259
Dimethylvinylchloride	513-37-1	year	7.69	1480	73.8
Direct Black 38	1937-37-7	year	4.76E+04	9.13E+06	4.57E+05
Direct Blue 6	2602-46-2	year	0.000476	0.0913	0.00457
Direct Brown 95	16071-86-6	year	0.000526	0.101	0.00505
Disperse Blue 1	2475-45-8	year	0.769	148	7.38
Disulfoton	298-04-4	24-hr	6	0.0329	0.00164
Epichlorohydrin	106-89-8	year	0.0435	8.35	0.417
Estradiol 17b	50-28-2	year	9.09E-05	0.0174	0.000872
Ethyl Carbamate	51-79-6	year	0.00345	0.662	0.0331
Ethyl Chloride	75-00-3	24-hr	3.00E+04	164	8.21
Ethylbenzene	100-41-4	year	0.4	76.8	3.84
Ethylene Glycol	107-21-1	24-hr	400	2.19	0.11
Ethylene glycol monobutyl ether	111-76-2	24-hr	1.30E+04	71.2	3.56
Ethylene glycol monoethyl ether acetate	111-15-9	24-hr	300	1.64	0.0821
Ethylene glycol monomethyl ether acetate	110-49-6	24-hr	90	0.493	0.0246
Ethylene oxide	75-21-8	year	0.0114	2.19	0.109
Ethylene Thiourea	96-45-7	year	0.0769	14.8	0.738
Ethyleneimine	151-56-4	year	5.26E-05	0.0101	0.000505
Ferric Sulfate	10028-22-5	1-hr	120	0.263	0.0131

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Fluoride	16984-48-8	24-hr	13	0.0712	0.00356
Fluorine (soluble Fluoride)	7782-41-4	24-hr	15.8	0.0866	0.00433
Formaldehyde	50-00-0	year	0.167	32	1.6
Furmecycloox	60568-05-0	year	0.116	22.3	1.11
Furylfuramide	3688-53-7	year	0.0145	2.78	0.139
gamma-Hexachlorocyclohexane	58-89-9	year	0.00323	0.62	0.031
Glu-P-1	67730-11-4	year	0.000714	0.137	0.00685
Glu-P-2	67730-10-3	year	0.0025	0.48	0.024
Glutaraldehyde	111-30-8	24-hr	0.08	0.000438	2.19E-05
Gyromitrin	16568-02-8	year	0.000345	0.0662	0.00331
HC Blue 1	2784-94-3	year	0.0667	12.8	0.64
Heptachlor	76-44-8	year	7.69E-05	0.0148	0.000738
Heptachlor epoxide	1024-57-3	year	0.000385	0.0739	0.00369
Heptachlorodibenzo-p-dioxins	37871-00-4	year	2.63E-06	0.000505	2.52E-05
Hexachlorobenzene	118-74-1	year	0.00196	0.376	0.0188
Hexachlorobutadiene	87-68-3	year	0.0455	8.73	0.437
Hexachlorocyclohexane	608-73-1	year	0.000909	0.174	0.00872
Hexachlorocyclopentadiene	77-47-4	24-hr	0.2	0.0011	5.48E-05
Hexachlorodibenzo-p-Dioxins, Total	34465-46-8	year	2.63E-07	5.05E-05	2.52E-06
Hexachloroethane	67-72-1	year	0.0909	17.4	0.872
Hydrazine	302-01-2	year	0.000204	0.0391	0.00196
Hydrazine Sulfate	10034-93-2	year	0.00116	0.223	0.0111
Hydrogen chloride	7647-01-0	24-hr	9	0.0493	0.00246
Hydrogen Cyanide	74-90-8	24-hr	9	0.0493	0.00246
Hydrogen Fluoride	7664-39-3	24-hr	14	0.0767	0.00383
Hydrogen Selenide	7783-07-5	1-hr	5	0.011	0.000548
Hydrogen Sulfide	7783-06-4	24-hr	2	0.011	0.000548
Indeno[1,2,3-cd]pyrene	193-39-5	year	0.00909	1.74	0.0872
Isophorone	78-59-1	24-hr	2000	11	0.548
Isopropyl Alcohol	67-63-0	1-hr	3200	7.01	0.35
Lasiocarpine	303-34-4	year	0.000455	0.0873	0.00437
Lead & Compounds (NOS)	C7439-92-1	year	0.0833	16	0.799
Lead Acetate	301-04-2	year	0.0125	2.4	0.12
Lead Chromate	7758-97-6	year	4.14E-05	0.00794	0.000397
Lead Chromate Oxide	18454-12-1	year	7.01E-05	0.0135	0.000673
Lead Subacetate	1335-32-6	year	0.0909	17.4	0.872
Maleic Anhydride	108-31-6	24-hr	0.7	0.00383	0.000192
Manganese & Compounds	C7439-96-5	24-hr	0.04	0.000219	1.10E-05
Melphalan	148-82-3	year	2.70E-05	0.00518	0.000259
Melphalan HCl	3223-07-2	year	2.70E-05	0.00518	0.000259
Mercury, Elemental	7439-97-6	24-hr	0.09	0.000493	2.46E-05
Methyl Alcohol	67-56-1	24-hr	4000	21.9	1.1
Methyl Bromide	74-83-9	24-hr	5	0.0274	0.00137
Methyl Chloride	74-87-3	24-hr	90	0.493	0.0246
Methyl Ethyl Ketone	78-93-3	24-hr	5000	27.4	1.37
Methyl Isobutyl Ketone	108-10-1	24-hr	3000	16.4	0.821
Methyl Isocyanate	624-83-9	24-hr	1	0.00548	0.000274
Methyl methacrylate	80-62-6	24-hr	700	3.83	0.192
Methyl Methanesulfonate	66-27-3	year	0.0357	6.85	0.343
Methyl Tertiary Butyl Ether	1634-04-4	year	3.85	739	36.9
Methylene diphenyl isocyanate	101-68-8	24-hr	0.7	0.00383	0.000192
Methylthiouracil	56-04-2	year	0.00909	1.74	0.0872
Michler's ketone	90-94-8	year	0.004	0.768	0.0384
Mirex	2385-85-5	year	0.000196	0.0376	0.00188

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Mitomycin C	50-07-7	year	4.35E-07	8.35E-05	4.17E-06
Monocrotaline	315-22-0	year	0.000345	0.0662	0.00331
m-Xylene	108-38-3	24-hr	221	1.21	0.0605
n,n-Dimethylformamide	68-12-2	24-hr	80	0.438	0.0219
n-[4-(5-nitro-2-furyl)-2-thiazolyl]-acetamide	531-82-8	year	0.00233	0.447	0.0224
Naphthalene	91-20-3	year	0.0294	5.64	0.282
n-Hexane	110-54-3	24-hr	700	3.83	0.192
Nickel Refinery Dust	C7440-02-0	year	0.0042	0.806	0.0403
Nickel Subsulfide	12035-72-2	year	0.00204	0.391	0.0196
Nifurthiazole	3570-75-0	year	0.00152	0.292	0.0146
Nitric Acid	7697-37-2	1-hr	86	0.188	0.00942
Nitrilotriacetic acid	139-13-9	year	0.667	128	6.4
Nitrilotriacetic acid, trisodium salt monohydrate	18662-53-8	year	0.345	66.2	3.31
Nitrofen	1836-75-5	year	0.0435	8.35	0.417
Nitrofurazone	59-87-0	year	0.0027	0.518	0.0259
Nitrogen dioxide	10102-44-0	1-hr	470	1.03	0.0515
n-Methyl-n-nitro-n-nitrosoguanidine	70-25-7	year	0.000417	0.08	0.004
n-Nitrosodiethanolamine	1116-54-7	year	0.00125	0.24	0.012
n-Nitrosodiethylamine	55-18-5	year	1.00E-04	0.0192	0.000959
n-Nitrosodimethylamine	62-75-9	year	0.000217	0.0416	0.00208
n-Nitroso-di-n-butylamine	924-16-3	year	0.000323	0.062	0.0031
n-Nitrosodi-n-propylamine	621-64-7	year	0.0005	0.0959	0.0048
n-Nitrosodiphenylamine	86-30-6	year	0.385	73.9	3.69
n-Nitrosomorpholine	59-89-2	year	0.000526	0.101	0.00505
n-Nitroso-n-ethylurea	759-73-9	year	0.00013	0.0249	0.00125
n-Nitroso-n-methylethylamine	10595-95-6	year	0.000159	0.0305	0.00153
n-Nitroso-n-methylurea	684-93-5	year	2.94E-05	0.00564	0.000282
n-Nitroso-n-Methylurethane	615-53-2	year	3.23E-05	0.0062	0.00031
n-Nitrosornicotine	16543-55-8	year	0.0025	0.48	0.024
n-Nitrosopiperidine	100-75-4	year	0.00037	0.071	0.00355
n-Nitrosopyrrolidine	930-55-2	year	0.00167	0.32	0.016
o-Anisidine	90-04-0	year	0.025	4.8	0.24
o-Anisidine Hydrochloride	134-29-2	year	0.0323	6.2	0.31
o-Phenylphenate, Sodium	132-27-4	year	1.16	223	11.1
ortho-Aminoazotoluene	97-56-3	year	0.000909	0.174	0.00872
o-Toluidine	95-53-4	year	0.0196	3.76	0.188
o-Toluidine Hydrochloride	636-21-5	year	0.027	5.18	0.259
o-Xylene	95-47-6	24-hr	221	1.21	0.0605
Ozone	10028-15-6	1-hr	180	0.394	0.0197
para-Cresidine	120-71-8	year	0.0233	4.47	0.224
p-Chloro-o-toluidine	95-69-2	year	0.013	2.49	0.125
Pentabromodiphenyl Ether	32534-81-9	24-hr	6	0.0329	0.00164
Pentachlorophenol	87-86-5	year	0.217	41.6	2.08
Perchloroethylene	127-18-4	year	0.169	32.4	1.62
Phenacetin	62-44-2	year	1.59	305	15.3
Phenazopyridine	94-78-0	year	0.0204	3.91	0.196
Phenazopyridine hydrochloride	136-40-3	year	0.0233	4.47	0.224
Phenesterin	3546-10-9	year	2.33E-05	0.00447	0.000224
Phenobarbital	50-06-6	year	0.00769	1.48	0.0738
Phenol	108-95-2	24-hr	200	1.1	0.0548
Phenoxybenzamine	59-96-1	year	0.00112	0.215	0.0107
Phenoxybenzamine hydrochloride	63-92-3	year	0.0013	0.249	0.0125
Phosgene	75-44-5	24-hr	0.3	0.00164	8.21E-05
Phosphine	7803-51-2	24-hr	0.8	0.00438	0.000219

Common Name	CAS #	Averaging Period	ASIL ($\mu\text{g}/\text{m}^3$)	SOER (lb/averaging period)	De Minimis (lb/averaging period)
Phosphoric Acid	7664-38-2	24-hr	7	0.0383	0.00192
Phosphorus	7723-14-0	24-hr	20	0.11	0.00548
Phthalic Anhydride	85-44-9	24-hr	20	0.11	0.00548
p-Nitrosodiphenylamine	156-10-5	year	0.159	30.5	1.53
Polybrominated Biphenyls	CAS-NA-2	year	0.000116	0.0223	0.00111
Polychlorinated Biphenyls	1336-36-3	year	0.00175	0.336	0.0168
Ponceau 3R	3564-09-8	year	0.217	41.6	2.08
Ponceau MX	3761-53-3	year	0.769	148	7.38
Potassium Bromate	7758-01-2	year	0.00714	1.37	0.0685
Procarbazine	671-16-9	year	0.00025	0.048	0.0024
Procarbazine Hydrochloride	366-70-1	year	0.000294	0.0564	0.00282
Propylene	115-07-1	24-hr	3000	16.4	0.821
Propylene Glycol	57-55-6	24-hr	28.5	0.156	0.0078
Propylene Glycol Dinitrate	6423-43-4	24-hr	0.276	0.00151	7.56E-05
Propylene glycol monomethyl ether	107-98-2	24-hr	7000	38.3	1.92
Propylene oxide	75-56-9	year	0.27	51.8	2.59
Propylthiouracil	51-52-5	year	0.00345	0.662	0.0331
p-Xylene	106-42-3	24-hr	221	1.21	0.0605
Refractory Ceramic Fibers	CAS-NA-3	24-hr	0.03	0.000164	8.21E-06
Reserpine	50-55-5	year	0.000323	0.062	0.0031
Safrole	94-59-7	year	0.0159	3.05	0.153
Selenium & Selenium Compounds (other than Hydrogen Selenide)	C7782-49-2	24-hr	20	0.11	0.00548
Short-chain (C10-13) chlorinated paraffins	85535-84-8	year	0.04	7.68	0.384
Silica (crystalline, Respirable)	7631-86-9	24-hr	3	0.0164	0.000821
Sodium Hydroxide	1310-73-2	1-hr	8	0.0175	0.000876
Sodium Sulfate	7757-82-6	1-hr	120	0.263	0.0131
Sterigmatocystin	10048-13-2	year	1.00E-04	0.0192	0.000959
Streptozotocin	18883-66-4	year	3.23E-05	0.0062	0.00031
Styrene	100-42-5	24-hr	900	4.93	0.246
Styrene Oxide	96-09-3	year	0.0217	4.16	0.208
Sulfallate	95-06-7	year	0.0185	3.55	0.178
Sulfur dioxide	7446-09-5	24-hr	26.7	0.146	0.0073
Sulfur Mustard	505-60-2	24-hr	0.7	0.00383	0.000192
Sulfuric Acid	7664-93-9	24-hr	1	0.00548	0.000274
Tetrabromodiphenyl Ether	40088-47-9	24-hr	6	0.0329	0.00164
Thioacetamide	62-55-5	year	0.000588	0.113	0.00564
Thiourea	62-56-6	year	0.0476	9.13	0.457
Titanium Tetrachloride	7550-45-0	24-hr	0.1	0.000548	2.74E-05
Toluene	108-88-3	24-hr	5000	27.4	1.37
Toluene-diisocyanates	26471-62-5	24-hr	0.07	0.000383	1.92E-05
Toluene-2,4-diisocyanate	584-84-9	24-hr	0.07	0.000383	1.92E-05
Toluene-2,6-diisocyanate	91-08-7	24-hr	0.07	0.000383	1.92E-05
Toxaphene	8001-35-2	year	0.00294	0.564	0.0282
Trans-1,2-dichloroethene	156-60-5	24-hr	807	4.42	0.221
Trans-2[(dimethylamino)-methylimino]-5-[2-(5-nitro-2-furyl)-vinyl]-1,3,4-oxadiazole	55738-54-0	year	0.00769	1.48	0.0738
Trichloroethylene	79-01-6	year	0.5	95.9	4.8
Triethylamine	121-44-8	24-hr	200	1.1	0.0548
Tris-(1-Aziridinyl)phosphine sulfide	52-24-4	year	0.000294	0.0564	0.00282
Tris(2,3-dibromopropyl)phosphate	126-72-7	year	0.00152	0.292	0.0146
Tryptophan-P-1	62450-06-0	year	0.000135	0.0259	0.0013
Tryptophan-P-2	62450-07-1	year	0.0011	0.211	0.0106
Vanadium	7440-62-2	24-hr	0.2	0.0011	5.48E-05
Vanadium Pentoxide	1314-62-1	1-hr	30	0.0657	0.00329

<u>Common Name</u>	<u>CAS #</u>	<u>Averaging Period</u>	<u>ASIL</u> <u>($\mu\text{g}/\text{m}^3$)</u>	<u>SOER</u> <u>(lb/averaging period)</u>	<u>De Minimis</u> <u>(lb/averaging period)</u>
Vinyl acetate	108-05-4	24-hr	200	1.1	0.0548
Vinyl Bromide	593-60-2	24-hr	3	0.0164	0.000821
Vinyl Chloride	75-01-4	year	0.0128	2.46	0.123

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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-460-110	Acceptable source impact levels.
WAC 173-460-120	Scientific review and amendment of acceptable source impact levels and lists.
WAC 173-460-130	Fees.
WAC 173-460-160	Class B toxic air pollutants and acceptable source impact levels.

WSR 08-23-099

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed November 19, 2008, 11:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-20-088.

Title of Rule and Other Identifying Information: The department is amending WAC 388-490-0005 The department requires proof before authorizing benefits for cash, medical, and Basic Food.

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 December 23, 2008, at 10:00 a.m.

Date of Intended Adoption: Not sooner than December 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 December 23, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by December 9, 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: DSHS is updating

the citizenship exemptions based on modifications to the Deficit Reduction Act (DRA) final rule and changes to Section 405 (c)(1) of the Tax Relief and Health Care Act of 2006 (TRHCA).

Reasons Supporting Proposal: Being compliant with federal regulation prevents jeopardizing federal financial participation in the state's medicaid program.

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

Statute Being Implemented: RCW 74.04.057, 74.08-090, and 74.09.530.

Rule is necessary because of federal law, Federal Tax Relief & Healthcare Act of 2006; Federal Deficit Reduction Act of 2005.

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: Kathy Johansen, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1321.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Client eligibility rules for medical assistance are exempt from the cost benefit analysis requirement per RCW 34.05.328 (5)(b)(vii).

November 12, 2008

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-02-066, filed 12/29/06, effective 1/29/07)

WAC 388-490-0005 The department requires proof before authorizing benefits for cash, medical, and Basic Food. This rule applies to cash, medical, and Basic Food.

(1) When you first apply for benefits, the department may require you to provide proof of things that help us decide if you are eligible for benefits. This is also called "verification." The types of things that need to be proven are different for each program.

(2) After that, we will ask you to give us proof when:

(a) You report a change;

(b) We find out that your circumstances have changed;

or

(c) The information we have is questionable, confusing, or outdated.

(3) Whenever we ask for proof, we will give you a notice as described in WAC 388-458-0020.

(4) You must give us the proof within the time limits described in:

(a) WAC 388-406-0030 if you are applying for benefits; and

(b) WAC 388-458-0020 if you currently receive benefits.

(5) We will accept any proof that you can easily get when it reasonably supports your statement or circumstances. The proof you give to us must:

(a) Clearly relate to what you are trying to prove;

(b) Be from a reliable source; and

(c) Be accurate, complete, and consistent.

(6) We cannot make you give us a specific type or form of proof.

(7) If the only type of proof that you can get costs money, we will pay for it.

(8) If the proof that you give to us is questionable or confusing, we may:

(a) Ask you to give us more proof, which may include providing a collateral statement. A "collateral statement" is from someone outside of your residence who knows your situation;

(b) Schedule a visit to come to your home and verify your circumstances; or

(c) Send an investigator from the Division of Fraud Investigations (DFI) to make an unannounced visit to your home to verify your circumstances.

(9) By signing the application, eligibility review, or change of circumstances form, you give us permission to contact other people, agencies, or institutions.

(10) If you do not give us all of the proof that we have asked for, we will determine if you are eligible based on the information that we already have. If we cannot determine that you are eligible based on this information, we will deny or stop your benefits.

(11) For all Medicaid programs, you must provide proof of citizenship and identity as specified at Section 6036 of the Deficit Reduction Act of 2005 (PL 106-171 amending USC 1396b). Exempt from this requirement are recipients of:

(a) Title IV-B child welfare services, or Title IV-E adoption assistance or foster care payments;

(b) ~~SSI (cash) benefits; (or)~~

~~((b)) (c) Social security benefits (based on their own disability); or~~

(d) Medicare.

Title of Rule and Other Identifying Information: The department is amending WAC 388-310-2100 WorkFirst career 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 December 23, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 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 December 23, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by December 9, 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: This rule change is needed to offer career services to employed adults who receive Basic Food benefits, who are working thirty or more hours a week and have minor dependents. The program is administered by the employment security department.

Reasons Supporting Proposal: This WAC is being amended to provide greater access [to] the career services program.

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 career services and who is eligible for these services.

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 eligibility for the career services program.

November 14, 2008

Stephanie E. Schiller
Rules Coordinator

WSR 08-23-100
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed November 19, 2008, 11:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-20-048.

AMENDATORY SECTION (Amending WSR 08-16-102, filed 8/5/08, effective 10/1/08)

WAC 388-310-2100 (~~WorkFirst~~) Career services program. (1) What is the (~~WorkFirst~~) career services program?

(~~WorkFirst~~) Career services, administered by employment security department, provides up to six months of:

- Basic needs payments;
- Wage progression services; and
- Job retention services.

(2) How can I get (~~WorkFirst~~) career services?

(a) To get career services, you must meet the following eligibility requirements:

(i) ~~(Enroll with the employment security department within the first two calendar months after your TANF/SFA ends or within the first two calendar months after you received your first diversion cash assistance (DCA) payment.~~

~~(ii) Be working thirty hours or more per week in a paid unsubsidized job; and~~

~~(iii) Not have left temporary assistance for needy families (TANF)/state family assistance (SFA) in sanction status within the previous six months; and~~

~~(iv) Be a custodial parent or caretaker relative who:~~

~~(A) Received TANF/SFA or diversion cash assistance (DCA) within at least one of the past two calendar months; (and) or~~

~~(B) Not have left TANF/SFA in sanction status)~~

(B) Receives basic food assistance for your family and does not currently receive cash benefits under the TANF, SFA, refugee or general assistance programs.

(b) You must also enroll with the employment security department during the following timeframes:

(i) Within the first two calendar months after your TANF/SFA ends; or

(ii) Within the first two calendar months after you received your first diversion cash assistance (DCA) payment; or

(iii) Anytime starting the month after you meet eligibility criteria for career services while receiving basic food. You

aren't eligible for career services based on receiving basic food assistance if you have already received career services during the current state fiscal year (July 1 through June 30).

(c) Each adult in your family who meets these conditions and enrolls in the program (~~will~~) can receive (~~their own basic needs~~) the payments and services.

(3) What services and (~~basic needs~~) payments are available while I am enrolled in the (~~WorkFirst~~) career services program?

The (~~WorkFirst~~) career services program provides wage progression services, job retention services and basic needs payments.

(a) Services include employment planning that will help you keep your job and increase your wages.

(b) As shown in the chart below, cash payments and bonuses are made monthly, for up to six consecutive months after leaving TANF/SFA (~~or~~), receiving DCA, or while receiving Basic Food assistance.

(c) You may receive up to six hundred fifty dollars in cash payments and bonuses over the six-month period following your TANF/SFA case closing (~~or~~), getting your first DCA payment, or while receiving Basic Food assistance.

<u>(Eligible Month)</u>	<u>(Payments & Bonus Amounts)</u>	<u>(Description of Payments and Bonuses)</u>
<u>(Month 1-6 After-TANF/SFA or DCA)</u>	<u>(\$50.00 a month)</u>	<u>(Monthly payments begin once you enroll. If you enroll during Month 2, then you are not eligible for the Month 1 payment.)</u>
<u>(Month 1 or 2)</u>	<u>(\$150.00)</u>	<u>(One-time enrollment bonus when you sign up for the program.)</u>
<u>(Month 4 and 6)</u>	<u>(\$100.00 month 4 \$100.00 month 6)</u>	<u>(Bonus for completing the WorkFirst career services assessment and employment planning interview.)</u>

<u>Program</u>	<u>Enrollment Period</u>	<u>Frequency</u>	<u>Payment Period</u>	<u>Payment & Bonus Amount</u>	<u>Payment Description</u>
<u>TANF/SFA or DCA</u>	<ul style="list-style-type: none"> • <u>First two months after TANF/SFA ends, or</u> • <u>Two months after first DCA payment</u> 	<ul style="list-style-type: none"> • <u>People can enroll the first two months after they:</u> • <u>Exit TANF/SFA or</u> • <u>Receive first DCA payment</u> 	<u>Month 1 or 2</u>	<u>\$150.00</u>	<u>One-time enrollment bonus when you sign up for the program.</u>
			<u>Month 1-6 after TANF/SFA ends</u>	<u>\$50.00</u>	<u>Monthly payments begin once you enroll. If you enroll during Month 2, then you are not eligible for the Month 1 payment.</u>

<u>Program</u>	<u>Enrollment Period</u>	<u>Frequency</u>	<u>Payment Period</u>	<u>Payment & Bonus Amount</u>	<u>Payment Description</u>
			Month 4 and 6	\$100.00 month 4 \$100.00 month 6	Bonus for completing the career services assessment and employment planning interview.
Basic Food	Any time starting the month after becoming eligible for career services	One time in a program year (July through June)	1st Month	\$150.00	One-time enrollment bonus when you sign up for the program.
			Month 1-6	\$50.00	Monthly payments begin once you enroll.
			Month 4 and 6	\$100.00 month 4 \$100.00 month 6	Bonus for completing the career services assessment and employment planning interview.

(4) How long can I receive ((~~WorkFirst~~)) career services ((~~and basic needs payments~~))?

(a) ((~~WorkFirst~~)) Career services ((~~and basic needs payments~~)) are available for a maximum of six consecutive months. Month one begins the calendar month after your TANF/SFA assistance ends or the calendar month after you receive your first DCA payment.

(b) If you are eligible for career services because you receive basic food assistance, career services are available for a maximum of six consecutive months beginning the month you enroll.

(c) Your ((~~WorkFirst~~)) career services ((~~payments~~)) will stop for any of the following reasons:

- (i) ((~~We~~)) The employment security department (ESD) learns you are no longer working thirty hours a week in unsubsidized employment;
- (ii) You begin receiving TANF/SFA assistance;
- (iii) ((~~We~~)) ESD does not have your current mailing address;
- (iv) You are not living in Washington; or
- (v) It has been more than six months since your initial DCA payment or since you stopped receiving TANF/SFA or since you enrolled in the career services program because you receive basic food assistance.

(5) What happens if the employment security department learns I am no longer working thirty hours or more per week?

(a) The employment security department will provide you with a letter with at least ten days advance notice that your ((~~WorkFirst~~)) career services will close. Your ((~~WorkFirst~~)) career services ((~~basic needs payments~~)) will stop at the end of the month in which your ten days notice expires. The letter will tell you how to request an administrative hearing if you disagree with the decision.

(b) If you find a new job or increase your hours back up to thirty hours before the end of the month, you will remain eligible for career services payments.

(c) Employment security staff can help you find new employment or work with you to increase your hours of employment.

(6) What happens if I am approved for TANF/SFA assistance while I am receiving ((~~WorkFirst~~)) career services?

If you start receiving TANF/SFA assistance, the employment security department will provide you with a letter and close your ((~~WorkFirst~~)) career services case at the end of the month. The letter will tell you how to request an administrative hearing if you disagree with the decision.

(7) What ((~~happens if I request an administrative hearing~~)) can I do if I disagree with decisions about career services?

(a) You have the right to request an administrative hearing if you disagree with a decision or action regarding the ((~~WorkFirst~~)) career services program. For more information, see chapter 388-02 WAC and RCW 74.08.080.

(b) If you receive continued benefits, they will still end when you reach your benefit maximum as outlined under (3)(c) and (4) regardless of any other pending administrative hearing.

**WSR 08-23-102
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed November 19, 2008, 11:23 a.m.]**

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-03-095.

Title of Rule and Other Identifying Information: The department is amending WAC 388-444-0005 Food stamp employment and training (FS E&T) program—General requirements and 388-444-0040 Work programs for ABAWDs in the food stamp employment and training program.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff

Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on December 23, 2008, 10:00 a.m.

Date of Intended Adoption: Not earlier than December 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 December 23, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by December 9, 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 WAC 388-444-0005 and 388-444-0040 to allow participants in the food stamp employment & training (FS E&T) program the option to volunteer to participate more than one hundred twenty hours per month.

Reasons Supporting Proposal: The department is proposing the amendments to give participants in the FS E&T program the option to volunteer to participate more than one hundred twenty hours per month to match the allowance of this option in the federal Food, Conservation, and Energy Act of 2008.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, 74.08A.903.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, 74.08A.903.

Rule is necessary because of federal law, Food, Conservation [Conservation] and Energy Act of 2008.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nick Espinosa, 712 Pear Street S.E., Olympia, WA 98501, (360) 725-4620.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small business; it only affects DSHS clients by extending the option to volunteer more than one hundred twenty hours in the FS E&T 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, "this 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."

November 14, 2008
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-14-125, filed 7/3/07, effective 8/3/07)

WAC 388-444-0005 Food stamp employment and training (FS E&T) program—General requirements. (1) To receive Basic Food some people must register for work

and participate in the food stamp employment and training (FS E&T) program.

(2) We determine if you must register for work and participate in FS E&T under WAC 388-444-0010:

(a) If we require you to register for work and participate in FS E&T you are nonexempt from FS E&T.

(b) If you meet one of the conditions under WAC 388-444-0015, you are exempt from FS E&T. If you are exempt, you may choose to receive services through the FS E&T program.

(3) If you are nonexempt from FS E&T requirements, we register you for work:

(a) When you apply for Basic Food benefits or are added to someone's assistance unit; and

(b) Every twelve months thereafter.

(4) If you are nonexempt, you must meet all the FS E&T program requirements in subsections (5) through (7) of this section. If you fail to meet the requirements without good cause, we disqualify you from receiving Basic Food benefits:

(a) We define good cause for not meeting FS E&T requirements under WAC 388-444-0050; and

(b) We disqualify nonexempt persons who fail to meet E&T requirements as described under WAC 388-444-0055.

(5) If you are nonexempt, you must:

(a) Report to us or your FS E&T service provider and participate as required;

(b) Provide information regarding your employment status and availability for work when we ask for it;

(c) Report to an employer when we refer you; and

(d) Accept a bona fide offer of suitable employment. We define unsuitable employment under WAC 388-444-0060.

(6) If you are nonexempt, you must participate in one or more of the following FS E&T activities:

(a) Job search;

(b) Paid or unpaid work;

(c) Training or work experience;

(d) General education development (GED) classes; or

(e) English as a second language (ESL) classes.

(7) If you must participate in WorkFirst under WAC 388-310-0200, you have certain requirements for the Food Stamp Employment and Training Program:

(a) Your FS E&T requirement is to fully participate in the WorkFirst activities approved in your Individual Responsibility Plan (IRP) under WAC 388-310-0500; and

(b) If your IRP includes unpaid community service or work experience, we use your TANF grant and the Basic Food benefits received by members of your TANF assistance unit to determine the maximum hours of unpaid work we include in your plan.

(8) ~~(Your FS E&T activities including paid or unpaid work will not exceed one hundred twenty hours a month whether you are exempt or nonexempt.) Exempt or nonexempt FS E&T participants will not be required to participate more than one hundred and twenty hours per month, but exempt or nonexempt FS E&T participants may volunteer to participate beyond one hundred and twenty hours.~~

AMENDATORY SECTION (Amending WSR 99-07-024, filed 3/10/99, effective 4/10/99)

WAC 388-444-0040 Work programs for ABAWDs in the food stamp employment and training program. Work programs are available to clients eighteen to fifty years of age who are able to work and have no dependents.

(1) The following are considered work programs:

(a) Workfare consists of:

(i) Thirty days of job search activities in the first month beginning with the first day of application, or sixteen hours of volunteer work with a public or private nonprofit agency; and

(ii) In subsequent months, sixteen hours per month of volunteer work with a public or private nonprofit agency allows the client to remain eligible for food stamps. Workfare is not enforced community service or for paying fines or debts due to legal problems.

(b) Work experience (WEX) is supervised, unpaid work for at least twenty hours a week. The work must be for a non-profit agency or governmental or tribal entity. This work is to improve the work skills of the client.

(c) On-the-job training (OJT) is paid employment for at least twenty hours a week. It is job training provided by an employer at the employer's place of business and may include some classroom training time.

(2) The department may not **require you to participate** more than ~~((thirty hours a week of Workfare and paid work combined))~~ one hundred and twenty hours per month in a work program, paid work, or a combination of activities. ABAWDs may volunteer to participate in activities beyond one hundred and twenty hours per month.

(3) The department may pay for some of a client's actual expenses needed for the client to participate in work programs. Standards for paying expenses are set by the department.