

WSR 08-24-083
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

(Division of Alcohol and Substance Abuse)

[Filed December 1, 2008, 4:02 p.m., effective January 1, 2009]

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

Purpose: The division of alcohol and substance abuse (DASA) is amending, repealing and developing a new section of chapter 388-805 WAC, Certification requirements for chemical dependency service providers, establishing the level of quality and patient care standards for chemical dependency service providers seeking certification by DSHS/DASA.

DASA [is] amending chapter 388-805 WAC. The proposed new rule amendment revisions will include:

1. Adding and expanding definitions in WAC 388-805-005 for "critical incidents" and "screening and brief intervention."

2. Changing the definition in WAC 388-805-005 to "community relations plan and opiate substitution treatment program" to reflect the federal rule and the guidelines for accreditation reference changes.

3. Adding language for a new service in WAC 388-805-010 for "screening and brief intervention."

4. Correcting a typo in WAC 388-805-030 from SAMSHA to SAMHSA.

5. Further defining the legislative authority in WAC 388-805-030 to include "county, city, or tribal," so it is congruent with the rest of the chapter.

6. Expanding the requirements to maintain agency certification in WAC 388-805-100 to include "transfer summary," references for "transfer summary," and reformatting of the section.

7. Correcting the references for a "sample floor plan" in WAC 388-805-110.

8. Reformatting WAC 388-805-145, "key responsibilities required of an agency administrator."

9. Adding language in WAC 388-805-150 requiring an opiate substitution treatment program to report the death of a patient to the department.

10. Reformatting in WAC 388-805-205, "agency personnel file requirements."

11. Adding new language in WAC 388-805-300, "agency clinical manual," that requires that clinical supervisors have documentation of their competency, to document record reviews, allows record reviews to be done semi-annually instead of quarterly, and to ensure continued competency of each chemical dependency professional (CDP).

12. Adding language in WAC 388-805-310, "requirements for chemical dependency assessments," to include evaluation of parental and sibling alcohol and other drug use in youth assessments, moves WAC 388-805-815 requirements to WAC 388-805-310, and adds new language for persons charged with a violation under RCW 46.61.502 or 46.61.504. These requirements for persons with an initial finding other than substance dependence would include:

a. A criminal case history and police report or documentation of efforts to include this information.

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

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

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

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

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

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

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

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

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

Amending WAC 388-805-005 What definitions are important throughout this chapter?, 388-805-010 What chemical dependency services are certified by the department?, 388-805-030 What are the requirements for opiate substitution treatment program certification?, 388-805-100 What do I need to do to maintain agency certification?, 388-805-110 What do I do to relocate or remodel a facility?, 388-805-130 How does the department suspend or revoke certification?, 388-805-145 What are the key responsibilities required of an agency administrator?, 388-805-150 What must be included in an agency administrative manual?, 388-805-205 What are agency personnel file requirements?, 388-805-300 What must be included in the agency clinical manual?, 388-805-310 What are the requirements for chemical dependency assessments?, 388-805-315 What are the requirements for treatment, continuing care, transfer, and discharge plans?, 388-805-620 What are the requirements for outpatient services?, 388-805-625 What are the requirements for outpatient services for persons subject to RCW 46.61.-5056?, 388-805-710 What are the requirements for opiate substitution medical management?, 388-805-715 What are the requirements for opiate substitution medication management? and 388-805-810 What are the requirements for DUI assessment providers?; repealing WAC 388-805-815 What are the requirements for DUI assessment services?; and new WAC 388-805-855 What are the requirements for screening and brief intervention services?

Citation of Existing Rules Affected by this Order: Repealing WAC 388-805-815; and amending WAC 388-805-005, 388-805-010, 388-805-030, 388-805-100, 388-805-110, 388-805-130, 388-805-145, 388-805-150, 388-805-205, 388-805-300, 388-805-310, 388-805-315, 388-805-620, 388-805-625, 388-805-710, 388-805-715, and 388-805-810.

Statutory Authority for Adoption: RCW 70.96A.040.

Other Authority: Chapter 70.96A RCW and 42 C.F.R. Part 8.

Adopted under notice filed as WSR 08-15-106 on July 18, 2008.

A final cost-benefit analysis is available by contacting Deb Cummins, Certification, P.O. Box 45330, Olympia, WA 98504-5330, phone (360) 725-3716, toll free 1-877-301-4557, fax (360) 586-0343, e-mail cummida@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 16, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 17, Repealed 1.

Date Adopted: December 1, 2008.

Robin Arnold-Williams
Secretary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) When the ownership of a certified chemical dependency treatment provider changes from one distinct legal owner to another distinct legal owner;
- (2) When the type of business changes from one type to another such as, from a sole proprietorship to a corporation; or
- (3) When the current ownership takes on a new owner of five percent or more of the organizational assets.

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

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

- (1) Led by a chemical dependency professional (CDP), or CDP trainee under supervision of a CDP;
- (2) Directed toward patients and others who are harmfully affected by the use of mood-altering chemicals or are chemically dependent; and
- (3) Directed toward a goal of abstinence for chemically dependent persons.

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

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

"Clinical indicators" include, but are not limited to, inability to maintain abstinence from alcohol or other nonpre-

scribed drugs, positive drug screens, patient report of a subsequent alcohol/drug arrest, patient leaves program against program advice, unexcused absences from treatment, lack of participation in self-help groups, and lack of patient progress in any part of the treatment plan.

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

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

"Criminal background check" means a search by the Washington state patrol for any record of convictions or civil adjudication related to crimes against children or other persons, including developmentally disabled and vulnerable adults, per RCW 43.43.830 through 43.43.842 relating to the Washington state patrol.

"Critical incidents" includes:

- (1) Death of a patient;
- (2) Serious injury;
- (3) Sexual assault of patients, staff members, or public citizens on the facility premises;
- (4) Abuse or neglect of an adolescent or vulnerable adult patient by another patient or agency staff member on facility premises;
- (5) A natural disaster presenting a threat to facility operation or patient safety;
- (6) A bomb threat; a break in or theft of patient identifying information;
- (7) Suicide attempt at the facility;
- (8) An error in program administered medication at an outpatient facility that results in adverse effects requiring urgent medical intervention.

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

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

- (1) Suicide threat or attempt;
- (2) Assault or threat of assault; or
- (3) Attempt to run from treatment, potentially resulting in a dangerous or life-threatening situation.

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

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

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

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

- (1) Has a physical or mental impairment that substantially limits one or more major life activities of the person;
- (2) Has a record of such an impairment; or
- (3) Is regarded as having such an impairment.

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

- (1) Provides distinct chemical dependency supervision and treatment separate from any other services provided within the facility;
- (2) Provides a separate treatment area for ensuring confidentiality of chemical dependency treatment services; and
- (3) Has separate accounting records and documents identifying the provider's funding sources and expenditures of all funds received for the provision of chemical dependency treatment services.

"Domestic violence" means:

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

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

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

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

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

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

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

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

"HIV/AIDS education" means education, in addition to the brief risk intervention, designed to provide a person with information regarding HIV/AIDS risk factors, HIV anti-

body testing, HIV infection prevention techniques, the impact of alcohol and other drug use on risks and the disease process, and trends in the spread of the disease.

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

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

"Opiate substitution treatment program" means an organization that administers or dispenses an approved medication as specified in ((212 CFR Part 291)) 42 CFR Part 8 for treatment or detoxification of opiate dependence. The agency is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Sexual abuse" means:

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

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

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of employment or treatment; or
- (2) Such conduct interferes with work performance or creates an intimidating, hostile, or offensive work or treatment environment.

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

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

"Supervision" means:

- (1) Regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give directions and require change; and
- (2) **"Direct supervision"** means the supervisor is on the premises and available for immediate consultation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) **ADATSA assessments**, alcohol and other drug assessments of patients seeking financial assistance from the department due to the incapacity of chemical dependency. Services include assessment, referral, case monitoring, and assistance with employment; and

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

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

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

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

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

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

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

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

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

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

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

(a) Obtain stakeholder input regarding the proposed location;

(b) Address any concerns identified by stakeholders; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Treatment process:

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

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

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

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

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

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

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

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

(c) Facility:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The provider fails to correct cited deficiencies.

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

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

WAC 388-805-145 What are the key responsibilities required of an agency administrator? (1) The administra-

tor is responsible for the day-to-day operation of the certified treatment service, including:

(a) All administrative matters;

(b) Patient care services; and

(c) Meeting all applicable rules and ethical standards.

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

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

(a) Are developed and adhered to; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The organization's:

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

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

or
(c) Statement of sole proprietorship.

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

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

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

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

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

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

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

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

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

(7) An organization chart specifying:

(a) The governing body;

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

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

(8) A delegation of authority policy.

(9) A copy of current fee schedules.

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

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

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

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

(b) An outpatient dies on the premises; or

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

(13) Patient grievance policy and procedures.

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

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

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

(a) Preventing entry of unauthorized visitors; and

(b) Use of passes for leaves of patients.

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

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

(b) Evacuation of mobility-impaired persons;

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

(d) Different types of disasters;

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

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

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

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

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

(3) Each person's file must contain:

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

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

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

(ii) Annually thereafter for bloodborne pathogens;

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

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

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

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

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

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

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

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

(i) Job title;

(ii) Minimum qualifications for the position;

(iii) Summary of duties and responsibilities;

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

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

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

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

(5) In addition, for residential ((facilities)) programs, the personnel file for staff members providing patient care must

~~contain~~ documentation ~~((of current cardiopulmonary resuscitation (CPR) and first aid training))~~ for at least one person on each shift ~~of training in:~~

~~(a) Cardiopulmonary resuscitation (CPR); and~~

~~(b) First aid.~~

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

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

~~(a) Separate from clinical records; and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(i) Job title;~~

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

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

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

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

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

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

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

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

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

(2) How the provider will meet applicable certified service standards for the level of program service requirements: Allowance of up to twenty percent of education time to consist of film or video presentations.

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

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

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

(b) Has documented competency in clinical supervision;

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

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

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

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

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

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

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

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

(7) Additional requirements for opiate substitution treatment programs:

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

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

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

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

(e) No person under eighteen years of age may be admitted to maintenance treatment unless a parent, legal guardian,

or responsible adult designated by the relevant state authority consents in writing to treatment;

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

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

(h) When the medical director or program physician of an opiate substitution treatment program provider in which the patient is enrolled determines that exceptional circumstances exist, the patient may be granted permission to seek concurrent treatment at another opiate substitution treatment program provider. The justification for finding exceptional circumstances for double enrollment must be documented in the patient's record at both treatment program providers.

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

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

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

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

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

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

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

(12) Provision of education to each patient on:

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

(b) Relapse prevention; and

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

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

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

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

(c) Nicotine addiction.

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

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

(a) Is part of the treatment program; and

(b) Has therapeutic value.

(16) Use of self-help groups.

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

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

(19) Implementation of the deferred prosecution program.

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

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

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

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

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

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

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

(a) Medical emergencies;

(b) Suicidal and mentally ill patients;

(c) Laboratory tests, including UA's and drug testing;

(d) Services and resources for pregnant women:

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

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

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

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

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

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

(i) The type of substances used;

(ii) The route of administration; and

(iii) Amount, frequency, and duration of use.

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

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

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

(e) A legal history; and

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

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

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

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

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

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

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

(2) If the patient is in need of treatment, a CDP or CDP trainee under supervision of a CDP must evaluate the assessment using PPC dimensions for the patient placement decision.

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

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

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

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

(d) History of emotional or psychological problems;

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

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

(4) Documentation of the information collected, including:

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

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

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

(d) Evidence the patient:

(i) Was notified of the assessment results; and

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

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

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

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

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

WAC 388-805-315 What are the requirements for treatment, continuing care, transfer, and discharge plans?

(1) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must be responsible for the overall treatment plan for each patient, including:

(a) Patient involvement in treatment planning;

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

(c) Completeness of patient records.

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

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

(b) Conduct individual and group counseling;

(c) Develop the continuing care plan; and

(d) Complete the discharge summary.

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

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

(a) Try to motivate the patient to stay in treatment; and

(b) Report a noncompliant patient to the committing authority as appropriate.

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

(a) In the treatment program; and

(b) In self-help groups.

(6) When transferring a patient from one certified treatment service to another within the same agency, at the same location, a CDP, or a CDP trainee under supervision of a CDP, must:

(a) Update the patient assessment and treatment plan; and

(b) Provide a summary report of the patient's treatment and progress, in the patient's record.

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

(a) Finalize a continuing care plan to assist in determining appropriate recommendation for care;

(b) Assist the patient in making contact with necessary agencies or services; and

(c) Provide the patient a copy of the plan.

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

(a) Patient demographic information;

(b) Diagnostic assessment statement and other assessment information, including:

(i) Documentation of the HIV/AIDS intervention;

(ii) TB test result;

- (iii) A record of the patient's detox and treatment history;
 - (iv) The reason for the transfer; and
 - (v) Court mandated, department of correction supervision status or agency recommended follow-up treatment.
 - (c) Discharge summary; and
 - (d) The plan for continuing care or treatment.
- (9) A CDP, or CDP trainee under supervision of a CDP, must complete a discharge summary, within seven days of each patient's discharge from the agency, which includes:
- (a) The date of discharge (~~(or transfer)~~); and
 - (b) A summary of the patient's progress toward each treatment goal, except in detox.

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

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

- (1) Complete admission assessments (~~(within ten calendar days of admission, or by the second visit)~~), prior to admission unless participation in this outpatient treatment service is part of the same provider's continuum of care.
- (2) Complete an initial individualized treatment plan prior to the patient's participation in treatment.
- (3) Conduct group or individual chemical dependency counseling sessions for each patient, each month, according to an individual treatment plan.
- ~~((3))~~ (4) Conduct and document a treatment plan review for each patient:
 - (a) Once a month for the first three months; and
 - (b) Quarterly thereafter or sooner if required by other laws.

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

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

- (2) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must:
 - (a) For the first sixty days of treatment:
 - (i) Conduct group or individual chemical dependency counseling sessions for each patient, each week, according to an individual treatment plan.
 - (ii) Conduct at least one individual chemical dependency counseling session of no less than thirty minutes duration excluding a chemical dependency assessment for each patient, according to an individual treatment plan.
 - (iii) Conduct alcohol and drug basic education for each patient.
 - (iv) Document patient participation in self-help groups described in WAC 388-805-300(16) for patients with a diagnosis of substance dependence.
 - (v) For patients with a diagnosis of substance dependence who received intensive inpatient chemical dependency treatment services, the balance of the sixty-day time period

will consist, at a minimum, of weekly outpatient counseling sessions according to an individual treatment plan.

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

- (i) Conduct group or individual chemical dependency counseling sessions for each patient, every two weeks, according to an individual treatment plan.
- (ii) Conduct at least one individual chemical dependency counseling session of no less than thirty minutes duration every sixty days for each patient, according to an individual treatment plan.
- (c) Upon completion of one hundred eighty days of (~~intensive~~) treatment, a CDP, or a CDP trainee under the supervision of a CDP, must refer each patient for ongoing treatment or support, as necessary, using PPC.
- (3) For patients who are assessed with insufficient evidence of substance dependence or substance abuse, a CDP must refer the patient to alcohol/drug information school.

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

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

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

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

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

- (a) By a program physician or other medical practitioner; ~~((and))~~
- (b) Within fourteen days of admission; and
- (c) Annually to update the medical examination of each patient by a program physician or other medical practitioner to include the patient's overall physical condition and response to medication.

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

- (a) Current health information concerning the possible addiction, health risks and benefits opiate substitution medication may have on them and their fetus;
- (b) Current health information concerning the risks of not initiating opiate substitution medication may have on them and their fetus and;
- (c) Referral options to address neonatal abstinence syndrome for their baby.

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

- (a) Signs and symptoms of withdrawal;
- (b) Patient comfort; and

(c) Side effects from over medication.

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

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

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

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

- (a) Methadone; and
- (b) ~~((Levomethadyl acetate (LAAM); and~~
- ~~(e)))~~ Buprenorphine distributed as subutex and suboxone.

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

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

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

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

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

WAC 388-805-810 What are the requirements for DUI assessment providers? (1) If located in a district or

municipal probation department, each DUI service provider must meet the requirements of:

- (a) WAC 388-805-001 through 388-805-135,
- (b) WAC 388-805-145 (4), (5), and (6);
- (c) WAC 388-805-150, the administrative manual, subsections (4), (7) through (11), (13), and (14);
- (d) WAC 388-805-155, facilities, subsections (1)(b), (c), (d), and (2)(b);
- (e) WAC 388-805-200 (1), (4), and (5);
- (f) WAC 388-805-205 (1), (2), (3)(a) through (d), (4), ~~((6))~~ (5), and (7);
- (g) WAC 388-805-220, 388-805-225, and 388-805-230;
- (h) WAC 388-805-260, volunteers;
- (i) WAC 388-805-300, clinical manual, subsections (1), (2), (3), (9), (20), (21), and (22);
- (j) WAC 388-805-305, patients' rights;
- (k) WAC 388-805-310, assessments;
- (l) WAC 388-805-320, patient record system, subsections (3)(a) through (f), and (5);
- (m) WAC 388-805-325, record content, subsections (1), (2), (3), (4), (5), (7), (8), (10), (15), (16), and (17); and
- (n) WAC 388-805-350, outcomes evaluation(~~(;~~
~~(e) WAC 388-805-815, DUI assessment services)).~~

(2) If located in another certified chemical dependency treatment facility, the DUI service provider must meet the requirements of:

- (a) WAC 388-805-001 through 388-805-260; 388-805-305 and 388-805-310; and
- (b) WAC 388-805-300, 388-805-320, 388-805-325 as noted in subsection (1) of this section, 388-805-350(~~(;~~
~~(e) WAC 388-805-815)).~~

(3) Providers must limit patients to persons who have been arrested for a violation of driving under the influence of intoxicating liquor or other drugs or in physical control of a vehicle as defined under chapter 46.61 RCW.

NEW SECTION

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

- (a) WAC 388-805-001 through 388-805-135, 388-805-205 and 388-805-640; and

(b) This section.

(2) The screening and brief intervention administrator must:

(a) Ensure a chemical dependency professional (CDP), or a CDP trainee under the supervision of a CDP, provides the services;

(b) Maintains a current list of local resources for legal, employment, education, interpreter, and social and health services;

(c) Ensure all staff completes forty hours of training that covers the following areas before assigning unsupervised duties:

(i) Chemical dependency screening and brief intervention techniques; and

(ii) Motivational interviewing.

(d) Have policies and procedures for the provision of screening and brief intervention services, such as:

- (i) Screening;
- (ii) Motivational interviewing; and
- (iii) Referral.

(e) Ensure the individual patient records contain:

- (i) A copy of a referral;
- (ii) Demographic information;
- (iii) Documentation the patient was informed and received a copy of the requirements under 42 C.F.R Part 2;

(iv) Documentation the patient received a copy of the counselor disclosure information;

(v) Documentation the patient received a copy of the patient rights;

(vi) Properly completed authorization for the release of information;

(vii) A copy of screening documents including outcome and referrals; and

(viii) Progress notes summarizing any contact with the patient.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-805-815	What are the requirements for DUI assessment services?
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WSR 09-01-016

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed December 5, 2008, 8:59 a.m., effective January 5, 2009]

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

Purpose: To update current language and add intrastate high risk and imminent hazard carriers.

Citation of Existing Rules Affected by this Order: Amending WAC 446-65-010 and 446-65-020.

Statutory Authority for Adoption: RCW 46.32.020.

Adopted under notice filed as WSR 08-19-076 on September 16, 2008.

Changes Other than Editing from Proposed to Adopted Version: Removed new section WAC 446-65-040.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 2, Repealed 0.

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

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

Date Adopted: November 26, 2008.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 06-08-082, filed 4/4/06, effective 5/5/06)

WAC 446-65-010 Transportation requirements. (1) The Washington state patrol hereby adopts the following parts of Title 49 Code of Federal Regulations (CFR), and any amendments thereto(~~(, of Title 49 Code of Federal Regulations (CFR),)~~) for motor carriers used in intrastate or interstate commerce(~~(;)~~) in their entirety:

(a) Part(~~(s)~~) 40 Procedures for transportation workplace drug and alcohol testing programs(~~(;)~~).

(b) Part 325 Compliance with interstate motor carrier noise emission standards(~~(;)~~).

(c) Part 350 Commercial motor carrier safety assistance program(~~(;)~~).

(d) Part 355 Compatibility of state laws and regulations affecting interstate motor carrier operations(~~(;)~~).

(e) Part 365 Rules governing applications for operating authority(~~(;)~~).

(f) Part 367 Standards for registration with states(~~(;)~~).

(g) Part 380 Special training requirements(~~(;)~~).

(h) Part 382 Controlled substances and alcohol use and testing(~~(;)~~).

(i) Part 383 Compliance with commercial driver's license program(~~(;)~~).

(j) Part 385 Safety fitness procedures(~~(;)~~).

(k) Part 387 Minimum levels of financial responsibility for motor carriers(~~(;)~~).

(l) Part 390 General(~~(;)~~).

(m) Part 391 Qualification of drivers(~~(;)~~). Provided that 49 CFR 391 subpart D (Tests), and E (Physical Qualifications and Examinations) do not apply to motor carriers operating vehicles with gross vehicle weight rating between 10,001 lbs. and 26,000 lbs. operating intrastate, and not used to transport hazardous materials in a quantity requiring placarding.

(n) Part 392 Driving of motor vehicles(~~(;)~~).

(o) Part 393 Parts and accessories necessary for safe operation(~~(;)~~).

(p) Part 395 Hours of service of drivers(~~(;)~~): Except if a company has:

(i) Drivers of commercial motor vehicle of any size, hauling logs from the point of production or driving in dump truck operations in intrastate commerce; or

(ii) Operators of intrastate property-carrying commercial motor vehicles that do not require a commercial drivers license to operate.

They are exempt from the requirements of CFR 395.3 (maximum driving time) and CFR 395.8 (record of duty status) and ineligible to use the provisions of CFR 395.1 (e)(1), (g) and (o) provided that:

(A) The driver must:

(I) Operate within a one hundred air-mile radius of the location where the driver reports to work and the driver must

return to the work reporting location at the end of each duty tour;

(II) Have at least ten consecutive hours off duty separating each on-duty period;

(III) Not drive:

• More than twelve hours following at least ten hours off duty; or

• After the fourteenth hour after coming on duty on at least five days of any period of seven consecutive days; and

• After the sixteenth hour after coming on duty on no more than two days of any period of seven consecutive days; and

• After having been on duty for eighty hours in seven consecutive days if the employing motor carrier does not operate commercial motor vehicle every day of the week; or

• After having been on duty for ninety hours in eight consecutive days if the employing motor carrier operates commercial motor vehicle every day of the week; in any period of seven or eight consecutive days may end with the beginning of any off-duty period of twenty-four or more consecutive hours.

(B) The motor carrier that employs the driver must maintain and retain for a period of twelve months accurate and true time recordings showing:

(I) The time the driver reports for duty each day;

(II) The total number of hours the driver is on duty each day;

(III) The total number of hours the driver drives each day;

(IV) The time the driver is released from duty each day; and

(V) The total time the driver is driving and on duty for the preceding seven days.

(q) Part 396 Inspection, repair, and maintenance(,);

(r) Part 397 Transportation of hazardous materials; driving and parking rules(, provided, however, motor carriers operating vehicles with a gross vehicle weight rating between 10,001 lbs. and 26,000 lbs. operating solely intrastate, and not used to transport hazardous materials in a quantity requiring placarding, are exempt from Parts 390 General, 391 Qualifications of drivers, 392 Driving of motor vehicles, 395 Hours of service, and 396 Inspection, repair, and maintenance)).

(2) As provided in Part 395, exemption for agricultural transporters, the harvest dates are defined as starting February 1 and ending November 30 of each year.

(3) Agricultural operations exceptions:

(a) Agricultural operations transporting agricultural products other than Class 2 material (Compressed Gases), over roads, other than the National System of Interstate Defense Highways, between fields of the same farm, is exempt from Part 397 when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier.

(ii) The movement of the agricultural product conforms to all other laws in effect on or before July 1, 1998, and 49 CFR 173.24, 173.24a, and 173.24b.

(b) The transportation of an agricultural product to or from a farm within one hundred fifty miles of the farm, is excepted from the requirements of 49 CFR Part 172 subpart

G (emergency response information) and H (training requirements) when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier;

(ii) The total amount of agricultural product being transported on a single vehicle does not exceed:

(A) Sixteen thousand ninety-four pounds of ammonium nitrate fertilizer properly classed as Division 5.1, PGIII, in bulk packaging; or

(B) Five hundred two gallons for liquids or gases, or five thousand seventy pounds for solids, of any other agricultural product;

(iii) The packaging conforms to the requirements of state law and is specifically authorized for transportation of the agricultural product by state law and such state law has been in effect on or before July 1, 1998; and

(iv) Each person having any responsibility for transporting the agricultural product or preparing the agricultural product for shipment has been instructed in the applicable requirements of 49 CFR adopted in this section.

(C) Formulated liquid agricultural products in specification packaging of fifty-eight gallon capacity or less, with closures manifolded to a closed mixing system and equipped with a positive dry disconnect device, may be transported by a private motor carrier between a final distribution point and an ultimate point of application or for loading aboard an airplane for aerial application.

(4) ~~((Copies of Title 49 CFR, parts 40 and 325 through 397, now in force are on file at the code reviser's office, Olympia and at the Washington state patrol headquarters, commercial vehicle enforcement section, Olympia. Additional copies may be available for review at Washington state patrol district headquarters offices, public libraries, Washington utilities and transportation commission offices, and at the United States Department of Transportation, Bureau of Motor Carrier Safety Office, Olympia. Copies of the CFR may be purchased through the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402-))~~ Links to the CFRs are available on the Washington state patrol web site at www.wsp.wa.gov. Copies of the CFRs may also be ordered through the United States Government Printing Office, 732 N. Capitol Street N.W., Washington, D.C. 20401.

AMENDATORY SECTION (Amending WSR 95-13-080, filed 6/20/95, effective 7/21/95)

WAC 446-65-020 Physical qualifications for drivers.

~~((This section provides a process whereby drivers of commercial motor vehicles, which operate solely intrastate and require a commercial driver's license, may receive a clearance to obtain a medical certificate for certain physical conditions.~~

~~(1) A person shall not drive a commercial motor vehicle unless they are physically qualified to do so and, except as provided in CFR 49, Part 391.67, and WAC 446-65-010(1), has on their person the original, or a photographic copy, of a medical examiner's certificate that they are physically qualified to drive a motor vehicle.~~

(2) A person is physically qualified to drive a motor vehicle if that person:

(a) Has no loss of a foot, a leg, a hand, or an arm, or has obtained from the department of licensing the proper driver's license, endorsement, and restrictions (if any) for the operation of the class of motor vehicle the person is driving;

(b) Has no impairment of:

(i) A hand or finger which interferes with prehension of power grasping; or

(ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a motor vehicle; or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a motor vehicle; or has obtained from the department of licensing the proper license, endorsement, and restrictions (if any) for the class of motor vehicle the person is driving;

(c) Has no established medical history of clinical diagnosis of diabetes mellitus currently requiring insulin for control, or if diagnosed as having diabetes mellitus requiring insulin for control, has been cleared by the department of licensing for the operation of the class of motor vehicle the person is driving;

(d) Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure, or if diagnosed as having any of these medical complications, has been cleared by the department of licensing for the operation of the class of motor vehicle the person is driving;

(e) Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his/her ability to control and drive a motor vehicle safely, or if diagnosed as having a respiratory dysfunction which could interfere with his/her ability to control and drive a motor vehicle safely, has been cleared by the department of licensing for the operation of the class of motor vehicle the person is driving;

(f) Has no current clinical diagnosis of high blood pressure likely to interfere with his/her ability to operate a motor vehicle safely, or if diagnosed as having high blood pressure likely to interfere with his/her ability to operate a motor vehicle safely, has been cleared by the department of licensing for the operation of the class of motor vehicle the person is driving;

(g) Has no established medical history of clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with his/her ability to control and operate a motor vehicle safely, or if diagnosed as having any of these medical complications which might interfere with his/her ability to control and operate a motor vehicle safely, has been cleared by the department of licensing for the operation of the class of motor vehicle the person is driving;

(h) Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle, or if diagnosed as having epilepsy or any other condition likely to cause loss of consciousness or any loss of ability to control a motor vehicle, has been cleared by the

department of licensing for the operation of the class of motor vehicle the person is driving;

(i) Has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his/her ability to drive a motor vehicle safely, or if diagnosed as having any of these complications likely to interfere with his/her ability to drive a motor vehicle safely, has been cleared by the department of licensing for the operation of the class motor vehicle the person is driving;

(j) Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses; distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber, or if not meeting these standards, has been cleared by the department of licensing for the operation of the class of motor vehicle the person is driving.

(k) First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid, or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5-1951, or if not meeting these standards, has been cleared by the department of licensing for the operation of the class of motor vehicle the person is driving;

(l) Does not use any unapproved amphetamine, narcotic, or habit-forming drug and if using a prescribed amphetamine, narcotic, or habit-forming drug, it must be used according to the directions regarding dosage and the operation of motor vehicles or heavy equipment; and

(m) Has no current clinical diagnosis of untreated alcoholism.

(3) If the medical examiner finds that the person he/she examined is physically qualified to drive a motor vehicle in accordance with subsection (2) of this section and the items listed in Chapter 49, CFR 391.43, he/she shall complete a certificate in the form prescribed in Chapter 49 CFR 391.43 and shall furnish one copy to the person who was examined and one copy to the motor carrier that employs him/her.

(4)) (1) If the medical examiner or physician finds any physical condition listed in ((subsection (2)(a) through (m) of this section)) Title 49 CFR 391.41 (b) (1) through (13) that is likely to interfere with the driver's ability to operate or control a motor vehicle safely, it shall be the responsibility of the driver to immediately forward a copy of the driver's medical examination to the Department of Licensing, Responsibility Division, Medical Section, P.O. Box 9030, Olympia, WA 98507-9030. Upon receipt of the medical examination, the department of licensing will review and evaluate the driver's physical qualifications to operate the class of motor vehicle the person intends to drive.

(2) The department of licensing shall send a notice of determination to the driver. A department of licensing clearance notification shall be sufficient cause for the medical examiner to issue a medical examiner's certificate.

(3) A failure by the driver to furnish a copy of the medical examination to the department of licensing as required above shall result in no clearance action being taken by the department of licensing.

NEW SECTION

WAC 446-65-030 Intrastate high risk and imminent hazard carriers. (1) Any intrastate motor carrier receiving a proposed unsatisfactory safety rating may be identified as a high risk carrier pursuant to RCW 46.32.080. They may also be identified as high risk through analysis of various data, including but not limited to the following:

- (a) Safety fitness rating (SafeStat score);
- (b) Out of service rate that is higher than the national average for drivers and/or vehicles;
- (c) Carrier requires or authorizes any driver or vehicle to operate in violation of an out of service order;
- (d) The number and severity of collisions to include fatalities and serious injury;
- (e) Deficiencies or violations of safety management procedures and/or practices;
- (f) Carrier who consistently refuses to come into compliance with federal and state regulations.

(2) If a motor carrier receives a high risk rating, they must undergo a compliance review by the Washington state patrol to determine compliance. During the compliance review:

(a) If no critical/acute violations are found, the carrier will be listed as satisfactory and be removed from the high risk category.

(b) If critical/acute violations are found, the carrier must:

(i) Schedule a follow-up compliance review with the Washington state patrol.

(A) If violations are found after the first compliance review, the follow-up compliance review must be scheduled within sixty to ninety days.

(B) If violations are found after the second compliance review, a third compliance review must be scheduled within one hundred twenty to one hundred eighty days.

(C) If repeat violations are found during any follow-up compliance review, all funds held in abeyance (suspended) from the previous audit will be reinstated along with any repeat violations/penalties.

(ii) Submit a carrier safety action plan within five days to the Washington state patrol outlining the action they have taken or will take to become compliant. This plan must:

(A) Be submitted on company letterhead.

(B) Be signed by the owner/officer of the company.

(C) Provide all supporting documents to show how the carrier plans to become compliant or has become compliant.

(D) Be reviewed and agreed upon by the Washington state patrol. The Washington state patrol may provide changes and request a carrier revise their safety plan and return it to the carrier for further action.

(iii) If a carrier's intrastate DOT number is inactivated:

(A) The carrier will receive a letter from the Washington state patrol advising them their intrastate DOT number has been inactivated and what steps need to be completed to be considered for reactivation.

(B) The Washington state patrol will notify the department of licensing that they have placed an out of service order on the carrier's intrastate DOT number and all vehicles registered to the carrier.

(C) The carrier will have a follow-up compliance review conducted and submit a carrier safety action plan outlining their plans for compliance.

(D) The Washington state patrol will review the safety plan and a follow-up compliance review will be conducted. If the carrier receives a rating of satisfactory or conditional, then the DOT number will be reinstated.

(iv) If a carrier's intrastate DOT number is reinstated:

(A) The carrier will receive a letter from the Washington state patrol advising them their DOT number will be reinstated.

(B) The carrier will need to update their information on a MCS150 form located on the Federal Motor Carrier Safety Administration (FMCSA) web site.

(C) Motor Carrier Management Information System (MCMIS) will be updated to show the intrastate DOT is active.

(3) An intrastate motor carrier may be deemed an imminent hazard pursuant to RCW 46.32.080 (3)(e) and placed out of service without going through any prior compliance reviews. In determining whether a motor carrier is an imminent hazard or danger to the public health, safety, or welfare, the chief of the Washington state patrol or their designee must consider safety factors. A safety factor which constitutes an imminent hazard includes any safety problem or condition which is likely to result in serious injury or death if not discontinued immediately.

(4) If a carrier is required to have a DOT number, they will be required to properly mark their vehicles as prescribed by the Washington state patrol. The marking must display the following:

(a) The legal name or a single trade name of the motor carrier as listed on the MCS150 form.

(b) The motor carrier identification number issued by the FMCSA, preceded by the letter "USDOT."

(i) Size, shape, location, and color of markings:

(A) Appear on both sides of the CMV;

(B) Be in letters that contrast sharply in color with the background on which the letters are placed;

(C) Be readily legible, during daylight hours, from a distance of fifty feet while the CMV is stationary; and

(D) Be kept and maintained in a manner that retains the legibility.

(ii) Construction and durability:

(A) The marking may be painted on the CMV; or

(B) May consist of a removable device.

WSR 09-01-021

PERMANENT RULES

DEPARTMENT OF

RETIREMENT SYSTEMS

[Filed December 8, 2008, 8:39 a.m., effective January 8, 2009]

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

Purpose: The purpose of this rule-making order is to delete a reference to and repeal rules related to the department of retirement system's (DRS) administration of the dependent care assistance program (DCAP). Because the Washington state health care authority will assume administration of DCAP on January 1, 2009, DRS rules are no longer necessary.

Citation of Existing Rules Affected by this Order: Repealing chapter 415-600 WAC; and amending WAC 415-02-030.

Statutory Authority for Adoption: RCW 41.50.050(5).

Other Authority: RCW 41.04.640.

Adopted under notice filed as WSR 08-20-029 on September 22, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 25.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 25.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 25.

Date Adopted: December 8, 2008.

Sandra J. Matheson
Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

Chapter 415-600 WAC	Dependent care assistance salary reduction program overview.
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AMENDATORY SECTION (Amending WSR 06-18-009, filed 8/24/06, effective 9/24/06)

WAC 415-02-030 Definitions. This section contains definitions of words and phrases commonly used in the department of retirement systems' rules. It also serves as a directory for finding definitions within the RCWs and WACs.

(1) **Accumulated contributions** means the sum of all contributions paid into a member's defined benefit account, including interest.

(2) **Appeal** means the proceeding through which a party obtains review of a department action in an adjudicative proceeding conducted under chapter 34.05 RCW (the Administrative Procedure Act) and chapter 415-08 WAC (the department's appeal rules).

(3) **Average final compensation** is defined in RCW 41.32.010(30) (TRS); RCW 41.35.010(14) (SERS); RCW 41.40.010(17) (PERS); and RCW 41.37.010(14) (PSERS).

(4) **Average final salary** for WSPRS is defined in RCW 43.43.120(15).

(5) **Cafeteria plan** means a "qualified" employee benefit program under IRC section 125, such as certain health and welfare plans.

(6) **Calendar month.**

(a) Refers to one of the twelve named months of the year, extending from the first day of the named month through the last day. For example: January 1st through January 31st is a calendar month. February 1st through February 29th is a calendar month in a leap year. March 13th through April 12th is *not* a calendar month.

(b) Exception: For the purpose of administering the break in employment required by RCW 41.32.570, 41.32.-802, 41.32.862, 41.35.060, 41.37.050 and 41.40.037 for retirees returning to work, one calendar month means thirty consecutive calendar days. For example: Kim's retirement date is August 1. August 31 would be the earliest Kim could return to work and meet the requirement for a one calendar month break in employment.

(7) **Compensation earnable or earnable compensation** definitions can be found in RCW 41.32.010(10) and 41.32.345 (TRS); RCW 41.35.010(6) (SERS); RCW 41.37.-010(6) (PSERS); and RCW 41.40.010(8) (PERS).

(8) **Contribution rate** is:

(a) For employees: The fraction (percent) of compensation a member contributes to a retirement system each month.

(b) For employers: The fraction (percent) of payroll a member's employer contributes to a retirement system each month. Contribution rates vary for the different systems and plans.

(9) **Deferred compensation** refers to the amount of the participant's compensation, which the participant voluntarily defers from earnings before taxes to a deferred compensation program.

(10) **Defined benefit plan** is a pension plan in which a lifetime retirement allowance is available, based on the member's service credit and compensation.

(11) **Defined contribution plan** is a plan in which part of members' or participants' earnings are deferred into an investment account in which tax is deferred until funds are withdrawn. The benefit is based on the contribution rate and the amount of return from the investment of the contributions. Members or participants receive the full market rate of return minus expenses. There is no guaranteed rate of return and the value of an account will increase or decrease based upon market fluctuations.

(12) **Department** means the department of retirement systems.

(13) (~~Dependent care assistance salary reduction plan (DCAP)~~) is a plan that allows an eligible employee of the state of Washington to set aside a "before tax" portion of his or her gross salary before federal income and Social Security taxes to be used for the reimbursement of dependent care expenses.

(14)) **Director** means the director of the department of retirement systems.

~~((15))~~ **(14) Employee** means a worker who performs labor or services for a retirement systems employer under the control and direction of the employer as determined under WAC 415-02-110(2). An employee may be eligible to participate as a member of one of the state-administered retirement systems according to eligibility requirements specified under the applicable retirement system.

~~((16))~~ **(15) Employer** is defined in RCW 41.26.030(2) (LEOFF), 41.32.010(11) (TRS), 41.34.020(5) (Plan 3), 41.35.010(4) (SERS), 41.37.010(4) (PSERS) and 41.40.-010(4) (PERS).

~~((17))~~ **(16) Ex-spouse** refers to a person who is a party to a "dissolution order" as defined in RCW 41.50.500(3).

~~((18))~~ **(17) Final average salary for LEOFF** is defined in RCW 41.26.030(12).

~~((19))~~ **(18) Gainsharing** is the process through which members of certain plans share in the extraordinary investment gains on earnings on retirement assets under chapters 41.31 and 41.31A RCW.

~~((20))~~ **(19) Independent contractor** means a contract worker who is not under the direction or control of the employer as determined under WAC 415-02-110 (2) and (3).

~~((21))~~ **(20) IRC** means the Federal Internal Revenue Code of 1986, as subsequently amended.

~~((22))~~ **(21) JRF** means the judges' retirement fund created by chapter 2.12 RCW.

~~((23))~~ **(22) JRS** means the Washington judicial retirement system created by chapter 2.10 RCW.

~~((24))~~ **(23) LEOFF** means the Washington law enforcement officers' and fire fighters' retirement system created by chapter 41.26 RCW.

~~((25))~~ **(24) Member** means a person who is included in the membership of one of the retirement systems created by chapters 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW.

~~((26))~~ **(25) Participant** means an eligible employee who participates in a deferred compensation or dependent care assistance plan.

~~((27))~~ **(26) Participation agreement** means an agreement that an eligible employee signs to become a participant in a deferred compensation or dependent care assistance plan.

~~((28))~~ **(27) Pension plan** is a plan that provides a life-long post retirement payment of benefits to employees.

~~((29))~~ **(28) PERS** means the Washington public employee's retirement system created by chapter 41.40 RCW.

~~((30))~~ **(29) Petition** means the method by which a party requests a review of an administrative determination prior to an appeal to the director. The department's petitions examiner performs the review under chapter 415-04 WAC.

~~((31))~~ **(30) Plan 1** means the retirement plans in existence prior to the enactment of chapters 293, 294 and 295, Laws of 1977 ex. sess.

~~((32))~~ **(31) Plan 2** means the retirement plans established by chapters 293, 294 and 295, Laws of 1977 ex. sess., chapter 341, Laws of 1998, and chapter 329, Laws of 2001.

~~((33))~~ **(32) Plan 3** means the retirement plans established by chapter 239, Laws of 1995, chapter 341, Laws of 1998, and chapter 247, Laws of 2000.

~~((34))~~ **(33) Portability** is the ability to use membership in more than one Washington state retirement system in order to qualify for retirement benefits. See chapters 41.54 RCW and 415-113 WAC.

~~((35))~~ **(34) PSERS** means the Washington public safety employees' retirement system created by chapter 41.37 RCW.

~~((36))~~ **(35) Public record** is defined in RCW 42.17.-020(41).

~~((37))~~ **(36) Restoration** is the process of restoring a member's service credit for prior periods.

~~((38))~~ **(37) Retirement system employer - see "employer."**

~~((39))~~ **(38) Rollover** means a distribution that is paid to or from an eligible retirement plan within the statutory time limit allowed.

~~((40))~~ **(39) Separation date** is the date a member ends employment in a position eligible for retirement or disability benefit coverage.

~~((41))~~ **(40) SERS** means the Washington school employees' retirement system created by chapter 41.35 RCW.

~~((42))~~ **(41) Split account** is the account the department establishes for a member or retiree's ex-spouse.

~~((43))~~ **(42) Surviving spouse** refers to a person who was married to the member at the time of the member's death and who is receiving or is eligible to receive a survivor benefit.

~~((44))~~ **(43) Survivor beneficiary** means a person designated by the member to receive a monthly benefit allowance after the member dies.

~~((45))~~ **(44) Survivor benefit** is a feature of a retirement plan that provides continuing payments to a beneficiary after the death of a member or retiree.

~~((46))~~ **(45) TRS** means the Washington state teachers' retirement system created by chapter 41.32 RCW.

~~((47))~~ **(46) The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA)** is the federal law that requires employers to reemploy and preserve job security, pension and welfare benefits for qualified employees who engage in military service.

~~((48))~~ **(47) WSPRS** means the Washington state patrol retirement system created by chapter 43.43 RCW.

WSR 09-01-044

PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed December 10, 2008, 11:39 a.m., effective January 10, 2009]

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

Purpose: The rule is being amended to include the exclusion of tuition paying students. The rule is also amended to clarify the twenty day absence exclusion to be twenty regular scheduled school days for the general student population of the school district. An exclusion previously listed under the enrollment limitations (WAC 392-121-136)

is also being deleted from that WAC and added to WAC 392-121-108 to align with exclusions instead of limitations.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-108.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 08-21-066 on October 10, 2008.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2 [0], Amended 2 [1], Repealed 0.

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

Date Adopted: December 10, 2008.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 07-23-008, filed 11/8/07, effective 12/9/07)

WAC 392-121-108 Definition—Enrollment exclusions. A person who qualifies for any of the exclusions set forth in this section shall not be counted as an enrolled student pursuant to WAC 392-121-106.

(1) Absences - except as provided in (a) and (b) of this subsection, a student whose consecutive days of absence from school exceed twenty school days, or a part-time student that has not attended school at least once within a time period consisting of twenty consecutive school days, shall not be counted as an enrolled student until attendance is resumed. School days are defined as the regularly scheduled instructional days for the general population of the school or district the student is enrolled in, regardless of the student's individualized schedule.

(a) If there is a written agreement between the appropriate school official and a student's parent or guardian pursuant to RCW 28A.225.010 that the student's temporary absence is not deemed to cause a serious adverse effect upon the student's educational progress, the absent student may be counted as an enrolled student for up to two monthly enrollment count dates as specified in WAC 392-121-122.

(b) A student receiving home and/or hospital service pursuant to WAC ((392-172-218)) 392-172A-02100 shall be counted as an enrolled student as provided in WAC 392-122-145.

(2) Dropouts - a student for whom the school district has received notification of dropping out of school by the student or the student's parent or guardian shall not be counted as an enrolled student until attendance is resumed.

(3) Transfers - a student who has transferred to another public or private school and for whom the school district has received notification of transfer from the school to which the student has transferred, from the student, or from the student's parent or guardian shall not be counted as an enrolled student unless the student reenrolls in the school district.

(4) Suspensions - a student who has been suspended from school pursuant to WAC 392-400-260, when the conditions of the suspension will cause the student to lose academic grades or credit, shall not be counted as an enrolled student until attendance is resumed.

(5) Expulsions - a student who has been expelled from all school subjects or classes by the school district pursuant to WAC 392-400-275 or 392-400-290 shall not be counted as an enrolled student; a student who has been partially expelled, such as from a single school subject or class, by the school district pursuant to WAC 392-400-275 or 392-400-290 may be considered a part-time enrolled student.

(6) Graduates - a student who has met the high school graduation requirements of chapter 180-51 WAC by the beginning of the school year.

(7) Tuition - a student paying tuition including, but not limited to, students on an F-1 visa or students enrolled in a tuition-based summer school program.

(8) An institution student who is claimed as a 1.0 FTE by any institution as an enrolled student eligible for state institutional education support pursuant to chapter 392-122 WAC where the institution's count date occurs prior to the school district count date for the month. Where the count dates occur on the same date, the institution shall have priority for counting the student.

WSR 09-01-046

PERMANENT RULES

ENERGY FACILITY SITE EVALUATION COUNCIL

[Filed December 10, 2008, 1:09 p.m., effective January 10, 2009]

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

Purpose: WAC 463-78-005(1) is amended so the effective date of adoption by reference of chapter 173-400 WAC is November 1, 2008, rather than March 1, 2005. The effect is that energy facility site evaluation council (EFSEC) will have the same rules as ecology allowing the United States Environmental Protection Agency to grant EFSEC full prevention of significant deterioration (PSD) delegation resulting in EFSEC ability to issue PSD permits without cosignature by United States Environmental Protection Agency.

Citation of Existing Rules Affected by this Order: Amending WAC 463-78-005(1).

Statutory Authority for Adoption: Chapter 80.50 RCW.

Other Authority: RCW 80.50.040.

Adopted under notice filed as WSR 08-19-092 on September 16, 2008.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: December 9, 2008.

Allen J. Fiksdal
Manager

AMENDATORY SECTION (Amending WSR 06-06-037, filed 2/23/06, effective 3/26/06)

WAC 463-78-005 Adoption by reference. (1) The energy facility site evaluation council adopts the following provisions of chapter 173-400 WAC, in effect on ((March)) November 1, ((2005)) 2008, by reference. WAC 173-400-110(8) and 173-400-730(4) are not adopted by reference.

- WAC 173-400-030: Definitions.
- WAC 173-400-035: Portable and temporary sources.
- WAC 173-400-040: General standards for maximum emissions.
- WAC 173-400-050: Emission standards for combustion and incineration units.
- WAC 173-400-060: Emission standards for general process units.
- WAC 173-400-075: Emission standards for sources emitting hazardous air pollutants.
- WAC 173-400-081: Startup and shutdown.
- WAC 173-400-091: Voluntary limits on emissions.
- WAC 173-400-105: Records, monitoring, and reporting.
- WAC 173-400-107: Excess emissions.
- WAC 173-400-110: New source review (NSR).
- WAC 173-400-112: Requirements for new sources in nonattainment areas.
- WAC 173-400-113: Requirements for new sources in attainment or unclassifiable areas.
- WAC 173-400-114: Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.
- WAC 173-400-117: Special protection requirements for federal Class I areas.
- WAC 173-400-120: Bubble rules.
- WAC 173-400-131: Issuance of emission reduction credits.

- WAC 173-400-136: Use of emission reduction credits.
- WAC 173-400-151: Retrofit requirements for visibility protection.
- WAC 173-400-161: Compliance schedules.
- WAC 173-400-171: Public involvement.
- WAC 173-400-175: Public information.
- WAC 173-400-180: Variance.
- WAC 173-400-190: Requirements for nonattainment areas.
- WAC 173-400-200: Creditable stack height and dispersion techniques.
- WAC 173-400-205: Adjustment for atmospheric conditions.
- WAC 173-400-700: Review of major stationary sources of air pollution.
- WAC 173-400-710: Definitions.
- WAC 173-400-720: Prevention of significant deterioration (PSD).
- WAC 173-400-730: Prevention of significant deterioration application processing procedures.
- WAC 173-400-740: PSD permitting public involvement requirements.
- WAC 173-400-750: Revisions to PSD permits.

(2) The energy facility site evaluation council adopts the following provisions of chapter 173-401 WAC, in effect on March 1, 2005, by reference.

- WAC 173-401-100: Program overview.
- WAC 173-401-200: Definitions.
- WAC 173-401-300: Applicability.
- WAC 173-401-500: Permit applications.
- WAC 173-401-510: Permit application form.
- WAC 173-401-520: Certification.
- WAC 173-401-530: Insignificant emission units.
- WAC 173-401-531: Thresholds for hazardous air pollutants.
- WAC 173-401-532: Categorically exempt insignificant emission units.
- WAC 173-401-533: Units and activities defined as insignificant on the basis of size or production rate.
- WAC 173-401-600: Permit content.
- WAC 173-401-605: Emission standards and limitations.
- WAC 173-401-610: Permit duration.
- WAC 173-401-615: Monitoring and related record-keeping and reporting requirements.
- WAC 173-401-620: Standard terms and conditions. Except (2)(i).

- WAC 173-401-625: Federally enforceable requirements.
- WAC 173-401-630: Compliance requirements.
- WAC 173-401-635: Temporary sources.
- WAC 173-401-640: Permit shield.
- WAC 173-401-645: Emergency provision.
- WAC 173-401-650: Operational flexibility.
- WAC 173-401-700: Action on application.
- WAC 173-401-705: Requirement for a permit.
- WAC 173-401-710: Permit renewal, revocation and expiration.
- WAC 173-401-720: Administrative permit amendments.
- WAC 173-401-722: Changes not requiring permit revisions.
- WAC 173-401-725: Permit modifications.
- WAC 173-401-730: Reopening for cause.
- WAC 173-401-750: General permits.
- WAC 173-401-800: Public involvement.
- WAC 173-401-810: EPA Review.
- WAC 173-401-820: Review by affected states.

(3) The energy facility site evaluation council adopts the following provisions of chapter 173-406 WAC, in effect on March 1, 2005, by reference.

Part I - GENERAL PROVISIONS

- WAC 173-406-100: Acid rain program general provisions.
- WAC 173-406-101: Definitions.
- WAC 173-406-102: Measurements, abbreviations, and acronyms.
- WAC 173-406-103: Applicability.
- WAC 173-406-104: New units exemption.
- WAC 173-406-105: Retired units exemption.
- WAC 173-406-106: Standard requirements.

Part II - DESIGNATED REPRESENTATIVE

- WAC 173-406-200: Designated representative.
- WAC 173-406-201: Submissions.
- WAC 173-406-202: Objections.

Part III - APPLICATIONS

- WAC 173-406-300: Acid rain permit applications.
- WAC 173-406-301: Requirement to apply.
- WAC 173-406-302: Information requirements for acid rain permit applications.
- WAC 173-406-303: Permit application shield and binding effect of permit application.

Part IV - COMPLIANCE PLAN

- WAC 173-406-400: Acid rain compliance plan and compliance options.
- WAC 173-406-401: General.
- WAC 173-406-402: Repowering extensions.

Part V - PERMIT CONTENTS

- WAC 173-406-500: Acid rain permit.
- WAC 173-406-501: Contents.
- WAC 173-406-502: Permit shield.

Part VI - PERMIT ISSUANCE

- WAC 173-406-600: Acid rain permit issuance procedures.
- WAC 173-406-601: General.
- WAC 173-406-602: Completeness.
- WAC 173-406-603: Statement of basis.
- WAC 173-406-604: Issuance of acid rain permits.

Part VII - PERMIT REVISIONS

- WAC 173-406-700: Permit revisions.
- WAC 173-406-701: General.
- WAC 173-406-702: Permit modifications.
- WAC 173-406-703: Fast-track modifications.
- WAC 173-406-704: Administrative permit amendment.
- WAC 173-406-705: Automatic permit amendment.
- WAC 173-406-706: Permit reopenings.

Part VIII - COMPLIANCE CERTIFICATION

- WAC 173-406-800: Compliance certification.
- WAC 173-406-801: Annual compliance certification report.
- WAC 173-406-802: Units with repowering extension plans.

Part IX - NITROGEN OXIDES

- WAC 173-406-900: Nitrogen oxides emission reduction program.

Part X - SULFUR DIOXIDE OPT-IN

- WAC 173-406-950: Sulfur dioxide opt-ins.

(4) The energy facility site evaluation council adopts the following provisions of chapter 173-460 WAC, in effect on March 1, 2005, by reference.

- WAC 173-460-010: Purpose.
- WAC 173-460-020: Definitions.
- WAC 173-460-030: Requirements, applicability and exemptions.
- WAC 173-460-040: New source review.

- WAC 173-460-050: Requirement to quantify emissions.
- WAC 173-460-060: Control technology requirements.
- WAC 173-460-070: Ambient impact requirement.
- WAC 173-460-080: Demonstrating ambient impact compliance.
- WAC 173-460-090: Second tier analysis.
- WAC 173-460-100: Request for risk management decision.
- 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 173-460-140: Remedies.
- WAC 173-460-150: Class A toxic air pollutants: Known, probable and potential human carcinogens and acceptable source impact levels.
- WAC 173-460-160: Class B toxic air pollutants and acceptable source impact levels.

WSR 09-01-049**PERMANENT RULES
DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed December 10, 2008, 1:58 p.m., effective January 10, 2009]

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

Purpose: The department is amending WAC 388-489-0025 **Can my transitional food assistance benefits end before the end of my five-month transitional period?**

The rule governs the circumstances where the department may terminate transitional food assistance (TFA) earlier than the five-month transitional period.

The amended rule reflects that the department will terminate TFA benefits early if all members of the TFA assistance unit are ineligible for Basic Food for the reasons currently specified in the rule.

Citation of Existing Rules Affected by this Order: Amending WAC 388-489-0025.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Adopted under notice filed as WSR 08-21-104 on October 16, 2008.

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

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

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

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

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

Date Adopted: December 4, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-19-060, filed 9/16/05, effective 11/1/05)

WAC 388-489-0025 Can my transitional food assistance benefits end before the end of my five-month transition period? Your transitional food assistance benefits will end early if:

(1) Someone who gets transitional food assistance with you applies and is approved for temporary assistance for needy families while still living in your home. You may reapply to have your eligibility for Basic Food determined;

(2) We learn that you and your family are no longer residing in the state of Washington; or

(3) **All members** of your household are ineligible to get Basic Food for any of the following reasons:

(a) Refusal to cooperate with quality assurance (WAC 388-464-0001);

(b) Transfer of property to qualify for Basic Food assistance (WAC 388-488-0010);

(c) Intentional program violation (WAC 388-466-0015 and 388-446-0020);

(d) Fleeing felon or violating a condition of probation or parole (WAC 388-442-0010);

(e) Alien status (WAC 388-424-0020 and 388-424-0025);

(f) Employment and training requirements (WAC 388-444-0055 and 388-444-0075);

(g) Work requirements for able-bodied adults without dependents (WAC 388-444-0030);

(h) Student status (WAC 388-482-0005);

(i) Living in an institution where residents are not eligible for Basic Food (WAC 388-408-0040); or

(j) Deceased.

WSR 09-01-052**PERMANENT RULES
DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed December 10, 2008, 4:17 p.m., effective January 10, 2009]

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

Purpose: The department is adopting the following amendments to the boarding home licensing chapter: WAC 388-78A-2470 Criminal history disclosure and background, to correct typographical error in section heading.

WAC 388-78A-2680 Boarding home use of audio and video monitoring and 388-78A-2690 Resident use of electronic monitoring, to clarify and enhance readability and usability of electronic monitoring requirements; to ensure boarding home compliance with resident rights when electronic monitoring is used.

WAC 388-78A-2950 Water supply, 388-78A-2980 Lighting, and 388-78A-3030 Toilet rooms and bathrooms, to clarify and enhance readability and usability of construction requirements regarding lighting, water supply and showers; to create flexibility in construction requirements for boarding home providers to meet resident needs.

WAC 388-78A-3450 Finalizing a preliminary finding and 388-78A-3460 Appeal of administrative law judge's initial order or finding, to clarify and enhance readability and usability of the rules; to provide guidance to administrative law judges that a department denial of a petition to remove a finding of neglect under WAC 388-78A-3450 from a department list may not be appealed.

Citation of Existing Rules Affected by this Order: Amending WAC 388-78A-2470, 388-78A-2680, 388-78A-2690, 388-78A-2950, 388-78A-2980, 388-78A-3030, 388-78A-3450, and 388-78A-3460.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Other Authority: Chapter 74.34 RCW.

Adopted under notice filed as WSR 08-16-119 on August 5, 2008.

Changes Other than Editing from Proposed to Adopted Version: See Reviser's note below.

A final cost-benefit analysis is available by contacting Todd Erik Henry, P.O. Box 45600, Olympia, WA 98513, phone (360) 725-2580, fax (360) 438-7903, e-mail henryte@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: December 10, 2008.

Robin Arnold-Williams
Secretary

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 09-02 issue of the Register.

WSR 09-01-053

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed December 10, 2008, 4:47 p.m., effective January 10, 2009]

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

Purpose: To update and expand the definition of rural for purposes of determining health systems resources grant eligibility. The adopted rule changes the basis of the definition from the metropolitan statistical area (MSA) concept to the urbanized area concept. The adopted rule will eliminate the unfair reclassification of some counties from rural to urban when applying the MSA method to the updated 2000 census. Current rules base the definition on the 1990 census.

Citation of Existing Rules Affected by this Order: Amending WAC 246-560-010.

Statutory Authority for Adoption: RCW 70.175.040 - [70.175.]050 and 70.185.040 - [70.185.]050.

Adopted under notice filed as WSR 08-14-138 on July 1, 2008.

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

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

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

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

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

Date Adopted: December 10, 2008.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 99-03-043, filed 1/14/99, effective 2/14/99)

WAC 246-560-010 Definitions. For the purpose of this chapter the following words and phrases have the following meanings unless the context clearly indicates otherwise.

(1) "Applicant" means any interested party who has been invited to submit an application proposing a health systems resources project.

(2) "Application" means an invited proposal for a health systems resources project.

(3) "Basic health care services" means organized care modalities to prevent death, disability, and serious illness. The term includes, but is not limited to:

- (a) Emergency services;
- (b) Primary care physicians, physician assistants, nurse practitioners, and midwifery services;
- (c) Short term inpatient care;
- (d) Home health care;
- (e) Community based care for chronic conditions;
- (f) Dental care;

- (g) Vision care;
- (h) Hearing care;
- (i) Hospice care;
- (j) Mental health;
- (k) Necessary support services; and
- (l) Nutrition related services.

(4) "Catchment area" means the Washington state geographic area where people live who are to receive the basic health care services addressed by the project.

(5) "Community" means the resident individuals and organizations in a catchment area who may benefit from the basic health care services addressed by the project.

(6) "Community-based" means that the need is identified by a broad section of the community including providers, institutions in the area, and nonhealth care provider members of the community such as community members of health care boards, economic development council members, organized patient advocacy groups, and others who have an interest in the long-term viability of health care services in the catchment area.

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

(8) "Deliverable" means a document that results from project activities. The term includes, but is not limited to:

- (a) A form;
- (b) An agreement;
- (c) A plan;
- (d) Documentation of numbers served;
- (e) A report; or
- (f) Presentation material.

(9) "Health care delivery system" means services, personnel, and how they are organized and financed.

(10) "Interested party" means an eligible entity that has submitted a letter of interest for a health systems resources project.

(11) "Letter of interest" means a brief description of a project as described in WAC 246-560-040.

(12) "Letter of invitation" means a letter inviting an interested party who has submitted a letter of interest to submit an application.

(13) "Local project administrator" means an individual or organization representing the applicant and authorized to enter into legal agreements on behalf of the applicant.

(14) "Matching funds" means fifty percent of the total budget for recruitment and retention activities must be from a source other than this program. Matching funds may be in-kind contributions.

(15) (~~"Metropolitan statistical area" or "MSA" means an urban area defined and described by the United States Department of Census, Bureau of the Census, and printed in the State of Washington 1997 Data Book, Office of Financial Management, Olympia, Washington. The boundaries of all metropolitan statistical areas are county boundaries. The urban counties include:~~

- ~~(a) Benton;~~
- ~~(b) Clark;~~
- ~~(c) Franklin;~~
- ~~(d) Island;~~
- ~~(e) King;~~
- ~~(f) Kitsap;~~

- ~~(g) Pierce;~~
- ~~(h) Snohomish;~~
- ~~(i) Spokane;~~
- ~~(j) Thurston;~~
- ~~(k) Whatcom; and~~
- ~~(l) Yakima.~~

~~(16))~~ "Outcome" means the anticipated result or impact of the project activities.

~~((17))~~ (16) "Project" means a health systems resources project.

~~((18))~~ (17) "Rural" means a ~~((geographical area outside the boundaries of metropolitan statistical areas (MSA's) or an area within an MSA but more than thirty minutes average travel time from a city or town or contiguous cities or towns with a population of ten thousand or more))~~ nonurbanized area.

~~((19))~~ (18) "Successful applicant" means an applicant whose project has been selected for contracting.

~~((20))~~ (19) "Urban underserved" means an urbanized area ~~((within a MSA that is thirty minutes average travel time or less from a city or town or contiguous cities or towns with a population of ten thousand or more,))~~ that has unmet health care needs.

(20) "Urbanized area" means an area defined and described as an urbanized or urban area by the United States Department of Census, Bureau of the Census.

(21) "Workplan" means a written document, usually in matrix form, that shows the detail of what is needed to complete a project. The activities, timeline, party responsible, budget, evaluation plan, and measurable outcome is shown for each deliverable.

WSR 09-01-060

PERMANENT RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed December 11, 2008, 10:56 a.m., effective January 11, 2009]

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

Purpose: Chapter 246-840 WAC amends language to allow ARNP's to dispense Schedule II-IV drugs for more than seventy-two hours or as needed in the treatment of individuals. It also clarifies and updates language to reflect certification areas and allows more flexibility in practice areas. The proposed rule also incorporates the nursing or nursing related accrediting organizations by United States Department of Education or Council of Higher Education Accreditation for compliance.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-840-305, 246-840-320, 246-840-330, 246-840-345, 246-840-370 and 246-840-425; and amending WAC 246-840-300, 246-840-310, 246-840-311, 246-840-340, 246-840-350, 246-840-360, 246-840-365, 246-840-400, 246-840-410, 246-840-420, and 246-840-450.

Statutory Authority for Adoption: RCW 18.79.010, [18.79.]050, [18.79.]110, and [18.79.]210.

Adopted under notice filed as WSR 08-16-128 on August 6, 2008.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-840-360 removed the word "independent" in front of "clinical practice" in subsection (1)(d), (1)(d)(i) and (1)(d)(ii) and in (2)(d)(i) removed "the" added an "s" to "ARNP," deleted the word "is" and added the word "are"; WAC 246-840-304 placed a semi colon instead of a period after (1) and deleted "For example"; and WAC 246-840-455 placed a hyphen in "postmasters" and changed "practicum" to "practica."

A final cost-benefit analysis is available by contacting Terry J. West, Department of Health, Nursing Commission, P.O. Box 47864, Olympia, WA 98504, phone (360) 236-4712, fax (360) 236-4738, e-mail Terry.West@doh.wa.gov.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 12, Repealed 6.

Date Adopted: September 11, 2008.

December 10, 2008

Paula R. Meyer

Executive Director

AMENDATORY SECTION (Amending WSR 00-21-119, filed 10/18/00, effective 11/18/00)

WAC 246-840-300 Advanced registered nurse practitioner (ARNP) scope of practice. ((An advanced registered nurse practitioner is a registered nurse prepared in a formal educational program to assume primary responsibility for continuous and comprehensive management of a broad range of patient care, concerns and problems. Advanced registered nurse practitioners function within the specialty scopes of practice and/or description of practice and/or standards of care developed by national professional organizations and reviewed and approved by the commission. These statements form the basis for selection of test items or competency based evaluation processes and are derived from standard educational curricula for certain practice areas. ARNP members of the commission will review these statements on a biennial basis and will present substantive changes to the full commission for approval or disapproval. Advanced registered nurse practitioners are prepared and qualified to assume primary responsibility and accountability for the care of their patients. This practice is grounded in nursing and incorporates the use of independent judgment as well as collaborative interaction with other health care professionals when indicated in the assessment and management

of wellness and conditions as appropriate to the ARNP's area of specialization.

Within the scope of the advanced registered nurse practitioner's knowledge, experience and specialty scope of practice statement(s), licensed advanced registered nurse practitioners may perform the following functions:

~~• Examine patients and establish medical diagnoses by client history, physical examination and other assessment criteria;~~

~~• Admit patients to health care facilities;~~

~~• Order, collect, perform and interpret laboratory tests;~~

~~• Initiate requests for radiographic and other testing measures;~~

~~• Identify, develop, implement and evaluate a plan of care and treatment for patients to promote, maintain and restore health;~~

~~• Prescribe medications when granted authority under this chapter;~~

~~• Refer clients to other health care practitioners or facilities.~~

An advanced registered nurse practitioner:

(1) Shall hold a current license to practice as a registered nurse in Washington;

(2) Shall have completed a formal advanced nursing education meeting the requirements of WAC 246-840-305;

(3) Shall present documentation of initial certification credential granted by a national certifying body recognized by the commission, approved ARNP specialty whose certification program is approved by the commission and subsequently maintain currency and competency as defined by the certifying body;

(4) Copies of statements of scope of practice or practice descriptions are maintained in the nursing commission's office. Specialty designations recognized by the commission and the date of the commission approved statement of scope of practice or practice description are:

(a) Family Nurse Practitioner (FNP) (American Nurses Association, 1998; American Academy of Nurse Practitioners, 1992).

(b) Women's Health Nurse Practitioner (WHNP) (American Association of Women's Health, Obstetric, and Neonatal Nurses, 1997).

(c) Pediatric Nurse Practitioner (PNP) (National Association of Pediatric Nurse Associates and Practitioners, 2000; American Nurses Association, 1998).

(d) Adult Nurse Practitioner (ANP) (American Nurses Association, 1998; American Academy of Nurse Practitioners, 1992).

(e) Geriatric Gerontological Nurse Practitioner (GNP) (American Nurses Association, 1998).

(f) Certified Nurse Midwife (CNM) (American College of Nurse Midwives, 1997).

(g) Certified Registered Nurse Anesthetist (CRNA) (American Association of Nurse Anesthetists, 1996).

(h) School Nurse Practitioner (American Nurses Association, 1998).

(i) Neonatal Nurse Practitioner (NNP) (American Association of Women's Health, Obstetric, and Neonatal Nurses, 1997).

~~(j) Psychiatric Nurse Practitioner or Clinical Specialist in Psychiatric-Mental Health Nursing (American Nurses Association, 1998).~~

~~(k) Acute Care Nurse Practitioner (American Nurses Association, 1998).~~

~~(5) Shall be held individually accountable for practice based on and limited to the scope of his/her education, demonstrated competence, and advanced nursing experience;~~

~~(6) Shall obtain instruction, supervision, and consultation as necessary before implementing new or unfamiliar techniques or practices;~~

~~(7) Shall be responsible for maintaining current knowledge in his/her field of practice;~~

~~(8) Must be prepared to show documentation of any additional formal education, skills training, or supervised clinical practice beyond the basic ARNP preparation; and~~

~~(9) May choose to limit his or her area of practice within the recognized specialty or specialties.~~

~~(10) If recognized in more than one specialty area, must obtain and maintain certification in all areas and must obtain formal education and training for each area of specialization.)~~

(1) A licensed advanced registered nurse practitioner (ARNP) is a registered nurse prepared in a formal educational program to assume primary responsibility for continuous and comprehensive management of a broad range of patient care concerns and problems.

(2) The ARNP is prepared and qualified to assume primary responsibility and accountability for the care of patients.

(3) ARNP practice is grounded in nursing and incorporates the use of independent judgment as well as collaborative interaction with other health care professionals when indicated in the assessment and management of wellness and health conditions as appropriate to the ARNP's area of practice and certification.

(4) The ARNP functions within his or her scope of practice according to the commission approved certification program and standards of care developed by professional organizations.

(5) The ARNP shall obtain instruction, supervision, and consultation as necessary before implementing new or unfamiliar techniques or practices.

(6) Performing within the scope of the ARNP's knowledge, experience and practice, the licensed ARNP may perform the following:

(a) Examine patients and establish diagnoses by patient history, physical examination and other methods of assessment;

(b) Admit, manage and discharge patients to and from health care facilities;

(c) Order, collect, perform and interpret diagnostic tests;

(d) Manage health care by identifying, developing, implementing and evaluating a plan of care and treatment for patients;

(e) Prescribe therapies and medical equipment;

(f) Prescribe medications when granted authority under this chapter;

(g) Refer patients to other health care practitioners, services or facilities; and

(h) Perform procedures or provide care services that are within the scope of practice according to the commission approved certification program.

NEW SECTION

WAC 246-840-302 ARNP designations, certification and approved certification examinations. (1) ARNP designations recognized by the commission include:

(a) Nurse Practitioner (NP);

(b) Certified Nurse-midwife (CNM); and

(c) Certified Registered Nurse Anesthetist (CRNA).

(2) An ARNP must maintain current certification by an accredited certifying body as identified in subsection (3) of this section. An ARNP license becomes invalid when the certification expires.

(3) The commission approved certification examinations include those approved by the National Commission on Certifying Agencies or the American Boards of Nursing Specialties from the following programs:

(a) For NP designation, NP exams from:

(i) American Academy of Nurse Practitioners;

(ii) American Nurses Credentialing Center;

(iii) National Certification Corporation for Obstetric, Gynecological, and Neonatal Nursing; and

(iv) Pediatric Nursing Certification Board.

(b) For CNM designation, the CNM exam from American Midwifery Certification Board.

(c) For CRNA designation, the CRNA exam from Council on Certification of Nurse Anesthetists.

(4) An ARNP may choose to limit his or her area of practice within the commission approved certification program area of practice.

(5) If an ARNP is recognized in more than one certification area, he or she must obtain and maintain education, training and practice in each area.

NEW SECTION

WAC 246-840-304 Certification and certification program requirements. (1) Certification is a form of credentialing, under sponsorship of a commission approved certifying body that recognizes advanced nursing practice in one of the three ARNP designations identified in WAC 246-840-302(1): Nurse practitioner (NP); certified nurse midwife (CNM); or certified registered nurse anesthetist (CRNA).

(2) A certification program must:

(a) Ensure that examinations are based on a scope of practice statement that denotes the dimension and boundary, the focus, and the standards of advanced nursing practice in the area of certification. The examination must:

(i) Measure the theoretical and clinical content denoted in the scope of practice; and

(ii) Be developed in accordance with generally accepted standards of validity and reliability.

(b) Require completion of a graduate program of study in the area of certification. The graduate program must:

(i) Be based on measurable objectives that relate directly to the scope of practice;

(ii) Include theoretical and clinical content directed to the objectives; and

(iii) Be equivalent to at least one academic year and include at least five hundred hours of clinical practice under the supervision of preceptors.

(c) Meet the criteria of the National Commission on Certifying Agencies or the American Boards of Nursing Specialties.

AMENDATORY SECTION (Amending WSR 00-21-119, filed 10/18/00, effective 11/18/00)

WAC 246-840-310 Use and protection of ((nomenclature)) professional titles. (1) Any person who ((qualifies under WAC 246-840-300 and whose application for advanced registered nurse practitioner designation has been approved by the commission shall be designated as an advanced registered nurse practitioner and)) holds a license to practice as an ARNP shall have the right to use the title "advanced registered nurse practitioner" or "nurse practitioner" and the abbreviation following the nurse's name shall read "ARNP" ((and)) or "NP."

(2) The ARNP may also use the title or abbreviation designated by the approved ((national)) certifying body.

(3) No other person shall assume such titles or use such abbreviations. ((No other person shall use any other title, words, letters, signs or figures to indicate that the person using same is recognized as an advanced registered nurse practitioner and:

- (1) Family nurse practitioner, FNP; or
- (2) Women's health care nurse practitioner, WHNP; or
- (3) Pediatric nurse practitioner/associate, PNP/PNA; or
- (4) Adult nurse practitioner, ANP; or
- (5) Geriatric nurse practitioner, GNP; or
- (6) Certified nurse midwife/nurse midwife, CNM; or
- (7) Certified registered nurse anesthetist, CRNA; or
- (8) School nurse practitioner, SNP; or
- (9) Neonatal nurse practitioner, NNP; or
- (10) Clinical nurse specialist in psychiatric/mental health nursing or psychiatric nurse practitioners; or
- (11) Acute care nurse practitioner, ACNP.))

AMENDATORY SECTION (Amending WSR 02-20-077, filed 9/30/02, effective 10/31/02)

WAC 246-840-311 ARNP previously adopted specialties. (1) ((The nursing care quality assurance commission recognizes the need to provide for renewing the licenses of advanced registered nurse practitioners certified in:)) On the effective date of this rule, an ARNP holding a license under one or more of the following certification categories may continue to renew his or her license:

- (a) Community health nurse;
- (b) Maternal/GYN/neonatal nurse;
- (c) Medical/surgical nursing;
- (d) Occupational health nurse;
- (e) Neurosurgical nursing; or
- (f) Enterostomal therapy; or
- (g) Psychiatric mental health clinical nurse specialist.

(2) ((Failure to renew. If any current credential holder of one or more of the above six categories fails to renew his or her credential(s), then upon the expiration of the current credential listed above, the nursing care quality assurance com-

mission will not renew or recognize the specialty certification(s) listed above for that individual according to the requirements of WAC 246-840-360.

(3) Existing licenses only. This rule applies only to existing licensees issued credentials in the above six categories by the Washington state nursing care quality assurance commission. No new applications will be accepted for certification in the above six categories.)) Any lapse in certification identified in subsection (1)(a) through (g) of this section will result in an invalid ARNP license. The license will not be renewed.

(3) The commission will not accept initial ARNP licensure applications from individuals certified in the categories identified in subsection (1)(a) through (g) of this section.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-840-340 ARNP application requirements for ((ARNP)) new graduates of advanced registered nurse programs. ((A registered nurse applicant for licensure as an ARNP shall:

(1) Submit a completed application and fee as specified in WAC 246-840-990.

(2) Meet the requirements of WAC 246-840-300 and 246-840-305. The following documents must be submitted as evidence to these requirements:

(a) An official transcript received by the commission directly from the formal advanced nursing education program showing all courses, grades, degree or certificate granted, official seal and appropriate registrar or program director's signature.

(b) Program objectives and course descriptions.

(c) Documentation from program director or faculty specifying the area of specialty, unless such is clearly indicated on the official transcript.

(3) Have graduated from an advanced nursing education program, as defined in WAC 246-840-300, within five years of application; if longer than five years have practiced a minimum of one thousand five hundred hours in an expanded specialty role within five years immediately preceding application.

(4) Submit evidence of certification by a certification program approved by the commission.

(5) Persons not meeting the educational requirements in subsection (2) of this section may be licensed if:

(a) Certified prior to December 31, 1994, by a national certifying organization recognized by the commission at the time certification was granted; and

(b) Recognized as an advanced registered nurse practitioner by another jurisdiction prior to December 31, 1994; and

(c) Completed an advanced registered nurse practitioner program equivalent to one academic year.

(6) Persons not meeting the requirements in subsection (3) of this section may be licensed following successful completion of five hundred hours of clinical practice supervised by an advanced registered nurse practitioner or a physician (licensed under chapter 18.71 or 18.57 RCW) in the same specialty area. Following completion of the supervised practice, the supervisor must submit an evaluation to the commis-

sion and verify that the applicant's knowledge and skills are at a safe and appropriate level.) (1) An applicant for licensure as an ARNP must meet the following requirements:

(a) Hold a registered nurse license in the state of Washington that is not subject to sanctions or restrictions by the commission;

(b) Have graduated from an advanced nursing education program within the past year;

(i) For new graduates of advanced nursing education programs in the United States, the program must be accredited by a nursing or nursing-related accrediting organization recognized by the United States Department of Education (USDE) or the Council of Higher Education Accreditation (CHEA);

(ii) For new graduates of advanced nursing education programs outside the United States, the program must be equivalent to the advanced registered nurse education in Washington; and

(c) Hold certification from a commission approved certification program as identified in WAC 246-840-302.

(2) An applicant for ARNP licensure must:

(a) Apply for Washington state registered nurse licensure if not a current holder of the RN license;

(b) Submit a completed application to the commission;

(c) Submit the license fee as specified in WAC 246-840-990;

(d) Request the commission approved certification program as identified in WAC 246-840-302(3) to send official documentation of certification directly to the commission;

(e) Request the advanced nursing educational program to send an official transcript directly to the commission showing all courses, grades, degree or certificate granted, official seal and appropriate registrar or program director's signature;

(f) Submit documentation from the graduate program director or faculty identifying the area of practice, unless the area of practice is clearly indicated on the official transcript;

(g) Submit program objectives and course descriptions when requested by the commission; and

(h) Request a certificate or credential from a commission approved credential evaluating service if the applicant is a new graduate educated outside the United States.

(3) The ARNP applicant may petition the commission for an exemption to the requirement that application for licensure occur within one year of graduation if the applicant has had undue hardship.

(a) Undue hardship includes difficulty scheduling for the approved certification examination through no fault of his or her own, natural disaster, or an unexpected health or family crisis which caused him or her to delay completing the certification examination.

(b) Undue hardship does not include failure of the examination.

(c) The ARNP applicant shall provide evidence as requested by the commission of any undue hardship.

NEW SECTION

WAC 246-840-342 ARNP application requirements for licensed advanced practice nurse applicants from other states or jurisdictions. (1) An applicant who is cur-

rently licensed as an advanced practice nurse in another state or jurisdiction and who is applying for ARNP licensure in Washington, must meet the following requirements:

(a) Hold current registered nurse and advanced practice nurse licenses that are not subject to sanctions or restrictions by another state or jurisdiction licensing agency;

(b) Have graduated from an advanced nursing educational program that:

(i) Requires a minimum of one academic year for completion if graduated on or before December 31, 1994; or

(ii) Requires a graduate degree with a concentration in advanced nursing practice if graduated on or after January 1, 1995; or

(iii) Is equivalent to that leading to a graduate degree in advanced nursing practice if the formal educational program is taken after completion of the graduate degree;

(c) Have been practicing in direct patient care as a licensed nurse practitioner, certified nurse-midwife or certified nurse anesthetist in his or her state for at least two hundred fifty hours of direct patient services within the two years prior to the date of application for ARNP licensure; and

(d) Be currently certified as a nurse practitioner, nurse midwife or registered nurse anesthetist by a commission approved certification program as identified in WAC 246-840-302(3).

(2) An out-of-state applicant for ARNP licensure must:

(a) Apply for Washington state registered nurse licensure as identified in WAC 246-840-090;

(b) Submit a completed ARNP license application to the commission;

(c) Submit a license fee as specified in WAC 246-840-990;

(d) Request the commission approved certification program as identified in WAC 246-840-302(3) to send official documentation of certification directly to the commission;

(e) Request the advanced nursing educational program to send an official transcript directly to the commission showing all courses, grades, degree or certificate granted, official seal and appropriate registrar or program director's signature;

(f) Submit documentation from the graduate program director or faculty identifying the area of practice, unless the area of practice is clearly indicated on the official transcript;

(g) Submit educational program objectives and course descriptions when requested by the commission; and

(h) Submit evidence of at least two hundred fifty hours of direct patient care services as an advanced practice nurse within the two years prior to the date of application for ARNP licensure. The two hundred fifty hours may include teaching advanced nursing practice if the faculty member is providing patient care or serving as a preceptor.

NEW SECTION

WAC 246-840-344 ARNP application requirements for advanced practice nurse applicants educated and licensed outside the United States. (1) Persons educated outside the United States who are currently licensed in their country as advanced registered nurse practitioners, registered nurse midwives or registered nurse anesthetists and who are

applying for ARNP licensure in Washington, must meet the following requirements:

(a) Hold current registered nurse and ARNP licenses that are not subject to sanctions or restrictions by a foreign nurse licensing agency;

(b) Have a certificate or credential from a commission approved credential evaluating service verifying that the educational program completed by the applicant is equivalent to the advanced registered nurse education identified in WAC 246-840-455;

(c) Have been practicing in direct patient care as a licensed nurse practitioner, certified nurse midwife or certified nurse anesthetist in his or her country for at least two hundred fifty hours of direct patient services within the two years prior to the date of application for ARNP licensure; and

(d) Be certified as a nurse practitioner, nurse midwife or registered nurse anesthetist by a commission approved certification program.

(2) The applicant must:

(a) Obtain registered nurse licensure as identified in WAC 246-840-045;

(b) Submit a completed ARNP application to the commission;

(c) Submit the application fee as specified in WAC 246-840-990;

(d) Submit a certificate or credential from a commission approved credential evaluating service;

(e) Request the commission approved certification program as identified in WAC 246-840-302(3) to send official documentation of certification directly to the commission; and

(f) Submit evidence of at least two hundred fifty hours of direct patient care services as an advanced practice nurse within the two years prior to the date of application for ARNP licensure. The two hundred fifty hours may include teaching advanced nursing practice if the faculty member is providing patient care or serving as a preceptor.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-840-350 Application requirements for ARNP interim permit. (1) A registered nurse licensed in the state of Washington who has completed advanced ~~((formal))~~ graduate education and ~~((registered))~~ is scheduled for a commission approved ~~((national))~~ certification examination may be issued an interim permit ~~((to practice specialized and))~~ for advanced nursing practice pending notification of the results of the first certification examination. The holder of an ARNP interim permit must use the title graduate advanced registered nurse practitioner ~~((GRNP))~~ GARNP.

~~((1))~~ (2) An applicant for ARNP interim permit must:

(a) Submit a completed application on a form provided by the commission ~~((accompanied by))~~;

~~((and~~ (b) Submit a fee as specified in WAC 246-840-990;

~~((b))~~ (c) Submit ~~((documentation of completion of advanced formal education in the area of specialty))~~ an official transcript sent directly to the commission from the advanced nursing educational program showing all courses,

grades, degree or certification granted, official seal and appropriate registrar or program director's signature;

(d) Submit educational program objectives and course descriptions when requested;

(e) Submit documentation from program director or faculty identifying the area of practice, unless the area of practice is clearly indicated on the official transcript; and

~~((e))~~ (f) Submit documentation of ~~((registration))~~ scheduled date for the first certification examination administered by ~~((an))~~ a commission approved certification program following completion of advanced ~~((formal))~~ graduate education~~((and~~

~~((d) Hold a current license to practice as a registered nurse in Washington)).~~

~~((2))~~ (3) The interim GARNP permit expires when advanced registered nurse practitioner status is granted. If the applicant fails the examination, the interim permit will expire upon notification of failure either at the test site or by mail and is not renewable.

~~((3))~~ (4) An applicant who does not ~~((write))~~ complete the examination on the date scheduled must immediately return the permit to the ~~((department of health))~~ commission.

~~((4))~~ (5) The interim permit authorizes the holder to ~~((perform the functions of advanced and specialized nursing practice as described in this section))~~ practice as an ARNP, but does not include prescriptive authority.

AMENDATORY SECTION (Amending WSR 00-21-119, filed 10/18/00, effective 11/18/00)

WAC 246-840-360 Renewal of ARNP ~~((designation))~~ license. (1) For ARNP license renewal, the applicant must have:

~~((1) Maintain a current))~~ (a) An active registered nurse license in Washington~~((;))~~;

~~((2))~~ (b) Maintained certification in area of practice from a commission approved certification program as identified in WAC 246-840-302;

(c) Obtained thirty contact hours of continuing education credit during the renewal period in each area of certification. ARNPs who have certification in more than one related area of practice may count the continuing education hours for more than one certification; and

(d) Practiced for at least two hundred fifty hours in clinical practice as an ARNP within the two-year licensing renewal cycle.

(i) Clinical practice includes the formulation, implementation and evaluation of plans of care for patients for whom ARNPs are responsible.

(ii) Clinical practice includes teaching advanced nursing practice if the faculty member is providing patient care or serving as a preceptor.

(2) The ARNP applicant must:

(a) Submit a renewal fee as specified in WAC 246-840-990;

(b) Submit evidence of current certification by ~~((her/his certifying body))~~ the commission approved certification program in all ~~((specialty))~~ areas~~((;~~

~~((3) Provide documentation))~~ of practice;

(c) Submit a written declaration, on forms provided by the commission, that he or she has completed thirty contact hours ((a contact hour is fifty minutes)) of continuing education during the renewal period in ((the)) each area of certification ((derived from any combination of the following approved by the commission:

- (a) Formal academic study;
- (b) Continuing education offerings;
- (4) Attest;);

(d) Submit a written declaration on forms provided by the commission, to having within the last two years, a minimum of two hundred fifty hours of ((specialized and advanced nursing practice within the preceding biennium providing direct patient care services. The commission may perform random audits of licensee's attestations.

(5) Comply with the requirements of chapter 246-12 WAC, Part 2.)) independent clinical practice in the ARNP role;

(e) Submit evidence of completion of continuing education contact hours and independent clinical practice hours when requested by the commission; and

(f) Comply with the requirements of chapter 246-12 WAC, Part 2.

NEW SECTION

WAC 246-840-361 Continuing education for ARNP license renewal. The thirty contact hours of continuing education required for renewal of ARNP licensure must:

(1) Be acceptable to the commission approved certification program identified in WAC 246-840-302(3); and

(2) Be obtained from courses in which the contact hour is at least fifty minutes; and

(3) Not include the fifteen hours of continuing education required for ARNPs with prescriptive authority as identified in WAC 246-840-450 (1)(b); and

(4) Not include the same course taken more than once during the renewal cycle.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-840-365 ((Return to active ARNP status from)) Inactive ((or expired status)) credential. ((Persons on inactive or expired status who do not hold a current active license in any other United States jurisdiction and who wish to return to active status must apply for reinstatement of ARNP licensure. This requires:

- (1) Current RN license in the state of Washington.
- (2) Evidence of current certification by his/her certifying body.
- (3) Documentation of thirty contact hours of continuing education in the area of specialty during the last two years.
- (4) Two hundred fifty hours of precepted/supervised advanced clinical practice supervised by an ARNP or physician in the same specialty within the last year.
- (5) If the license has been expired, meet the requirements of chapter 246-12 WAC, Part 2.
- (6) If the licensee has been on inactive status, meet the requirements of chapter 246-12 WAC, Part 4.

During the time of the preceptorship, the nurse will be practicing under RN license and will not use the designation ARNP.

ARNP licensure must be reinstated before reapplying for prescriptive authority. At that time the CE requirement will be the same as if applying for prescriptive authority for the first time, as in WAC 246-840-410.)) (1) An ARNP may apply for and renew an inactive credential as identified in chapter 246-12 WAC, Part 4.

(2) An ARNP may apply for an inactive credential if he or she meets the following criteria:

- (a) Holds an active Washington state ARNP credential;
- (b) Does not have any sanctions or restrictions issued on the current ARNP license; and
- (c) Will not practice in Washington.

(3) Prior to returning to active status, the applicant must complete two hundred fifty hours for each two-year period of inactive license status for a maximum of one thousand hours of advanced clinical practice supervised by an ARNP or physician in the same practice area that the applicant is seeking licensure.

(a) The applicant must submit a written notification to the commission thirty days prior to the supervision experience identifying the name of the ARNP or physician who will be supervising the applicant.

(b) The supervising ARNP or physician must submit a written evaluation to the commission verifying that the applicant has successfully completed the required hours of supervised clinical practice and that the applicant's knowledge and skills are at a safe and appropriate level to practice as an ARNP.

(c) During the time of the supervision, the nurse will be practicing under his or her RN license and will not use the designation ARNP.

(4) A person with an inactive credential and who does not hold a current active advanced practice nursing license in any other United States jurisdiction, may return to active status. The applicant must:

(a) Meet the requirement identified in chapter 246-12 WAC, Part 4;

(b) Hold a registered nurse license in the state of Washington that is not subject to sanctions or restrictions;

(c) Submit a fee as identified in WAC 246-840-990;

(d) Submit evidence of current certification by the commission approved certification program identified in WAC 246-840-302(3);

(e) Submit a written declaration, on forms provided by the commission, of completion within the past two years of thirty contact hours of continuing education related to area of certification and practice; and

(f) Submit evidence of supervised advanced clinical practice.

(5) A person with an inactive credential and who has been in active practice in another United States jurisdiction may return to active status and must:

(a) Meet the requirements identified in chapter 246-12 WAC, Part 4;

(b) Meet the requirements of WAC 246-840-342; and

(c) Submit a fee as identified in WAC 246-840-990.

(6) To obtain prescriptive authority an applicant must apply as identified in WAC 246-840-410 once the ARNP license has been returned to active status.

NEW SECTION

WAC 246-840-367 Expired license. (1) If an ARNP license has expired for two years or less, the practitioner must:

(a) Meet the requirements of chapter 246-12 WAC, Part 2;

(b) Meet ARNP renewal requirements identified in WAC 246-840-360; and

(c) Meet the prescriptive authority requirements identified in WAC 246-840-450 if renewing prescriptive authority.

(2) Prior to returning to active status, the applicant must complete two hundred fifty hours for each two-year period of expired license status for a maximum of one thousand hours of advanced clinical practice supervised by an ARNP or physician in the same practice area that the applicant is seeking licensure.

(i) The applicant must submit a written notification to the commission thirty days prior to the supervision experience identifying the name of the ARNP or physician who will be supervising the applicant.

(ii) The supervising ARNP or physician must submit a written evaluation to the commission verifying that the applicant has successfully completed the required hours of supervised clinical practice and that the applicant's knowledge and skills are at a safe and appropriate level to practice as an ARNP.

(iii) During the time of the supervision, the nurse will be practicing under his or her RN license and will not use the designation ARNP.

(3) If the ARNP license has expired for more than two years and the practitioner has not been in active practice in another United States jurisdiction, the practitioner must:

(a) Meet the requirements of chapter 246-12 WAC, Part 2;

(b) Submit evidence of current certification by the commission approved certification program identified in WAC 246-840-302(3);

(c) Submit a written declaration, on forms provided by the commission, of completion within the past two years of thirty hours of continuing education related to area of certification and practice; and

(d) Submit evidence of the supervised advanced clinical practice hours.

(4) If the ARNP license has expired for more than two years and the practitioner has been in active advanced nursing practice in another jurisdiction, the practitioner must:

(a) Meet the requirements of chapter 246-12 WAC, Part 2;

(b) Meet the requirements of WAC 246-840-342; and

(c) Submit verification of active practice from any other United States jurisdiction.

(5) If the license has expired for two or more years, applicants may apply for prescriptive authority as identified in WAC 246-840-410 once the ARNP license has been returned to active status.

AMENDATORY SECTION (Amending WSR 97-13-100, filed 6/18/97, effective 7/19/97)

WAC 246-840-400 ARNP ~~((with))~~ prescriptive ~~((authorization))~~ authority. (1) An ~~((advanced registered nurse practitioner))~~ ARNP licensed under chapter 18.79 RCW when authorized by the nursing commission may prescribe drugs, medical equipment and therapies pursuant to applicable state and federal laws.

(2) The ARNP when exercising prescriptive authority is accountable for competency in:

~~((1))~~ (a) Patient selection;

~~((2))~~ (b) Problem identification through appropriate assessment;

~~((3))~~ (c) Medication ~~((and))~~ or device selection;

~~((4))~~ (d) Patient education for use of therapeutics;

~~((5))~~ (e) Knowledge of interactions of therapeutics, if any;

~~((6))~~ (f) Evaluation of outcome; and

~~((7))~~ (g) Recognition and management of complications and untoward reactions.

AMENDATORY SECTION (Amending WSR 00-21-119, filed 10/18/00, effective 11/18/00)

WAC 246-840-410 Application requirements for ARNP ~~((with))~~ prescriptive authority. (1) An ~~((advanced registered nurse practitioner))~~ ARNP who applies for ~~((authorization to prescribe drugs))~~ prescriptive authority must:

~~((1) Be currently designated))~~ (a) Have a current license as an ~~((advanced registered nurse practitioner))~~ ARNP in Washington

(2) Provide evidence of completion of) that is not subject to sanctions or restrictions issued by the commission; and

(b) Complete thirty contact hours of education in pharmacotherapeutics related to the applicant's scope of ~~((specialized and advanced))~~ practice ~~((and~~

(a)) within a two-year time period immediately prior to the date of application for prescriptive authority, unless the applicant has graduated within the past two years from a graduate program which meets the requirements identified in WAC 246-840-455 (1)(e).

The pharmacotherapeutic educational content shall include pharmacokinetic principles and their clinical application and the use of pharmacological agents in the prevention of illness, restoration, and maintenance of health.

~~((b) Are obtained within a two-year time period immediately prior to the date of application for prescriptive authority-~~

~~((e) Are))~~ (2) The ARNP applying for prescriptive authority must;

(a) Submit a completed application on a form provided by the commission;

(b) Submit a fee as specified in WAC 246-840-990; and

(c) Submit evidence of completion of thirty contact hours of education in pharmacotherapeutics related to the applicants scope of practice.

(3) If an ARNP does not apply for prescriptive authority within two years of graduation from the advanced practice

program, an additional thirty contact hours of pharmacotherapeutics shall be required.

(4) An ARNP who applies for a new or additional ARNP designation must send proof of pharmacology content appropriate to each designation.

(5) The thirty contact hours of pharmacotherapeutic education shall be obtained from the following:

((i)) (a) Study within the advanced ((format)) educational program; ((and)) or

((ii)) (b) Continuing education programs.

~~(Exceptions shall be justified to and approved by the commission.~~

~~(3) Submit a completed, notarized application on a form provided by the commission accompanied by a fee as specified in WAC 246-840-990.)~~ (6) Applicants who hold prescriptive authority from another state at the time of application may request an exemption to subsection (1)(b) and (2)(c) of this section if he or she provides evidence of at least two hundred fifty hours of independent advanced registered nurse practice with prescriptive authority in his or her scope of practice within the two years prior to application for prescriptive authority.

AMENDATORY SECTION (Amending WSR 06-01-102, filed 12/21/05, effective 1/21/06)

WAC 246-840-420 Authorized prescriptions by ((the)) ARNP with prescriptive authority. (1) Prescriptions for drugs, medical equipment and therapies must comply with all applicable state and federal laws and be within the ARNP's scope of practice.

(2) The ((prescriber)) advanced registered nurse practitioner must sign all prescriptions and include the initials ARNP or NP.

(3) An ARNP may not, under RCW 18.79.240(1) and chapter 69.50 RCW, prescribe controlled substances in Schedule I.

(4) Any ARNP with prescriptive ((authorization)) authority who prescribes controlled substances must ((register)) be registered with the drug enforcement administration.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-840-450 Renewal of ARNP prescriptive authority. (1) ARNP ((with)) prescriptive ((authorization)) authority must be renewed ((every two years)) at the time of renewal of the ARNP license. For renewal of ARNP ((with)) prescriptive ((authorization)) authority, the licensee must:

((1)) (a) Meet the requirements of WAC 246-840-360 ((1), (2), and (3)); and

((2)) (b) Provide ((documentation of fifteen additional)) a written declaration on forms provided by the commission of fifteen contact hours of continuing education during the renewal period in pharmacotherapeutics related to the licensee's scope of practice~~(-This continuing education must meet the requirements of WAC 246-840-410(3)(a) and chapter 246-12 WAC, Part 7.~~

~~(3) Submit a completed and notarized renewal application with a nonrefundable fee as specified in WAC 246-840-990.)~~ that are in addition to the thirty contact hours of con-

tinuing education required for renewal of the ARNP license as identified in WAC 246-840-360 (1)(c) and (2)(c) and 246-840-361; and

(c) Submit evidence of completion of continuing education contact hours when requested by the commission.

(2) If the licensee fails to renew his or her prescriptive ((authorization)) authority prior to the expiration date, then the individual may not prescribe until the prescriptive authority is renewed and is subject to the late renewal fee specified in WAC 246-840-990 and chapter 246-12 WAC, Part 2.

NEW SECTION

WAC 246-840-451 Continuing education requirements for ARNP prescriptive authority. (1) The fifteen hours of pharmacotherapeutic continuing education must:

(a) Relate to the ARNP's scope of certification and scope of practice; and

(b) Be obtained from continuing education courses in which the contact hour time is not less than fifty minutes.

(2) The same course taken more than once during a reporting cycle shall be only counted once.

NEW SECTION

WAC 246-840-455 Requirements for advanced registered nurse practice educational programs in Washington state. (1) Advanced nursing practice educational programs shall include content that culminates in a graduate degree with a concentration in advanced nursing practice as defined in WAC 246-840-010(2).

(2) Postmasters advanced nursing practice programs must meet all competencies designated for the ARNP role including clinical practica of no less than five hundred hours.

(3) The college or university graduate educational program shall have as its primary purpose the preparation of advanced practice nurses for roles as defined in WAC 246-840-300 and 246-840-302.

(4) Advanced nursing practice educational programs shall be accredited by a nursing or nursing-related accrediting organization recognized by the United States Department of Education (USDE) or the Council of Higher Education Accreditation (CHEA).

(5) Within ninety days from the effective date of this rule, existing accredited advanced practice educational programs shall submit to the commission current accreditation documentation from all accrediting bodies.

(6) Newly created advanced practice educational programs shall submit to the commission for review the following:

(a) Copies of the curricula within thirty days of sending the information to the accrediting agency;

(b) Other accreditation materials as requested by the commission; and

(c) Accreditation documentation from all accrediting agencies within thirty days from receipt of the report from the accreditation body.

(7) Advanced practice educational programs must submit to the commission for review the following:

(a) Accreditation documentation from all accrediting agencies, within thirty days from receipt of the report from the accreditation body; and

(b) For programs that are not fully accredited, the program must submit copies of self-evaluation report(s) and any interim report(s) provided to all nursing or nursing-related national accrediting agencies, at the time of notification from the accrediting agency that the program has not been fully accredited.

(8) Failure to submit curricula, self-evaluation report(s), interim report(s) or notice of accreditation reports and results as specified in subsections (5), (6) and (7) of this section, may result in the denial of ARNP initial licensure for the school's graduates until such time as the documentation is submitted.

(9) Advanced nursing practice educational programs shall meet the standards established by the national nursing or nursing-related accrediting agency.

(10) Failure to maintain accreditation status may result in denial of application of initial ARNP licensure for the school's graduates effective at the time in which the school became unaccredited.

(11) Advanced nursing practice educational course requirements shall include:

(a) Clinical and didactic course work that prepares the graduate to practice in the role of the ARNP consistent with the designation being sought for licensure;

(b) Advanced physiology/pathophysiology;

(c) Advanced health assessment;

(d) Diagnostic theory and management of health care problems;

(e) Advanced pharmacology which includes pharmacodynamics, pharmacokinetics, pharmacotherapeutics and pharmacological management of individual patients; and

(f) At least five hundred hours in direct patient care in the ARNP role with clinical preceptor supervision and faculty oversight.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-840-305	Criteria for formal advanced nursing education meeting the requirement for ARNP licensure.
WAC 246-840-320	Certification and certification program.
WAC 246-840-330	Commission approval of certification programs and commission recognition of new specialties.
WAC 246-840-345	ARNP designation in more than one area of specialty.
WAC 246-840-370	Termination of ARNP designation by the commission.
WAC 246-840-425	Seventy-two-hour limit.

WSR 09-01-063

PERMANENT RULES

PUBLIC DISCLOSURE COMMISSION

[Filed December 11, 2008, 2:17 p.m., effective January 11, 2009]

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

Purpose: To incorporate statutory changes in 2SHB 3104 (chapter 6, Laws of 2008) concerning domestic partners. New section WAC 390-05-222 Domestic partner—Definition, and amending WAC 390-17-305 Personal funds of a candidate and 390-20-110 Forms for lobbyist employers.

Citation of Existing Rules Affected by this Order: Amending WAC 390-17-305 and 390-20-110.

Statutory Authority for Adoption: RCW 42.17.370 and 2SHB 3104, section 1303.

Adopted under notice filed as WSR 08-20-111 on September 30, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 2, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 2, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 2, Repealed 0.

Date Adopted: December 11, 2008.

Vicki Rippie
Executive Director

NEW SECTION

WAC 390-05-222 Domestic partner—Definition. "Domestic partner" or "domestic partners," as those terms are used in chapter 42.17 RCW and Title 390 WAC, means "state registered domestic partners" as defined in RCW 26.60.020 (1).

AMENDATORY SECTION (Amending WSR 93-16-064, filed 7/30/93, effective 8/30/93)

WAC 390-17-305 Personal funds of a candidate. (1) The personal funds of a candidate include:

(a) Assets which the candidate has legal access to or control over, and which he or she has legal title to or an equitable interest in, at the time of candidacy;

(b) Income from employment;

(c) Dividends and proceeds from stocks and other investments;

(d) Income from trusts, if established before candidacy;

(e) Income from trusts established from bequests, even if established after candidacy;

(f) Personal gifts, if customarily received; and

(g) Proceeds from lotteries and similar games of chance.

(2) A candidate may also use, as personal funds, his or her portion of assets owned jointly with a spouse or domestic partner. If the candidate's financial interest is not specified, then the candidate's share is deemed to be half the value of the asset.

(3) If any person gives or loans the candidate funds in connection with his or her campaign, the funds are not considered personal funds of the candidate. Such funds are considered a contribution under chapter 42.17 RCW unless the loan meets the exemption provided in RCW 42.17.720(3).

AMENDATORY SECTION (Amending WSR 05-06-070, filed 3/1/05, effective 4/1/05)

WAC 390-20-110 Forms for lobbyist employers report. The official form for statement by employers of registered lobbyists as required by RCW 42.17.180 is designated "L-3," revised (~~2/05~~) 1/09. Copies of this form are available at the Commission Office 711 Capitol Way, Room 206, Evergreen Plaza Building, PO Box 40908, Olympia, Washington, 98504-0908. Any paper attachments shall be on 8-1/2" x 11" white paper.

((STRICKEN GRAPHIC

PUBLIC DISCLOSURE COMMISSION

711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

Employer's Lobbying Expenses

L3

2/05

THIS SPACE FOR OFFICE USE

1. Employer's Name (Use complete company, association, union or entity name.)

Attention (Identify person to whom inquiries about the information below should be directed; NOT the lobbyist.)

Mailing Address Telephone () -

City State Zip + 4 E-Mail Address Year Report Covers

THIS REPORT MUST BE FILED BY THE LAST DAY OF FEBRUARY. Include expenditures made and accrued during the previous calendar year for lobbying the Washington State Legislature and/or any state agency. Complete all sections. Use "none" or "0" when applicable.

2. Identify each of your lobbyists/lobbying firms below. In column 1, show the full amount of salary or fee each earned for lobbying. In column 2, show the full amount paid (plus obligated) for other lobbying related expenses that were made by or through the lobbyist and reported by the lobbyist on the monthly L-2 report (e.g., contributions to legislative candidates, reimbursement for entertainment expenses, etc.). Compute the subtotals across and down the columns; put the grand total of expenses incurred by or through lobbyists in the space designated.

Names of Registered Lobbyists (if payments were to lobbying firm, list firm name)	Col 1-Salary	Col 2-Other	Total Amount
	\$	\$	\$
Total From Attached Page			
Total Expenses By or Through Lobbyists			\$

Information continued on attached pages

DO NOT INCLUDE EXPENDITURES ALREADY ACCOUNTED FOR IN ITEM 2 ABOVE when completing Items 3 through 7 below.

3. Other expenditures made by the employer for lobbying purposes. Show total expenditures made/accrued:

- a. to vendors on behalf of or in support of registered lobbyists (e.g., entertainment credit card purchases); \$
- b. to or on behalf of expert witnesses or others retained to provide lobbying services who offer specialized knowledge or expertise that assists the employer's lobbying effort; _____
- c. for entertainment, tickets, passes, travel expenses (e.g., transportation, meals, lodging, etc.) and enrollment or course fees provided to legislators, state officials, state employees and members of their immediate families; (Also complete Item 9.) _____
- d. for composing, designing, producing and distributing informational materials for use primarily to influence legislation; and _____
- e. for grass roots lobbying expenses, including those previously reported by employer on Form L-6, and payments for lobbying communications to clients/customers (other than to corporate stockholders and members of an organization or union). _____

4. Political contributions to candidates for legislative or statewide executive office, committees supporting or opposing these candidates, or committees supporting or opposing statewide ballot measures. (Also complete Item 10.)

- a. Contributions made directly by the employer, including those previously reported on PDC Form L-3c. _____
- b. If contributions were made by a political committee associated, affiliated or sponsored by the employer, show the PAC name below. (Information reported by the PAC on C-4 reports need not be again included as part of this L-3 report.) _____
 Name of PAC _____

5. Independent expenditures supporting or opposing a candidate for legislative or statewide executive office or a statewide ballot measure. (Also complete Item 11.) _____

6. Expenditures to or on behalf of legislators, state officials, their spouses and dependents for the purpose of influencing, honoring or benefiting the legislator or official. (Normal course of business payments are not reportable.) (Also complete Item 14.) _____

7. Other lobbying-related expenditures, whether through or on behalf of a registered lobbyist. Attach list itemizing each expense (i.e., show date, recipient, purpose and amount). Do not include payments accounted for above. _____

Total Lobbying Expenses (Items 2 thru 7) \$

8. This report must be certified by the president, secretary-treasurer or similar office of lobbying employer.

Certification: I certify that this report is true, complete and correct to the best of my knowledge. Signature of Employer Officer Date

Printed Name and Title of Officer: _____

CONTINUE ON REVERSE

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Employer's Name

Year report covers:

9. Entertainment, tickets, passes, travel expenses (including transportation, meals, lodging, etc.) and enrollment or course fees provided to legislators, state officials, state employees and members of their immediate families. See instruction manual for details.

Name and Title	Cost or Value	Date and Description of Expense
	\$	
<input type="checkbox"/> Information continued on attached pages		

10. Contributions (not reported by the lobbyist) totalling over \$25 to a legislative or statewide executive office candidate, a committee formed to support or oppose one of these candidates or a committee supporting or opposing a statewide ballot measure. Do not list employer-affiliated PAC contributions.

Name of Recipient	Amount	Date (and, if In-Kind, Description)
	\$	
<input type="checkbox"/> Information continued on attached pages		

11. Independent expenditures in support of or opposition to a) a legislative or statewide executive office candidate or b) a statewide ballot proposition.

See instruction manual for definition of "independent expenditure."

Candidate's Name, Office Sought & Party or Ballot Proposition Number & Brief Description	Amount	Date and Description of Expense (Note if Support or Oppose)
	\$	
<input type="checkbox"/> Information continued on attached pages		

12. Compensation of \$1,500 or more during the preceding calendar year for employment or professional services paid to state elected officials, successful candidates for state office and each member of their immediate family.

Name	Relationship to Candidate or Elected Official if Member of Family	Amount (Code)**	Description of Consideration or Services Exchanged for Compensation
<input type="checkbox"/> Information continued on attached pages			

13. Compensation of \$1,500 or more during the preceding calendar year for professional services paid to any corporation, partnership, joint venture, association or other entity in which state elected official, successful state candidate or member of their immediate family hold office, partnership, directorship or ownership interest of 10% or more.

Firm Name	Person's Name	Amount (Code)**	Description of Consideration or Services Exchanged for Compensation
<input type="checkbox"/> Information continued on attached pages			

14. Any expenditure, not otherwise reported, made directly or indirectly to a state elected official, successful candidate for state office or member of their immediate family, if made to honor, influence or benefit the person because of his or her official position.

Name	Amount	Date and Purpose
	\$	
<input type="checkbox"/> Information continued on attached pages		

****DOLLAR
CODE AMOUNT**

A - \$1 to \$2,999
B - \$3,000 to \$14,999
C - \$15,000 to \$29,999

****DOLLAR
CODE AMOUNT**

D - \$30,000 to \$74,999
E - \$75,000 or more

STRICKEN GRAPHIC))

 PUBLIC DISCLOSURE COMMISSION 711 CAPITOL WAY RM 206 PO BOX 40908 OLYMPIA WA 98504-0908 (360) 753-1111 TOLL FREE 1-877-601-2828	<h2 style="margin: 0;">Employer's Lobbying Expenses</h2>	<h1 style="font-size: 2em; margin: 0;">L3</h1>	THIS SPACE FOR OFFICE USE 1/09
1. Employer's Name (Use complete company, association, union or entity name.)			
Attention (Identify person to whom inquiries about the information below should be directed; NOT the lobbyist.)			
Mailing Address		Telephone () - -	
City	State	Zip + 4	
		E-Mail Address	Year Report Covers
<p>THIS REPORT MUST BE FILED BY THE LAST DAY OF FEBRUARY. Include expenditures made and accrued during the previous calendar year for lobbying the Washington State Legislature and/or any state agency. Complete all sections. Use "none" or "0" when applicable.</p>			
2. Identify each of your lobbyists/lobbying firms below. In column 1 , show the full amount of salary or fee each earned for lobbying. In column 2 , show the full amount paid (plus obligated) for other lobbying related expenses that were made by or through the lobbyist and reported by the lobbyist on the monthly L-2 report (e.g., contributions to legislative candidates, reimbursement for entertainment expenses, etc.). Compute the subtotals across and down the columns; put the grand total of expenses incurred by or through lobbyists in the space designated.			
Names of Registered Lobbyists (if payments were to lobbying firm, list firm name)	Col 1-Salary	Col 2-Other	Total Amount
	\$	\$	\$
Total From Attached Page			
<input type="checkbox"/> Information continued on attached pages			Total Expenses By or Through Lobbyists \$
<p>DO NOT INCLUDE EXPENDITURES ALREADY ACCOUNTED FOR IN ITEM 2 ABOVE when completing Items 3 through 7 below.</p>			
3. Other expenditures made by the employer for lobbying purposes. Show total expenditures made/accrued:			
a. to vendors on behalf of or in support of registered lobbyists (e.g., entertainment credit card purchases);			\$
b. to or on behalf of expert witnesses or others retained to provide lobbying services who offer specialized knowledge or expertise that assists the employer's lobbying effort;			_____
c. for entertainment, tickets, passes, travel expenses (e.g., transportation, meals, lodging, etc.) and enrollment or course fees provided to legislators, state officials, state employees and members of their immediate families; (Also complete Item 9.)			_____
d. for composing, designing, producing and distributing informational materials for use primarily to influence legislation; and			_____
e. for grass roots lobbying expenses, including those previously reported by employer on Form L-6, and payments for lobbying communications to clients/customers (other than to corporate stockholders and members of an organization or union).			_____
4. Political contributions to candidates for legislative or statewide executive office, committees supporting or opposing these candidates, or committees supporting or opposing statewide ballot measures. (Also complete Item 10.)			
a. Contributions made directly by the employer, including those previously reported on PDC Form L-3c.			_____
b. If contributions were made by a political committee associated, affiliated or sponsored by the employer, show the PAC name below. (Information reported by the PAC on C-4 reports need not be again included as part of this L-3 report.)			_____
Name of PAC _____			_____
5. Independent expenditures supporting or opposing a candidate for legislative or statewide executive office or a statewide ballot measure. (Also complete Item 11.)			
6. Expenditures to or on behalf of legislators, state officials, or their spouse, registered domestic partner and dependents for the purpose of influencing, honoring or benefiting the legislator or official. (Normal course of business payments are not reportable.) (Also complete Item 14.)			
7. Other lobbying-related expenditures, whether through or on behalf of a registered lobbyist. Attach list itemizing each expense (i.e., show date, recipient, purpose and amount). Do not include payments accounted for above.			
Total Lobbying Expenses			\$
(Items 2 thru 7)			
8. This report must be certified by the president, secretary-treasurer or similar office of lobbying employer.			
Certification: I certify that this report is true, complete and correct to the best of my knowledge.		Signature of Employer Officer	Date
Printed Name and Title of Officer:			

CONTINUE ON REVERSE

Employer's Name	Year report covers:
-----------------	---------------------

9. Entertainment, tickets, passes, travel expenses (including transportation, meals, lodging, etc.) and enrollment or course fees provided to legislators, state officials, state employees and members of their immediate families. See instruction manual for details.

Name and Title	Cost or Value	Date and Description of Expense
	\$	

Information continued on attached pages

10. Contributions (not reported by the lobbyist) totaling over \$25 to a legislative or statewide executive office candidate, a committee formed to support or oppose one of these candidates or a committee supporting or opposing a statewide ballot measure. Do not list employer-affiliated PAC contributions.

Name of Recipient	Amount	Date (and, if In-Kind, Description)
	\$	

Information continued on attached pages

11. Independent expenditures in support of or opposition to a) a legislative or statewide executive office candidate or b) a statewide ballot proposition.
See instruction manual for definition of "independent expenditure."

Candidate's Name, Office Sought & Party or Ballot Proposition Number & Brief Description	Amount	Date and Description of Expense (Note if Support or Oppose)
	\$	

Information continued on attached pages

12. Compensation of \$2,000 or more during the preceding calendar year for employment or professional services paid to state elected officials, successful candidates for state office and each member of their immediate family.

Name	Relationship to Candidate or Elected Official if Member of Family	Amount (Code)**	Description of Consideration or Services Exchanged for Compensation

Information continued on attached pages

13. Compensation of \$2,000 or more during the preceding calendar year for professional services paid to any corporation, partnership, joint venture, association or other entity in which state elected official, successful state candidate or member of their immediate family hold office, partnership, directorship or ownership interest of 10% or more.

Firm Name	Person's Name	Amount (Code)**	Description of Consideration or Services Exchanged for Compensation

Information continued on attached pages

14. Any expenditure, not otherwise reported, made directly or indirectly to a state elected official, successful candidate for state office or member of their immediate family, if made to honor, influence or benefit the person because of his or her official position.

Name	Amount	Date and Purpose
	\$	

Information continued on attached pages

****DOLLAR**
CODE AMOUNT
 A - \$1 to \$3,999
 B - \$4,000 to \$19,999
 C - \$20,000 to \$39,999

****DOLLAR**
CODE AMOUNT
 D - \$40,000 to \$99,999
 E - \$100,000 or more

WSR 09-01-065
PERMANENT RULES
HORSE RACING COMMISSION

[Filed December 11, 2008, 3:24 p.m., effective January 11, 2009]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The executive director of the executive ethics board believes that once this amendment has been adopted, there would be no special privilege and therefore no ethical issue would exist.

Purpose: To amend WAC 260-24-650 Clocker, to allow the commission to designate those Class A racing associations where commission clockers may enter daily workout records into Equibase, as long as the Class A racing association compensates the commission the full costs associated with entering the daily record information.

Citation of Existing Rules Affected by this Order: Amending WAC 260-24-650.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 08-21-011 on October 3, 2008.

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

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

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

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

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

Date Adopted: December 11, 2008.

R. J. Lopez
Deputy Secretary

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

WAC 260-24-650 Clocker. (1) The clocker is responsible for the following duties:

(a) Be present during training hours at each association to record the time and distance of each horse's official workout. (A clocker is not required to be present for any other workouts);

(b) Prepare a daily record of all official workouts, which must include:

- (i) The name of each horse;
- (ii) The name of the track and training center where the official workout occurred; and
- (iii) The time and distance of each horse's official workout;

(c) Deliver the daily record of all official workouts occurring on association grounds to the racing secretary at the end of each day's training.

(2) At those Class A racing associations designated by the commission, a commission clocker may enter into equibase the daily record of all official workouts occurring on association grounds as long as the commission is compensated by the racing association for the full cost associated with entering the daily record information.

(3) The clocker recording official workouts off the association grounds, during the association's scheduled race meet and training dates, will deliver the daily record of all official workouts to the racing secretary within twenty-four hours.

~~((3))~~ (4) Approval for a clocker's license will be based on the individual's knowledge of and proficiency in performing clocking activities.

WSR 09-01-068
PERMANENT RULES
PUBLIC DISCLOSURE COMMISSION

[Filed December 12, 2008, 10:39 a.m., effective January 12, 2009]

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

Purpose: To update rules to provide guidance and clarification to filers. Amendments to WAC 390-20-120 Forms for report of legislative activity by public agencies, provide for the name and contact information of the person within each public agency who prepared the public agency lobbying report (PDC L-5). Amendments to WAC 390-16-207 will clarify that all candidates with contribution limits, including judicial and county candidates, are subject to limits when receiving in-kind contributions.

Citation of Existing Rules Affected by this Order: Amending WAC 390-20-120 and 390-16-207.

Statutory Authority for Adoption: RCW 42.17.370.

Adopted under notice filed as WSR 08-20-112 on September 30, 2008.

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

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

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

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

Date Adopted: December 12, 2008.

Vicki Rippie
Executive Director

AMENDATORY SECTION (Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

WAC 390-16-207 In-kind contributions—Explanation and reporting. (1) An in-kind contribution occurs when a person provides goods, services or anything of value, other than money or its equivalent, to a candidate or political committee free-of-charge or for less than fair market value, unless the item or service given is not a contribution according to RCW 42.17.020 or WAC 390-17-405.

(2) An in-kind contribution also occurs when a person makes an expenditure that

- Supports or opposes a candidate or a ballot measure,
- Meets the definition of contribution in RCW 42.17.020 or WAC 390-05-210, and
- Is other than a monetary contribution made directly to a candidate or political committee.

For example, an in-kind contribution occurs when a person, after collaborating with a candidate or a candidate's agent, purchases space in a newspaper for political advertising supporting that candidate or opposing that candidate's opponent.

(3) An in-kind contribution also occurs when a person makes an electioneering communication that is a contribution as provided in RCW 42.17.570.

(4) According to RCW 42.17.095 and WAC 390-16-238, a candidate may not use his or her campaign funds to make a contribution, including an in-kind contribution, to another candidate or a political committee. However, under RCW 42.17.095, a candidate may use surplus funds as defined in RCW 42.17.020 to make a contribution to a political party or caucus political committee.

(5) In-kind contributions to recipients who have limits under RCW 42.17.640 or 42.17.645.

(a) If a (~~(state office)~~) candidate receives in-kind contributions from any person valued at more than \$25 in the aggregate (~~(during)~~ for an election (~~(cycle)~~), the contribution is reportable by the giver and the recipient pursuant to chapter 42.17 RCW and is subject to the applicable contribution limit provided in RCW 42.17.640 or 42.17.645.

(b) If a bona fide political party or legislative caucus committee receives in-kind contributions from any person valued at more than \$25 in the aggregate during a calendar year, the contribution is reportable by the giver and the recipient pursuant to chapter 42.17 RCW and is subject to the applicable contribution limit provided in RCW 42.17.640.

(c) If (~~(a state)~~) an elected official against whom recall charges have been filed or a political committee supporting the recall of (~~(a state)~~) an elected official receives in-kind contributions from any person valued at more than \$25 in the aggregate during a recall campaign, the contribution is reportable by the giver and the recipient pursuant to chapter 42.17 RCW and is subject to the applicable contribution limits provided in RCW 42.17.640 or 42.17.645.

(6) Political committees that make in-kind contributions. Except as provided for in subsection (5) of this section, a political committee that makes in-kind contributions to a candidate or political committee totaling more than \$50 in the aggregate during a reporting period must identify the recipient and the amount of the contribution as part of its C-4 report covering that period.

If the in-kind contribution is in the form of an expenditure that has been obligated, but not yet paid, the identity of the recipient candidate or political committee, along with a good faith estimate of the value of the contribution, must be disclosed in part 3 of Schedule B, in addition to the other information required by the form. When the expense is paid, the recipient's name and the amount of the contribution must be disclosed on Schedule A, along with the other information required by the form.

If a political committee provides equipment, property or anything else of value owned, leased or controlled by it to a candidate or political committee, the contributing committee must attach a statement to its C-4 report showing the name of the candidate or political committee to whom the contribution was made and the date, description and fair market value of the in-kind contribution.

(7) Reporting by recipients. Except as provided in subsection (5) of this section, in-kind contributions from one source are not reportable by the recipient candidate or political committee until the aggregate value of all in-kind contributions received from that source during a reporting period is more than \$50. If this threshold is met, the in-kind contributions must be reported in part 1 of Schedule B to the C-4 report covering that reporting period.

(8) Valuing in-kind contributions.

(a) For purposes of determining the value of goods or services provided as in-kind contributions, refer to WAC 390-05-235, Definition—Fair market value.

(b) If an expenditure that constitutes an in-kind contribution is made, the value of the in-kind contribution to a particular candidate or political committee is the portion of the expense that benefits the candidate or political committee.

(9) Application of RCW 42.17.105—Last-minute contributions.

(a) If an expenditure that constitutes an in-kind contribution is made no later than twenty-two days before a general election and written notice of the in-kind contribution is in the possession of the recipient candidate committee or political committee twenty-two or more days before that general election, the contribution is not subject to the respective \$5,000 or \$50,000 maximum amounts specified in RCW 42.17.105.

(b) If an in-kind contribution is in the form of personal services donated to a campaign for the duration of the twenty-one days before a general election, and if written notice of the value of this donation is in the possession of the recipient candidate or political committee twenty-two or more days before the election, that in-kind contribution is not subject to the respective \$5,000 or \$50,000 maximum amounts specified in RCW 42.17.105.

AMENDATORY SECTION (Amending WSR 02-03-018, filed 1/4/02, effective 2/4/02)

WAC 390-20-120 Forms for report of legislative activity by public agencies. The official form for the report of legislative activity by public agencies as required by RCW 42.17.190 is designated "L-5," revised (~~(1/02)~~) 1/09. Copies of this form are available at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington

98504-0908. Any attachments shall be on 8-1/2" x 11" white paper.

((STRICKEN GRAPHIC))

PUBLIC DISCLOSURE COMMISSION

711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

PDC FORM L-5 (Rev 1/02)	LOBBYING BY STATE AND LOCAL GOVERNMENT AGENCIES
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Instructions Are Printed On Reverse

Agency or Governmental Entity Name and Address	Date prepared	Report for calendar quarter ending
	County	Month Year

PERSONS WHO LOBBIED THIS QUARTER

Name	Job title	Annual salary \$	% of time spent lobbying during quarter
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General description of lobbying activities or objectives. (Include bill or WAC numbers, if any)

Check if person spent more than \$15 of non-public funds in lobbying. See instructions on reverse.

Name	Job title	Annual salary \$	% of time spent lobbying during quarter
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General description of lobbying activities or objectives. (Include bill or WAC numbers, if any)

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Name	Job title	Annual salary \$	% of time spent lobbying during quarter
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General description of lobbying activities or objectives. (Include bill or WAC numbers, if any)

Check if person spent more than \$15 of non-public funds in lobbying. See instructions on reverse.

EXPENDITURES FOR LOBBYING THIS QUARTER

Report only the separately identifiable and measurable expenditures incurred for lobbying purposes

Salaries Of Persons Who Lobbied (Include only portion of quarterly salary attributable to lobbying)	\$
Travel (Include food, lodging, per diem payments and cost of transportation used)	\$
Brochures And Other Publications Whose Principal Purpose Is To Influence Legislation	\$
Consultants Or Other Contractual Services	\$
Total This Quarter	\$
Total To Date This Year	\$

CERTIFICATION: I certify that to the best of my knowledge the above is a true, complete and correct statement in accordance with RCW 42.17.190.	Signature of agency head
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Attach additional sheets if more room is required

((STRICKEN GRAPHIC))

((STRICKEN GRAPHIC _____

THESE INSTRUCTIONS APPLY ONLY TO GOVERNMENT AGENCIES REPORTING PURSUANT TO RCW 42.17.190.

WHO SHOULD REPORT?

Each state agency, county, city, town, municipal corporation, quasi-municipal corporation or special purpose district which expends public funds for "lobbying". Please study the definitions of what is and is not included in lobbying to determine if your agency is required to report.

"Lobbying" means attempting to influence the passage or defeat of any legislation by the state legislature or the adoption or rejection of any rule, standard, rate or other legislative enactment by any state agency under chapters 28.19 and 34.04 RCW. "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter which may be the subject of action by either house, or any committee of the legislature and all bills and resolutions which having passed both houses, are pending approval by the Governor.

LOBBYING DOES NOT INCLUDE

1. Requests for appropriations by a state agency to OFM pursuant to RCW 43.88 or requests by OFM to the legislature for appropriations other than its own agency budget. Note that an agency representative who, in person, contacts a legislator or committee on appropriations matters is lobbying.
2. Recommendations or reports to the legislature in response to a legislative request expressly requesting or directing a specific study, recommendation or report on a particular subject.
3. Official reports including recommendations submitted annually or biennially by a state agency as required by law.
4. Requests, recommendations or other communications between or within state agencies or between or within local agencies.
5. Telephone conversations or preparation of written correspondence.
6. Preparation or adoption of policy positions within an agency or group of agencies. Note that once a position is adopted, further action to advocate it may constitute lobbying.
7. Attempts to influence federal or local legislation.

LOBBYING NOT REPORTABLE

1. In person lobbying totaling no more than four days or parts of days during any three month period in aggregate for all officials and employees of the agency. In person lobbying includes testifying at legislative committee hearings and state agency hearings on rules and regulations but does not include attendance merely to monitor or observe testimony and debate.
2. In person lobbying by any elected official on behalf of his agency or in connection with his powers, duties or compensation.

EXPENDITURES OVER \$15 OF NON-PUBLIC FUNDS

Any person (including an elected official) who expends more than \$15 of personal or non-public funds for or on behalf of one or more legislators, state elected officials or state public officers or employees in connection with in person lobbying must be listed on the L-5 report. Attach a page showing the spender's name, and date, the source of funds and amount spent, and for whom the money was spent. Examples of these expenditures include entertainment, dinners and campaign contributions.

REPORTS REQUIRED

The L-5 report is submitted to cover each calendar quarter in which lobbying occurs. No report is required if no reportable lobbying has taken place during the quarter.

DUE DATES: April 30 (1st quarter) July 31 (2nd quarter)
October 31 (3rd quarter) January 31 (4th quarter)

ONE CONSOLIDATED REPORT SHOULD BE SUBMITTED TO INCLUDE LOBBYING ACTIVITIES OF ALL DIVISIONS OR OFFICES OF AN AGENCY.

Public Disclosure Commission
Send Reports To: 711 Capitol Way, Rm 206
PO Box 40908
Olympia, WA 98504-0908

SPECIAL NOTE: In lieu of reporting as provided in RCW 42.17.190 any agency or lobbyist for an agency may elect to register and report as provided in RCW 42.17.150, .160, .170 and .180. An agency so choosing must notify PDC of that fact and obtain necessary reporting forms and instructions.

_____STRICKEN GRAPHIC))

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PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
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PDC FORM L-5 <small>(Rev 1/09)</small>	LOBBYING BY STATE AND LOCAL GOVERNMENT AGENCIES
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Instructions Are Printed On Reverse

Agency or Governmental Entity Name and Address	Date prepared	Report for calendar quarter ending Month _____ Year _____
	County _____	

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Consultants Or Other Contractual Services	\$
Total This Quarter	\$
Total To Date This Year	\$

CERTIFICATION: I certify that to the best of my knowledge the above is a true, complete and correct statement in accordance with RCW 42.17.190.	Name of employee completing report
	Signature of agency head
	Work telephone Number
	Work E-mail

Attach additional sheets if more room is required

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WSR 09-01-071
PERMANENT RULES
NOXIOUS WEED
CONTROL BOARD

[Filed December 15, 2008, 7:25 a.m., effective January 16, 2009]

Effective Date of Rule: January 16, 2009.

Purpose: The Washington state noxious weed list provides the basis for noxious weed control efforts for county and district weed control boards and other entities. It also provides guidelines for the state noxious weed control board.

This proposal amends chapter 16-750 WAC by (1) adding three new weed species to the Class A list (shiny geranium, *Geranium lucidum*; false brome, *Brachypodium sylvaticum*; and flowering rush, *Butomus umbellatus* and two new weed species to the Class C list (Himalayan blackberry, *Rubus armeniacus*; evergreen blackberry, *Rubus laciniatus*); (2) changing one weed species from the Class B list to the Class A list (smooth cordgrass, *Spartina alterniflora*); (3) changing the designation of nine Class B weeds (white bryony, *Bryonia alba*; Bohemian knotweed, *Polygonum bohemicum*; giant knotweed, *P. sachalinense*; Himalayan knotweed, *P. polystachyum*; Japanese knotweed, *P. cuspidatum*; annual bugloss, *Anchusa arvensis*; myrtle spurge, *Euphorbia myrsinites*; yellow starthistle; *Centaurea solstitialis*); and (4) changing the meeting schedule of the state noxious weed control board.

Citation of Existing Rules Affected by this Order: Amending WAC 16-750-005, 16-750-011, 16-750-015, and 16-750-135.

Statutory Authority for Adoption: Chapter 17.10 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 08-23-065 on November 17, 2008.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: December 15, 2008.

Butch Klaveano
Chair

AMENDATORY SECTION (Amending WSR 07-24-023, filed 11/28/07, effective 1/1/08)

WAC 16-750-005 State noxious weed list—Class A noxious weeds.

Common Name	Scientific Name
bean-caper, Syrian	<i>Zygophyllum fabago</i>
blueweed, Texas	<i>Helianthus ciliaris</i>
<u>brome, false</u>	<u><i>Brachypodium sylvaticum</i></u>
broom, Spanish	<i>Spartium junceum</i>
buffalobur	<i>Solanum rostratum</i>
bulrush, ricefield	<i>Schoenoplectus mucronatus</i>
clary, meadow	<i>Salvia pratensis</i>
cordgrass, common	<i>Spartina anglica</i>
cordgrass, dense flower	<i>Spartina densiflora</i>
cordgrass, salt meadow	<i>Spartina patens</i>
<u>cordgrass, smooth</u>	<u><i>Spartina alterniflora</i></u>
crupina, common	<i>Crupina vulgaris</i>
flax, spurge	<i>Thymelaea passerina</i>
four o'clock, wild	<i>Mirabilis nyctaginea</i>
<u>geranium, shiny</u>	<u><i>Geranium lucidum</i></u>
goatsrue	<i>Galega officinalis</i>
hawkweed, European	<i>Hieracium sabaudum</i>
hawkweed, yellow devil	<i>Hieracium floribundum</i>
hogweed, giant	<i>Heracleum mantegazzianum</i>
hydrilla	<i>Hydrilla verticillata</i>
johnsongrass	<i>Sorghum halepense</i>
knapweed, bighead	<i>Centaurea macrocephala</i>
knapweed, Vochin	<i>Centaurea nigrescens</i>
kudzu	<i>Pueraria montana var. lobata</i>
milfoil, variable-leaf	<i>Myriophyllum heterophyllum</i>
mustard, garlic	<i>Alliaria petiolata</i>
nightshade, silverleaf	<i>Solanum elaeagnifolium</i>
primrose-willow, floating	<i>Ludwigia peploides</i>
<u>rush, flowering</u>	<u><i>Butomus umbellatus</i></u>
sage, clary	<i>Salvia sclarea</i>
sage, Mediterranean	<i>Salvia aethiopis</i>
spurge, eggleaf	<i>Euphorbia oblongata</i>
starthistle, purple	<i>Centaurea calcitrapa</i>
sweetgrass, reed	<i>Glyceria maxima</i>
thistle, Italian	<i>Carduus pycnocephalus</i>
thistle, milk	<i>Silybum marianum</i>
thistle, slenderflower	<i>Carduus tenuiflorus</i>
velvetleaf	<i>Abutilon theophrasti</i>
woad, dyers	<i>Isatis tinctoria</i>

AMENDATORY SECTION (Amending WSR 07-24-023, filed 11/28/07, effective 1/1/08)

WAC 16-750-011 State noxious weed list—Class B noxious weeds.

Name		Will be a "Class B designate" in all lands lying within:	
(1)	alyssum, hoary <i>Berteroa incana</i>	(a)	regions 1, 2, 5, 6, 8, 9, 10
		(b)	region 3, except Okanogan County
		(c)	Okanogan County, of region 3, except Ranges 29 through 31 East of Townships 37 through 40 North
		(d)	Adams and Whitman counties of region 7.
(2)	arrowhead, grass-leaved <i>Sagittaria graminea</i>	(a)	regions 1, 3, 4, 6, 7, 8, 9, 10
		(b)	region 2 except Lake Roesiger, Lake Serene, Lake Loma and Echo Lake in Snohomish County
		(c)	region 5 except Mason Lake in Mason County.
(3)	blackgrass <i>Alopecurus myosuroides</i>	(a)	regions 1, 2, 3, 5, 6, 8, 9, 10
		(b)	Ferry, Stevens, Pend Oreille counties of region 4
		(c)	Adams County of region 7.
(4)	blueweed <i>Echium vulgare</i>	(a)	regions 1, 2, 3, 4, 5, 6, 8, 9, 10
		(b)	region 7 except for an area starting at the Stevens County line on SR 291 south to the SR 291 bridge over the Little Spokane River, thence upstream along the Little Spokane River to the first Rutter Parkway Bridge; thence south along the Rutter Parkway to the intersection of Rutter Parkway and Indian Trail Road; thence southerly along Indian Trail Road to a point three miles south (on section line between sections 22 and 27, T-26N, R-42E); thence due west to a point intersecting the line between Ranges 41 and 42; thence north along this line to a point 1/4 mile south of Charles Road; thence northwesterly parallel to Charles Road to a point 1/4 miles south of the intersection of Charles Road and West Shore Road; thence northerly along West Shore Road to the Spokane River (Long Lake); thence southeasterly along the Spokane River to the point of beginning.
(5)	broom, Scotch <i>Cytisus scoparius</i>	(a)	regions 3, 4, 6, 7, 9, 10.
(6)	bryony, white <i>Bryonia alba</i>	(a)	regions 1, 2, 3, 4, 5, 6, 8, 9
		(b)	region 7 except Whitman County
		(c)	Franklin (County) and <u>Asotin counties</u> of region 10.
(7)	bugloss, common <i>Anchusa officinalis</i>	(a)	regions 1, 2, 3, 5, 6, 8, 9, 10
		(b)	region 4 except Stevens and Spokane counties
		(c)	Lincoln, Adams, and Whitman counties of region 7.
(8)	bugloss, annual <i>Anchusa arvensis</i>	(a)	regions 1, 2, 3, 4, 5, 6, 8, 9
		(b)	Lincoln and Adams counties
		(c)	Whitman County except ranges 43 through 46 East of Townships 16 through 20 North((-))
		(d)	<u>Asotin County of region 10.</u>
(9)	butterfly bush <i>Buddleja davidii</i>	(a)	Pend Oreille County of region 4
		(b)	Grays Harbor County, and that portion of Thurston County lying below the ordinary high-water mark of the Nisqually River in region 5
		(c)	Kittitas County of region 6
		(d)	Lincoln County of region 7.

Name	Will be a "Class B designate" in all lands lying within:
(10) camelthorn <i>Alhagi maurorum</i>	(a) regions 1, 2, 3, 4, 5, 7, 8, 9 (b) region 6 except those portions of Sections 23, 24, 25, and 29 through 36, T16N, R27E, W.M. lying outside Intercounty Weed District No. 52 and except Sections 1 through 12, T15N, R27E, W.M. in Grant County and except the area west of Highway 17 and north of Highway 26 in Adams County (c) Franklin, Columbia, Garfield, and Asotin counties of region 10 (d) an area beginning at the Washington—Oregon border at the southwest portion of section 5, R32E, T6N, then north to the northwest corner of section 3, R32E, T7N, then east to the northeast corner of section 3, R36E, T7N, then south to southeast portion of section 15, R36E, T6N, at the Washington—Oregon border, then west along the Washington—Oregon border to the point of beginning.
(11) carrot, wild <i>Daucus carota</i>	(a) regions 3, 7 (except where intentionally cultivated) (b) Spokane and Ferry counties of region 4 (except where intentionally cultivated) (c) region 6, except Yakima County (except where intentionally cultivated) (d) region 9, except Yakima County (except where intentionally cultivated) (e) region 10, except Walla Walla County (except where intentionally cultivated).
(12) catsear, common <i>Hypochaeris radicata</i>	(a) regions 3, 4, 6, 7, 10 (b) region 9 except Klickitat County.
(13) chervil, wild <i>Anthriscus sylvestris</i>	(a) regions 1, 3, 4, 5, 6, 7, 9, 10 (b) region 2 except Guemes Island in Skagit County (c) region 8 except Clark County.
(14) cinquefoil, sulfur <i>Potentilla recta</i>	(a) regions 1, 3, 8, 10 (b) region 2 except Skagit County (c) region 4 except Stevens, Ferry, and Pend Oreille counties (d) region 5 except Thurston County (e) region 6 except Yakima County (f) region 7 except Spokane County (g) region 8 except Lewis County (h) region 9 except Klickitat County.
(15) cordgrass, smooth <i>Spartina alterniflora</i>	(a) regions 1, 3, 4, 5, 6, 7, 9, 10 (b) region 2 except Padilla Bay of Skagit County (c) region 8 except bays and estuaries of Pacific County.
(16) daisy, oxeye <i>Leucanthemum vulgare</i>	(a) regions 7, 10 (b) region 9 except those areas lying within Klickitat and Yakima counties west of Range 13 East (c) region 6 except those areas lying within Yakima and Kittitas counties west of Range 13 E.
((17)) <u>(16)</u> elodea, Brazilian <i>Egeria densa</i>	(a) regions 3, 4, 6, 7, 9, 10 (b) Lewis County of region 8 (c) Clallam County of region 1

Name	Will be a "Class B designate" in all lands lying within:
((18)) (17) fanwort <i>Cabomba caroliniana</i>	(d) King County of region 5, except lakes Washington, Sammamish, Union and Fenwick.
((19)) (18) fennel, common <i>Foeniculum vulgare</i> (except var. <i>azoricum</i>)	(a) regions 1, 2, 3, 4, 5, 6, 7, 9, 10 (b) region 8 except T8N, R3W of Cowlitz County.
((20)) (19) fieldcress, Austrian <i>Rorippa austriaca</i>	(a) regions 3, 4, 6, 7, 8, 9, 10 (b) region 1 except the incorporated areas of Port Townsend (c) region 2 except the incorporated areas of Anacortes and Mount Vernon (d) region 5 except King and Kitsap counties.
((21)) (20) floating heart, yellow <i>Nymphoides peltata</i>	(a) regions 1, 2, 3, 4, 5, 6, 8, 9 (b) regions 7 and 10 except within the Palouse River Canyon from Big Palouse Falls to the Snake River.
((22)) (21) gorse <i>Ulex europaeus</i>	(a) regions 1, 2, 3, 5, 6, 7, 8, 9, 10 (b) region 4 except the Spokane River between Long Lake Dam and Nine Mile Dam.
((23)) (22) hawkweed, mouseear <i>Hieracium pilosella</i>	(a) regions 1, 3, 4, 6, 7, 9, 10 (b) Skagit, Island, and Whatcom counties of region 2 (c) Thurston, Kitsap, Pierce, and King counties of region 5 (d) Wahkiakum, Clark, Skamania, Cowlitz, and Lewis counties of region 8.
((24)) (23) hawkweed, orange <i>Hieracium aurantiacum</i>	(a) regions 1, 2, 3, 4, 6, 7, 8, 9, 10 (b) region 5 except Thurston County (c) Thurston County lying within T17N, R1W, S31; T16N, R2W, S30 W1/2; T16N, R3W, S25, SE1/4; T16N, R3W, S36, N1/2; T16N, R2W, S31, NW1/4.
((25)) (24) hawkweed, polar <i>Hieracium atratum</i>	(a) regions 1, 3, 6, 9, 10 (b) Skagit County of region 2 (c) Ferry County of region 4 (d) Pierce, Thurston and King counties of region 5 (e) Lincoln and Adams counties of region 7 (f) Lewis County of region 8.
((26)) (25) hawkweed, queen-devil <i>Hieracium glomeratum</i>	(a) regions 1, 2, 3, 4, 6, 7, 8, 9, 10 (b) region 5 outside the boundaries of Mt. Rainier National Park.
((27)) (26) hawkweed, smooth <i>Hieracium laevigatum</i>	(a) regions 1, 2, 3, 5, 6, 7, 8, 9, 10 (b) Ferry County of region 4.
((28)) (27) hawkweed, yellow <i>Hieracium caespitosum</i>	(a) regions 1, 3, 4, 5, 6, 7, 8, 9, 10 (b) San Juan, Island, and Skagit counties of region 2.
((29)) (28) helmet, policeman's <i>Impatiens glandulifera</i>	(a) regions 1, 2, 3, 5, 6, 7, 8, 10 (b) region 4 except Stevens and Pend Oreille counties (c) region 9 except sections 32, 33 and 34 of T6N, R12E, and sections 4, 5, 6, and 7 of T5N, R12E, and section 12 of T5N, R11E, of Klickitat County.
((30)) (29) herb-Robert <i>Geranium robertianum</i>	(a) regions 1, 3, 4, 6, 7, 8, 9, 10 (b) region 2 except Whatcom County (c) region 5 except Thurston County.
	(a) regions 3, 4, 6, 7, 9, 10

Name	Will be a "Class B designate" in all lands lying within:	
((31)) (30) houndstongue <i>Cynoglossum officinale</i>	(a)	Kittitas County of region 6
	(b)	Douglas and Chelan counties of regions 3 and 6.
((32)) (31) indigobush <i>Amorpha fruticosa</i>	(a)	regions 1, 2, 3, 4, 5, 6
	(b)	regions 7 and 10 except within 200 feet of the Snake River from Central Ferry downstream
	(c)	regions 8, 9, and 10 except within 200 feet of the Columbia River.
((33)) (32) knapweed, black <i>Centaurea nigra</i>	(a)	regions 1, 2, 3, 4, 7, 9, 10
	(b)	region 5 except that area below the ordinary highwater mark of the Nisqually River, beginning at Alder Dam and downstream to the mouth of the Nisqually River in Pierce and Thurston counties
	(c)	region 6 except Kittitas County
	(d)	region 8 except Clark County.
((34)) (33) knapweed, brown <i>Centaurea jacea</i>	(a)	regions 1, 2, 3, 4, 7, 9, 10
	(b)	region 5 except that area below the ordinary highwater mark of the Nisqually River, beginning at Alder Dam and downstream to the mouth of the Nisqually River in Pierce and Thurston counties
	(c)	region 6 except Kittitas County
	(d)	region 8 except Clark County.
((35)) (34) knapweed, diffuse <i>Centaurea diffusa</i>	(a)	regions 1, 2, 5, 8
	(b)	Grant County lying in Townships 13 through 16 North, Ranges 25 through 27 East; Townships 17 and 18 N., Ranges 25 through 30 East; Townships 19 and 20 North, Ranges 29 and 30 East; T21N, R23E, Sections 1 through 30; T21N, R26E., Sections 5, 6, 7, 8, 17, and 18; East 1/2 Township 21N, Range 27E.; T21N, Ranges 28 through 30 E; those portions of Townships 22 through 28N, Ranges 28 through 30 E.; those portions of Township 22 through 28N., Ranges 23 through 30E. lying in Grant County; all W.M.
	(c)	Adams County except those areas within T15N, R36E, Section 36; T15N, R37E, Sections 22, 26, 27, 28, 31, 32, 33 and 34; T15N, R37E, western half of Sections 23, 24 and 25; T15N, R38E, Sections 2, 10, 11, 14, 15, 19 and 20; T16N, R38E, Sections 34 and 35; T17N, R37E, Sections 5 and 6
	(d)	Franklin County of regions 9 and 10.
((36)) (35) knapweed, meadow <i>Centaurea jacea x nigra</i>	(a)	regions 1, 2, 3, 4, 7, 9, 10
	(b)	region 5 except that area below the ordinary highwater mark of the Nisqually River, beginning at Alder Dam and downstream to the mouth of the Nisqually River in Pierce and Thurston counties
	(c)	region 6 except Kittitas County
	(d)	region 8 except Clark County.
((37)) (36) knapweed, Russian <i>Acroptilon repens</i>	(a)	regions 1, 2, 5, 7, 8
	(b)	region 4 except that area lying within the boundaries of the Colville Indian Reservation within Ferry County

Name	Will be a "Class B designate" in all lands lying within:
((38)) (37) knapweed, spotted <i>Centaurea stoebe</i>	(c) Adams County of region 6 except for the area west of Highway 17 and North of Highway 26
	(d) Intercounty Weed District No. 52
	(e) region 10 except Franklin County.
	(a) regions 1, 2, 3, 5, 6, 9
	(b) Ferry County of region 4
((39)) (38) knotweed, Bohemian <i>Polygonum bohemicum</i>	(c) Adams and Whitman counties of region 7
	(d) region 8, except that portion of Lewis County below the ordinary high watermark of the Tilton River from Hwy. 508 to Lake Mayfield
	(e) region 10 except Garfield County.
	(a) Kittitas County of region 6
	(b) Chelan and Douglas counties of regions 3 and 6
((40)) (39) knotweed, giant <i>Polygonum sachalinense</i>	(c) Pend Oreille County of region 4((-))
	(d) <u>Asotin County of region 10.</u>
	(a) Kittitas County of region 6
	(b) Pend Oreille County of region 4((-))
	(c) <u>Asotin County of region 10.</u>
((41)) (40) knotweed, Himalayan <i>Polygonum polystachyum</i>	(a) Kittitas County of region 6
	(b) Pend Oreille County of region 4
	(c) Lewis County of region 8((-))
	(d) <u>Asotin County of region 10.</u>
	(a) Kittitas County of region 6
((42)) (41) knotweed, Japanese <i>Polygonum cuspidatum</i>	(b) Chelan and Douglas counties of regions 3 and 6
	(c) Pend Oreille County of region 4((-))
	(d) <u>Asotin County of region 10.</u>
	(a) Regions 1, 2, 5, 8
	(b) Pend Oreille County of region 4
((43)) (42) kochia <i>Kochia scoparia</i>	(c) Kittitas County of region 6.
	(a) regions 3, 4, 6, 7, 8, 9, 10
	(b) San Juan, Snohomish and Skagit counties of region 2
	(c) Grays Harbor and Mason counties of region 5.
	(a) regions 1, 2, 3, 4, 6, 7, 8, 9, 10
((45)) (44) lawnweed <i>Soliva sessilis</i>	(b) ((region 2 except Snohomish County
	(e)) region 5 except King and Thurston counties.
	(a) regions 1, 2, 3, 4, 5, 6, 8, 9, 10
	(b) region 7 except an area within Whitman County east of the Pullman—Wawawai Road from Wawawai to Pullman and south of State Highway 270 from Pullman to Moscow, Idaho.
	(a) regions 1, 2, 3, 4, 6, 7, 8, 9, 10
((46)) (45) lepyrodielis <i>Lepyrodielis holosteoides</i>	(b) region 5 except King County
	(c) Those portions of King County lying north of I-90 and east of the line extending from SR522 to SR202 to E. Lake Sammamish Parkway; west of I-5 including Vashon Island; south of I-90 and east and south of I-405 to the county line.
	(a) regions 1, 2, 3, 4, 6, 7, 8, 9, 10
	(b) region 5 except King County
	(c) Those portions of King County lying north of I-90 and east of the line extending from SR522 to SR202 to E. Lake Sammamish Parkway; west of I-5 including Vashon Island; south of I-90 and east and south of I-405 to the county line.
((47)) (46) loosestrife, garden <i>Lysimachia vulgaris</i>	(a) regions 1, 4, 7, 8
	(b) region 2 except Snohomish County
((48)) (47) loosestrife, purple <i>Lythrum salicaria</i>	(a) regions 1, 4, 7, 8
	(b) region 2 except Snohomish County

Name	Will be a "Class B designate" in all lands lying within:
	(c) region 3 except within 100 feet of the ordinary highwater mark of the Okanogan River from the Canadian border south to Riverside
	(d) Grays Harbor, Mason, Kitsap, and Thurston counties of region 5
	(e) Those portions of King County lying north of I-90 and east of the line extending from SR522 to SR202 to E. Lake Sammamish Parkway; west of I-5 including Vashon Island; south of I-90 and east and south of I-405 to the county line
	(f) Pierce County, except those areas lying within T2D, 21, 22N, R1W and R1E, all sections
	(g) region 6 except that portion of Grant County lying northerly of the Frenchmen Hills-O'Sullivan Dam Road, southerly of Highway Interstate 90, easterly of the section line of the location of County Road J SW/NW if constructed and westerly of the section line of the location of County Road H SE/NE if constructed
	(h) region 9 except Benton County
	(i) region 10 except Walla Walla County
	(j) Intercounty Weed Districts No. 51 and No. 52.
	(a) regions 1, 4, 7, 8
	(b) region 2 except Snohomish County
((49)) (48) loosestrife, wand <i>Lythrum virgatum</i>	(c) region 3 except within 100 feet of the ordinary highwater mark of the Okanogan River from the Canadian border south to Riverside
	(d) region 5 except King County
	(e) Those portions of King County lying north of I-90 and east of the line extending from SR522 to SR202 to E. Lake Sammamish Parkway; west of I-5 including Vashon Island; south of I-90 and east and south of I-405 to the county line
	(f) region 6 except that portion of Grant County lying northerly of the Frenchmen Hills-O'Sullivan Dam Road, southerly of Highway Interstate 90, easterly of the section line of the location of County Road J SW/NW if constructed and westerly of the section line of the location of County Road H SE/NE if constructed
	(g) region 9 except Benton County
	(h) region 10 except Walla Walla County
	(i) Intercounty Weed Districts No. 51 and No. 52.
	(a) regions 1, 2, 3, 4, 5, 7, 8
	(b) region 6 except those areas lying between State Highway 26 and State Highway 28, and westerly of Dodson Road in Grant County, and except S 1/2, Sec. 2, T20N, R25E., W.M.
	(c) region 9 except:
((50)) (49) nutsedge, yellow <i>Cyperus esculentus</i>	

Name	Will be a "Class B designate" in all lands lying within:
	(i) except those areas lying within the following boundary description within Yakima County: Beginning at the intersection of Highway 12 and Parker Heights Road and continuing easterly to Konnowac Pass Road follow said road north to the intersection of Konnowac Pass Road and Nightingale Road. The northern boundary shall be the Roza Canal, continuing from the established point at Nightingale Road. The boundaries will follow the Roza Canal easterly to the County Line Road. The east boundaries will be the Yakima/Benton County Line from a point beginning at the County Line and Highway 22 (near Byron) continuing westerly along Highway 22 (to near the city of Mabton) to the intersection of Highway 22 and the Reservation Boundary (Division Road) and continuing north to the Yakima River. Then it will follow the river northwest to the Wapato-Donald Road continuing north along said road to Highway 12 then Highway 12 to Parker Heights Road.
	(ii) an area lying southerly of State Route 14 and within T2N, Ranges 13 and 14 E of Klickitat County
((51)) (50) oxtongue, hawkweed <i>Picris hieracioides</i>	(d) region 10 except Walla Walla County.
((52)) (51) parrotfeather <i>Myriophyllum aquaticum</i>	(a) regions 1, 2, 3, 4, 5, 6, 7, 9, 10
((53)) (52) pepperweed, perennial <i>Lepidium latifolium</i>	(b) region 8 except Skamania County.
	(a) regions 1, 2, 3, 4, 5, 6, 7, 9, 10
	(b) region 8 except Clark, Cowlitz, and Wahkiakum counties.
	(a) regions 1, 2, 3, 4, 5, 7, 8, 10
	(b) Intercounty Weed Districts No. 51 and 52
	(c) Kittitas County of region 6
	(d) Adams County of region 6 except for the area west of Highway 17 and north of Highway 26.
((54)) (53) poison-hemlock <i>Conium maculatum</i>	(a) Clallam County and that area lying within Port Townsend city limits in Jefferson County of region 1
	(b) Snohomish and San Juan counties of region 2
	(c) Pend Oreille County of region 4
	(d) Kitsap and Thurston counties of region 5
	(e) Kittitas County of region 6
	(f) Lincoln County of region 7
	(g) Clark County of region 8.
((55)) (54) primrose, water <i>Ludwigia hexapetala</i>	(a) regions 1, 2, 3, 4, 5, 6, 7, 9, 10
((56)) (55) puncturevine <i>Tribulus terrestris</i>	(b) region 8 except T8N, R3W, S14 of Cowlitz County.
	(a) Skagit County of region 2
	(b) Kittitas County of region 6
	(c) Adams County
	(d) Clallam County of region 1.

Name	Will be a "Class B designate" in all lands lying within:
((57)) (56) ragwort, tansy <i>Senecio jacobaea</i>	(a) regions 3, 4, 6, 7, 9, 10 (b) region 5, that portion of Pierce County lying south or east of a boundary beginning at the White River and State Highway 410, then west along State Highway 410 to intersection with State Highway 162 (Orting) to intersection with Orville Road, then south along Orville Road to intersection with Kapowsin Highway (304th Street East), then west following Kapowsin Highway to intersection with State Route 7, then south along State Route 7 to intersection with State Route 702, then west along State Route 702 to intersection with State Route 507, then southwest along State Route 507 to intersection with the Nisqually River.
((58)) (57) reed, common, nonnative genotypes <i>Phragmites australis</i>	(a) region 1 (b) Island, San Juan and Snohomish counties of region 2 (c) Okanogan County of region 3 (d) Pend Oreille and Stevens counties of region 4 (e) region 5 except Grays Harbor and Pierce counties (f) Kittitas County of region 6 (g) Yakima County of regions 6 and 9 (h) Lincoln County of region 7 (i) Clark and Lewis counties of region 8 (j) Klickitat County of region 9 (k) Asotin County of region 10.
((59)) (58) Saltcedar <i>Tamarix ramosissima</i>	(a) regions 1, 2, 3, 4, 5, 7, 8, unless intentionally established prior to 2004 (b) region 6 except Grant County, unless intentionally established prior to 2004 (c) region 9 except Benton and Franklin counties, unless intentionally established prior to 2004 (d) region 10 except Franklin County, unless intentionally established prior to 2004.
((60)) (59) sandbur, longspine <i>Cenchrus longispinus</i>	(a) regions 1, 2, 3, 4, 5, 7, 8 (b) Adams County of region 6 except for that area lying within Intercounty Weed District No. 52 (c) Intercounty Weed District No. 51 (d) Kittitas County of region 6(-) (e) <u>Asotin County of region 10.</u>
((61)) (60) skeletonweed, rush <i>Chondrilla juncea</i>	(a) regions 1, 2, 3, 5, 8 (b) Franklin County except T13N, R36E; and T14N, R36E (c) Adams County except those areas lying east of a line running north from Franklin County along the western boundary of Range 36 East to State Highway 26 then north on Sage Road until it intersects Lee Road, then due north until intersection with Providence Road, then east to State Highway 261, then north along State Highway 261 to its intersection with Interstate 90, henceforth on a due north line to intersection with Bauman Road, then north along Bauman Road to its terminus, then due north to the Lincoln County line.

Name	Will be a "Class B designate" in all lands lying within:
	(d) region 6 except that portion lying within Grant County that is southerly of State Highway 28, northerly of Interstate Highway 90 and easterly of Grant County Road I Northwest
	(e) Stevens County north of Township 33 North of region 4
	(f) Ferry and Pend Oreille counties of region 4
	(g) region 9 except the Dallesport area in Klickitat County lying within Township 2N, Ranges 13 and 14
	(h) Asotin County of region 10
	(i) Garfield County south of Highway 12
	(j) Columbia County from the Walla Walla County line on Highway 12, all areas south of Turner Road; at Turner Road to the Garfield county line, all areas south and east of Turner Road
	(k) Whitman County lying in Ranges 43 through 46 East of Townships 15 through 20 North; T14N, Ranges 44 through 46 East; and T13N, Ranges 45 and 46 East.
((62)) (61) sowthistle, perennial <i>Sonchus arvensis ssp. arvensis</i>	(a) regions 1, 2, 3, 4, 7, 8, 9, 10
	(b) Adams County of region 6
	(c) region 5 except for sections 28, 29, 30, 31, 32, and 33 in T19N, R1E of Thurston and Pierce counties.
((63)) (62) spurge, leafy <i>Euphorbia esula</i>	(a) regions 1, 2, 3, 4, 5, 6, 8, 9, 10
	(b) region 7 except as follows:
	(i) T27N, R37E, Sections 34, 35, 36; T27N, R38E, Sections 31, 32, 33; T26N, R37E, Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 16, 26; T26N, R38E, Sections 5, 6, 7, 8 of Lincoln County
	(ii) T24N, R43E, Section 12, Qtr. Section 3, Parcel No. 9068 of Spokane County.
((64)) (63) spurge, myrtle <i>Euphorbia myrsinites L</i>	(a) Pend Oreille County of region 4((-))
	(b) <u>Along the Asotin, Grande Ronde, and Snake rivers and in all other areas that are not an actively cultivated garden in Asotin County of region 10.</u>
((65)) (64) starthistle, yellow <i>Centaurea solstitialis</i>	(a) regions 1, 2, 3, 5, 6, 8
	(b) region 4 except those areas within Stevens County bounded by a line beginning at the intersection of State Highway 20 and State Highway 25, then north to intersection with Pinkston Creek Road, then east along Pinkston Creek Road to intersection with Highland Loop Road, then south along Highland Loop Road to intersection with State Highway 20, then west along State Highway 20 to intersection with State Highway 25
	(c) region 7 except those areas within Whitman County lying south of State Highway 26 from the Adams County line to Colfax and south of State Highway 195 from Colfax to Pullman and south of State Highway 270 from Pullman to the Idaho border
	(d) Franklin County
	(e) region 9 except Klickitat County

Name	Will be a "Class B designate" in all lands lying within:
((66)) (65) Swainsonpea <i>Sphaerophysa sal-sula</i>	<p>(f) ((in all lands lying within Asotin County, Region 10, except as follows: T11N, R44E, Sections 25, 26, 27, 28, 29, 31, 32, 33, 34, and 35; T11N, R45E, Sections 21, 22, 23, and 25; T11N, R36E, Sections 19, 20, 21, 28, 29, 30, 31, 32, and 33; T10N, R44E, Sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 15, and 16; T10N, R45E, Sections 23 and 24; T10N, R46E, Sections 7, 8, 17, 18, 19, 20, 21, 22, 27, 34, and 35; T9N, R46E, Sections 1, 2, 12, 13, 14, 23, 24, 25, 26, 35, and 36; T9N, R47E, Sections 18, 19, 30, and 31; T8N, R46E, Sections 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, 23, and 24; T8N, R47E, Sections 8, 17, 18, 19, 20, 29, 30, 31, and 32.)) <u>lands west of Shu-maker Grade and south of Mill Road in Asotin County.</u></p> <p>(a) regions 1, 2, 3, 4, 5, 7, 8</p> <p>(b) Columbia, Garfield, Asotin, and Franklin counties</p> <p>(c) an area beginning at the Washington—Oregon border at the southwest portion of Section 15, R32E, T6N, then north to the northwest corner of Section 3, R32E, T7N, then east to the northeast corner of Section 3, R36E, T7N, then south to the southeast portion of Section 15, R36E, T6N, at the Washington—Oregon border, then west along the Washington—Oregon border to the point of beginning</p> <p>(d) Weed District No. 3 of Grant County</p> <p>(e) Adams County of region 6.</p>
((67)) (66) thistle, musk <i>Carduus nutans</i>	<p>(a) regions 1, 2, 3, 5, 6, 7, 8, 9, 10</p> <p>(b) Spokane and Pend Oreille counties.</p>
((68)) (67) thistle, plumeless <i>Carduus acanthoides</i>	<p>(a) regions 1, 2, 3, 5, 6, 7, 8, 9, 10</p> <p>(b) region 4 except those areas within Stevens County lying north of State Highway 20.</p>
((69)) (68) thistle, Scotch <i>Onopordum acanthium</i>	<p>(a) regions 1, 2, 3, 4, 5, 6, 8, 9</p> <p>(b) region 7 except for those areas within Whitman County lying south of State Highway 26 from the Adams County line to Colfax and south of State Highway 195 from Colfax to Pullman and south of State Highway 270 from Pullman to the Idaho border</p> <p>(c) Franklin County.</p>
((70)) (69) toadflax, Dalmatian <i>Linaria dalmatica ssp. dalmatica</i>	<p>(a) regions 1, 2, 5, 8, 10</p> <p>(b) Douglas County of region 3 lying south of T25N and west of R25E</p> <p>(c) Okanogan County lying within T 33, 34, 35N, R19, 20, 21, 22E, except the southwest, southeast, and northeast quarters of the northeast quarter of section 27, T35N, R21E; and the northeast quarter of the southeast quarter of section 27, T35N, R21E</p> <p>(d) Kittitas, Chelan, Douglas, and Adams counties of region 6</p> <p>(e) Intercounty Weed District No. 51</p> <p>(f) Weed District No. 3 of Grant County</p> <p>(g) Lincoln and Adams counties</p> <p>(h) The western two miles of Spokane County of region 7</p> <p>(i) region 9 except as follows:</p> <p>(i) those areas lying within Yakima County</p>

Name	Will be a "Class B designate" in all lands lying within:
<p>((74)) (70) watermilfoil, Eurasian <i>Myriophyllum spicatum</i></p>	<p>(ii) those areas lying west of the Klickitat River and within Klickitat County.</p> <p>(a) regions 1, 9, 10</p> <p>(b) region 7 except Spokane County</p> <p>(c) region 8 except within 200 feet of the Columbia River</p> <p>(d) Adams County of region 6</p> <p>(e) in all water bodies of public access, except the Pend Oreille River, in Pend Oreille County of region 4.</p>

AMENDATORY SECTION (Amending WSR 07-24-023, filed 11/28/07, effective 1/1/08)

WAC 16-750-015 State noxious weed list—Class C noxious weeds.

Common Name	Scientific Name
archangel, yellow	<i>Lamium galeobdolon</i>
babysbreath	<i>Gypsophila paniculata</i>
beard, old man's	<i>Clematis vitalba</i>
bindweed, field	<i>Convolvulus arvensis</i>
blackberry, evergreen	<i>Rubus laciniatus</i>
blackberry, Himalayan	<i>Rubus armeniacus</i>
canarygrass, reed	<i>Phalaris arundinacea</i>
cockle, white	<i>Silene latifolia ssp. alba</i>
cocklebur, spiny	<i>Xanthium spinosum</i>
cross, hoary	<i>Cardaria draba</i>
odder, smoothseed alfalfa	<i>Cuscuta approximata</i>
goatgrass, jointed	<i>Aegilops cylindrica</i>
groundsel, common	<i>Senecio vulgaris</i>
hawkweed, common	<i>Hieracium lachenalii</i>
hawkweed, other nonnative species	<i>Hieracium sp.</i> , except species designated in the note in the left-hand column

Note:

This listing includes all species of *Hieracium*, except the following:

- Species designated as Class A noxious weeds in WAC 16-750-005;
- Species designated as Class B noxious weeds in WAC 16-750-011;
- Native species designated below:
 - Canada hawkweed (*H. canadense*)
 - houndstongue hawkweed (*H. cynoglossoides*)
 - long-beaked hawkweed (*H. longiberbe*)
 - narrow-leaved hawkweed (*H. umbellatum*)
 - slender hawkweed (*H. gracile*)
 - western hawkweed (*H. albertinum*)
 - white-flowered hawkweed (*H. albiflorum*)
 - woolley-weed (*H. scouleri*)

Common Name	Scientific Name
henbane, black	<i>Hyoscyamus niger</i>
iris, yellow flag	<i>Iris pseudacorus</i>
ivy, English, 4 cultivars only:	<i>Hedera hibernica 'Hibernica'</i> <i>Hedera helix 'Baltica'</i> <i>Hedera helix 'Pittsburgh'</i> <i>Hedera helix 'Star'</i>
mayweed, scentless	<i>Matricaria perforata</i>
pondweed, curly-leaf	<i>Potamogeton crispus</i>
rye, cereal	<i>Secale cereale</i>
spikeweed	<i>Hemizonia pungens</i>
St. Johnswort, common	<i>Hypericum perforatum</i>
tansy, common	<i>Tanacetum vulgare</i>
thistle, bull	<i>Cirsium vulgare</i>
thistle, Canada	<i>Cirsium arvense</i>
toadflax, yellow	<i>Linaria vulgaris</i>
water lily, fragrant	<i>Nymphaea odorata</i>
whiteweed, hairy	<i>Cardaria pubescens</i>
willow-herb, hairy	<i>Epilobium hirsutum</i>
wormwood, absinth	<i>Artemisia absinthium</i>

AMENDATORY SECTION (Amending WSR 99-24-029, filed 11/23/99, effective 1/3/00)

WAC 16-750-135 State noxious weed control board—Meetings. (1) All meetings of the board are open and public and all persons are permitted to attend any meeting of the board, except as otherwise provided in the Open Public Meetings Act, chapter 42.30 RCW.

(2) Members of the public are not required, as a condition to attendance at a board meeting, to register names, other information, or otherwise to fulfill any condition prior to attending.

(3) Interruptions. In the event that any meeting is interrupted by any person as to render the orderly conduct of the meeting unfeasible, and order cannot be restored by the removal of individuals who are interrupting the meeting, the chairperson may order the meeting room cleared and continue in session or may adjourn the meeting and reconvene at another location selected by a majority vote of the board members present. In such a session, the board will follow the procedures set forth in the Open Public Meetings Act (RCW 42.30.050).

(4) Adoption of rules, regulations, resolution, etc. The board shall not adopt any rules, regulations, resolution, etc. except in a meeting open to the public and then only at a

meeting, the date of which is fixed by rule, or at a meeting of which notice has been given according to the provisions of the Open Public Meetings Act. Any action taken at meetings failing to comply with this section is null and void.

(5) Regular meetings—Schedule—Publication in State Register—Notice of change. The board will meet (~~once every two months~~) at least five times per year and at other times determined by the chairperson or by a majority of the voting members. If any regular meeting falls on a holiday, the meeting will be held on the next business day. The executive secretary files with the code reviser a schedule of the time and place of regular meetings on or before January of each year for publication in the Washington State Register. Notice of any change from this meeting schedule will be published in the State Register for distribution at least twenty days prior to the rescheduled meeting date.

(6) Notice. Ten days notice of all meetings will be given by mailing a copy of the notice and agenda to each board member, county noxious weed control board, and weed district.

(7) Special meetings. The ten-day notice may be waived for special meetings which may be called at any time by the chairperson, director, or a majority of the voting board members. Special meeting notification shall follow the procedures for special meetings set forth in the Open Public Meetings Act (RCW 42.30.080).

(8) Adjournments. If a meeting is adjourned before the advertised time, a written notice will be posted at the meeting place that specifies when the meeting was adjourned.

(9) Executive sessions.

(a) The board may hold an executive session during a regular meeting which may be called by the chairperson or a majority of voting board members present. No official actions will be taken at executive sessions. Executive sessions may deal only with matters authorized by RCW 42.30.110.

(b) Before convening in executive session, the chairperson shall publicly announce the purpose of excluding the public from the meeting place and the time when the executive session will be concluded. The executive session may be extended to a later time by announcement of the chairperson.

(10) Agenda. The agenda will be prepared by the executive secretary in consultation with the chairperson. Items may be submitted by all board members to the executive secretary at least fifteen days prior to the board meeting.

(11) Attendance. Each board member is expected to attend all board and assigned committee meetings. In the event a board member is unable to attend, he or she is requested to provide the chairperson or executive secretary with the reasons for the absence prior to the meeting. Any voting member who misses two consecutive board meetings without providing the chairperson or the executive secretary with the reasons for the absences prior to the meeting may be removed from the board, following due notice and a hearing. Removal procedures may be initiated by a quorum vote of the board.

(12) Voting procedures. Board voting procedures on all matters are as follows:

(a) Five voting members constitute a quorum to conduct the affairs of the board.

(b) The chairperson may vote on all matters coming before the board.

(c) A roll call of all voting board members present may be requested on all motions by any member.

(d) All members have the right to move or second motions.

(e) Proxy voting is not permitted.

(13) Minutes. The minutes of all regular and special meetings, except executive sessions, will be promptly recorded and such records are open to public inspection.

(14) Press releases. All press releases and official information concerning board activities will be released from the board office.

(15) Public participation.

(a) Any person wishing to make a formal presentation at a regularly scheduled meeting of the board must notify the executive secretary of the subject matter at least fifteen days before the meeting.

(b) Permission to appear before the board will be granted by the executive secretary in consultation with the chairperson before the meeting. Permission includes the date and time of the meeting and the time set for formal presentation.

(c) The chairperson may, at his or her discretion, recognize anyone in the audience who indicates at the time of the meeting a desire to speak.

WSR 09-01-079

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed December 15, 2008, 3:53 p.m., effective January 15, 2009]

Effective Date of Rule: Thirty-one days for WAC 388-78A-2202, 388-78A-2204, 388-78A-2206, 388-78A-2208, 388-78A-2600, and 388-78A-2730; and May 1, 2009, for WAC 388-78A-3150 and 388-78A-3152.

Purpose: Respite: Adopt rules to implement E2SHB 2668 (chapter 146, Laws of 2008). Adopt new WAC 388-78A-2202 Respite—General, 388-78A-2204 Respite—Information, 388-78A-2206 Respite—Assessment, and 388-78A-2208 Respite—Negotiated service agreement, Adopt amendments to WAC 388-78A-2600 Policies and procedures.

Plans of correction (POC): Clarify, streamline and improve usability of plan of correction requirements. Adopt amendments to WAC 388-78A-2730 Licensee's responsibilities and 388-78A-3150 Statements of deficiency. Adopt new WAC 388-78A-3152 Plan of correction—Required.

Citation of Existing Rules Affected by this Order: Amending WAC 388-78A-2600, 388-78A-2730, and 388-78A-3150.

Statutory Authority for Adoption: RCW 18.20.090, E2SHB 2668 (chapter 146, Laws of 2008).

Other Authority: Chapter 18.20 RCW.

Adopted under notice filed as WSR 08-16-120 on August 5, 2008.

Changes Other than Editing from Proposed to Adopted Version: **WAC 388-78A-3150 Statements of deficiencies**

~~and plans of correction.~~ (1) The department ~~must~~ will give the administrator or the administrator's designee a written statement of deficiencies report specifying any violations of chapters 18.20, or 70.129, or 74.34 RCW or, this chapter, or any other applicable laws or rules that the department found during ~~on-site~~ any inspections ~~and~~ or complaint investigations.

~~(2) The licensee must respond to a statement of deficiencies by submitting to the department within a time acceptable to the department, a signed written plan of correction for each deficiency stated in the report. The licensee must include in the plan of correction, for each cited deficiency:~~

~~(a) A specific plan of what will be or was done to correct the problem;~~

~~(b) A description of what will be done to prevent future problems of this type;~~

~~(c) Who will be responsible for monitoring the corrections to ensure the problems do not recur; and~~

~~(d) The date by which lasting correction will be achieved.~~

WAC 388-78A-3152 Plan of correction—Required.

(1) The boarding home must comply with all applicable licensing laws and regulations at all times.

(2) When the department finds the boarding home out of compliance with any licensing law or regulation the department will send the home an inspection report with an attestation of correction statement for each cited deficiency.

(3) The boarding home must complete an attestation of correction for any inspection report as the department requires.

(4) For purposes of this section an "attestation of correction statement" means a statement developed by the department and signed and dated by the home, that the home:

- (a) Has or will correct each cited deficiency; and
- (b) Will maintain correction of each cited deficiency.

(5) The home must be able to show to the department, upon request, that, for each deficiency cited, the home has:

- (a) A plan of correction and maintaining correction;
- (b) Corrected or is correcting each deficiency; and
- (c) Maintained or is maintaining compliance.

(6) On each attestation of correction statement, the home must:

- (a) Give a date, approved by the department, showing when the cited deficiency has been or will be corrected; and
- (b) By signature and date showing that the home has or will correct, and maintain correction, of each deficiency.

(7) The home must return the inspection report, with completed attestation of correction statements, to the department within ten calendar days of receiving the report.

The changes were made because:

SUMMARY	ACTION TAKEN BY DEPARTMENT
<p>WAC 388-78A-3150 Statements of deficiencies. Replace the term "must" with "will" in the following phrase in WAC 388-78A-3150: "The department will give the administrator... a written statement of deficiencies report..." Keep the phrase "statement of deficiencies" in the phrase just mentioned. Replace the word "and" with "or" in the following phrase in WAC 388-78A-3150: "any inspections or complaint investigation(s)."</p>	<p>WAC 388-78A-3150 Statements of deficiencies. Clarifying change made.</p> <p>Clarifying change made.</p>
<p>WAC 388-78A-3152 Plan of correction—Required. Insert the term "applicable" in the phrase "must comply with all applicable licensing laws and regulations" in new WAC 388-78A-3152. Revise text to use the phrase "attestation of correction" in WAC 388-78A-3152 rather than simply use the term "attestation statement." Add language in WAC 388-78A-3152 that clarifies that the boarding home must complete an attestation of correction for any inspection report the department requires. Change the term "certifying" to "showing" WAC 388-78A-3152. Insert the term "calendar" in WAC 388-78A-3152 to read "within ten calendar days." Divide WAC 388-78A-3152 into additional subsections.</p>	<p>WAC 388-78A-3152 Plan of correction—Required. Clarifying change made.</p> <p>Clarifying change made.</p> <p>Clarifying change made.</p> <p>Clarifying change made.</p> <p>Clarifying change made.</p> <p>Clarifying change made.</p>

A final cost-benefit analysis is available by contacting Todd Henry, RCS, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2580, fax (360) 438-7903, e-mail henryte@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; and Recently Enacted State Statutes: New 4, Amended 1, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 3, Repealed 0.

Date Adopted: December 15, 2008.

Robin Arnold-Williams
 Secretary

Respite

NEW SECTION

WAC 388-78A-2202 Respite—General. A boarding home:

- (1) May provide short term respite care;
- (2) Must limit the length of stay for an individual on respite to thirty calendar days or less; and
- (3) Must not use respite as a placement pending the resident's admission to the boarding home.

NEW SECTION

WAC 388-78A-2204 Respite—Information. When a boarding home provides respite care, before or at the time of admission, the boarding home must obtain sufficient information about the individual to meet the individual's anticipated needs. That information must include at a minimum:

- (1) The resident's legal name;
- (2) The name, phone number and address of the resident's representative, if applicable;
- (3) The name and address of the adult family home, boarding home, or other location where the resident normally lives, with the name of a contact person and the contact person's phone number;
- (4) The name, address, and telephone number of the resident's attending physician, and alternate physician if any;
- (5) Medical and social history, which may be obtained from a respite care assessment and respite service plan performed by a case manager designated by an area agency on aging under contract with the department, and mental and physical assessment data; and
- (6) Physician's orders for diet, medication, and routine care consistent with the resident's status on admission.

NEW SECTION

WAC 388-78A-2206 Respite—Assessment. The boarding home must ensure that any individual on respite has assessments performed, where needed, and if the assessment of the individual shows symptoms of:

- (1) Tuberculosis, follow required tuberculosis testing requirements; and
- (2) Other infectious conditions or diseases, follow the appropriate infection control processes.

NEW SECTION

WAC 388-78A-2208 Respite—Negotiated service agreement. With the participation of the individual, and where appropriate their representative, the boarding home must develop a negotiated service agreement, to maintain or improve the individual's health and functional status during their stay in the boarding home.

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

WAC 388-78A-2600 Policies and procedures. (1) The boarding home must develop and implement policies and

procedures in support of services that are provided and are necessary to:

- (a) Maintain or enhance the quality of life for residents including resident decision-making rights;
- (b) Provide the necessary care and services for residents, including those with special needs;
- (c) Safely operate the boarding home; and
- (d) Operate in compliance with state and federal law, including, but not limited to, chapters 7.70, 11.88, 11.92, 11.94, 69.41, 70.122, 70.129, and 74.34 RCW, and any rules promulgated under these statutes.

(2) The boarding home must develop, implement and train staff persons on policies and procedures to address what staff persons must do:

- (a) Related to suspected abandonment, abuse, neglect, exploitation, or financial exploitation of any resident;
- (b) When there is reason to believe a resident is not capable of making necessary decisions and no substitute decision maker is available;
- (c) When a substitute decision maker is no longer appropriate;
- (d) When a resident stops breathing or a resident's heart appears to stop beating, including, but not limited to, any action staff persons must take related to advance directives and emergency care;
- (e) When a resident does not have a personal physician or health care provider;
- (f) In response to medical emergencies;
- (g) When there are urgent situations in the boarding home requiring additional staff support;
- (h) In the event of an internal or external disaster, consistent with WAC 388-78A-2700;
- (i) To supervise and monitor residents, including accounting for residents who leave the premises;
- (j) To appropriately respond to aggressive or assaultive residents, including, but not limited to:
 - (i) Actions to take if a resident becomes violent;
 - (ii) Actions to take to protect other residents; and
 - (iii) When and how to seek outside intervention.
- (k) To prevent and limit the spread of infections consistent with WAC 388-78A-2610;
 - (l) To manage residents' medications, consistent with WAC 388-78A-2210 through 388-78A-2290; sending medications with a resident when the resident leaves the premises;
 - (m) When services related to medications and treatments are provided under the delegation of a registered nurse consistent with chapter 246-840 WAC;
 - (n) Related to food services consistent with chapter 246-215 WAC and WAC 388-78A-2300;
 - (o) Regarding the safe operation of any boarding home vehicles used to transport residents, and the qualifications of the drivers;
 - (p) To coordinate services and share resident information with outside resources, consistent with WAC 388-78A-2350;
 - (q) Regarding the management of pets in the boarding home, if permitted, consistent with WAC 388-78A-2620; ~~(and)~~
 - (r) When receiving and responding to resident grievances consistent with RCW 70.129.060; and

(s) Related to providing respite care services consistent with RCW 18.20.350, if respite care is offered.

(3) The boarding home must make the policies and procedures specified in subsection (2) of this section available to staff persons at all times and must inform residents and residents' representatives of their availability and make them available upon request.

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

WAC 388-78A-2730 Licensee's responsibilities. (1)

The boarding home licensee is responsible for:

- (a) The operation of the boarding home;
- (b) Complying at all times with the requirements of this chapter, chapter 18.20 RCW, and other applicable laws and rules; and
- (c) The care and services provided to the boarding home residents.
 - (2) The licensee must:
 - (a) Maintain the occupancy level at or below the licensed resident bed capacity of the boarding home;
 - (b) Maintain and post in a size and format that is easily read, in a conspicuous place on the boarding home premises:
 - (i) A current boarding home license, including any related conditions on the license;
 - (ii) The name, address and telephone number of:
 - (A) The department;
 - (B) Appropriate resident advocacy groups; and
 - (C) The state and local long-term care ombudsman with a brief description of ombudsman services.
 - (iii) A copy of the report, including the cover letter, and plan of correction of the most recent full inspection conducted by the department.
 - (c) Ensure any party responsible for holding or managing residents' personal funds is bonded or obtains insurance in sufficient amounts to specifically cover losses of resident funds; and provides proof of bond or insurance to the department.
 - (3) The licensee must not delegate to any person responsibilities that are so extensive that the licensee is relieved of responsibility for the daily operations and provisions of services in the boarding home.
 - (4) The licensee must act in accord with any department-approved management agreement, if the licensee has entered into a management agreement.
 - (5) The licensee must appoint the boarding home administrator consistent with WAC 388-78A-2520.

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

WAC 388-78A-3150 Statements of deficiencies (~~and plans of correction~~). ((+)) The department ((must)) will give the administrator or the administrator's designee a written statement of deficiencies report specifying any violations of chapters 18.20, ((or)) 70.129, or 74.34 RCW ((or)), this chapter, or any other applicable laws or rules that the department found during ((on-site)) any inspection((s-and)) or complaint investigation((s)).

~~((2) The licensee must respond to a statement of deficiencies by submitting to the department within a time acceptable to the department, a signed written plan of correction for each deficiency stated in the report. The licensee must include in the plan of correction, for each cited deficiency:~~

- ~~(a) A specific plan of what will be or was done to correct the problem;~~
- ~~(b) A description of what will be done to prevent future problems of this type;~~
- ~~(c) Who will be responsible for monitoring the corrections to ensure the problems do not recur; and~~
- ~~(d) The date by which lasting correction will be achieved.))~~

NEW SECTION

WAC 388-78A-3152 Plan of correction—Required.

- (1) The boarding home must comply with all applicable licensing laws and regulations at all times.
- (2) When the department finds the boarding home out of compliance with any licensing law or regulation the department will send the home an inspection report with an attestation of correction statement for each cited deficiency.
- (3) The boarding home must complete an attestation of correction for any inspection report as the department requires.
- (4) For purposes of this section an "attestation of correction statement" means a statement developed by the department and signed and dated by the home, that the home:
 - (a) Has or will correct each cited deficiency; and
 - (b) Will maintain correction of each cited deficiency.
- (5) The home must be able to show to the department, upon request, that, for each deficiency cited, the home has:
 - (a) A plan of correction and maintaining correction;
 - (b) Corrected or is correcting each deficiency; and
 - (c) Maintained or is maintaining compliance.
- (6) On each attestation of correction statement, the home must:
 - (a) Give a date, approved by the department, showing when the cited deficiency has been or will be corrected; and
 - (b) By signature and date showing that the home has or will correct, and maintain correction, of each deficiency.
- (7) The home must return the inspection report, with completed attestation of correction statements, to the department within ten calendar days of receiving the report.

WSR 09-01-088

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 16, 2008, 10:05 a.m., effective January 16, 2009]

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

Purpose: The department is adopting this rule, WAC 458-20-15501, to update and further explain beyond WAC 458-20-155 the application of the business and occupation (B&O), retail sales, and use taxes as they apply to persons providing information or computer services, and persons who manufacture, develop, process, or sell information, software,

or computer programs. This rule also recognizes that RCW 82.12.020 (1)(b) now excludes software provided free of charge from the use tax.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 08-15-173 on July 23, 2008.

Changes Other than Editing from Proposed to Adopted Version: A number of minor edits were made to Rule 15501. These edits are designed primarily to clarify existing language of Rule 15501 as adopted. For example, all of the hypothetical examples originally had "Customer X, Y, or Z." All of the references to hypothetical customers were changed to actual random names such as Steve, Julie, Jack, Amelia, etc.

Additionally, minor edits were made to correct some grammatical and spelling errors. Edits were also made in an attempt to uniformly use client, customer, or buyer in the different examples and subsections. However, these three terms are still meant to be used interchangeably within this rule.

Changes, other than mere edit changes, are addressed below. Language added to proposed Rule 15501 is underlined, while language removed from proposed Rule 15501 is indicated by a strikethrough of the text.

1. WAC 458-20-15501 (101)(d) and (e)(i):

- (d) **Retail sale of computer systems.** Gross proceeds of sales of computer systems to consumers are subject to B&O tax under the retailing classification. Persons making retail sales are responsible for collecting retail sales tax at the time of sale and remitting the tax to the department, unless the sale is specifically exempt by law. If the seller is required to collect Washington sales tax (such as in the case of the seller having nexus in Washington), but ~~did~~ does not collect Washington sales tax, the buyer is responsible for remitting retail sales tax (commonly referred to as deferred sales tax), unless the sale is specifically exempt by law. If the seller is not required to collect Washington sales tax, then the buyer is responsible for remitting use tax, unless the transaction is specifically exempt by law. Separately stated charges for custom software ~~involved~~ sold with the ~~associated~~ computer software system are subject to service B&O tax. See subsection (302) of this section. This edit clarifies that the interaction between nexus, retail sales tax, and use tax are consistent with current department practice.
- (e)(i) Separately stated charges for custom programming ~~involved~~ sold with the ~~associated~~ computer software system are not subject to manufacturing B&O tax, but are subject to service B&O tax. See subsection (302). This subsection was updated to reflect the changes made to subsection (d) of the same subsection (101).

2. WAC 458-20-15501 (102)(d), this subsection was deleted.

3. WAC 458-20-155 (102)(e), this subsection become [became] subsection (d). Also, we clarified that the possession of the computer system was taken by the pur-

chaser before the software was purchased and installed. ~~(de)~~ Same facts as ~~(dc)~~ of this subsection, except that AFG sells and installs the prewritten computer software after Joe Z purchases and takes possession of the computer system. AFG is subject to retailing B&O tax and must collect retail sales tax from Joe on the sale of the computer system and the prewritten computer software. Also, AFG is subject to manufacturing B&O tax on the value of the computer system. AFG is entitled to claim a multiple activities tax credit. AFG is not subject to manufacturing B&O tax on the value of the prewritten computer software, because the installation of the software by AFG is not a part of AFG's manufacturing activity.

4. WAC 458-20-15501 (301)(d)(ii), the first sentence was rewritten to provide a clearer explanation of the exemption for internally used software. (ii) Use of prewritten computer software by software developer. ~~Use of prewritten computer software by a software developer is not subject to use tax because the software developer is not an end user. The internal use of prewritten computer software by the developer of that software is not subject to use tax because the software developer is not an end user of its own internally developed software.~~ For example, VV Software, Inc., an in-state software developer, creates accounting software generally used by small businesses. VV plans to sell its newly created software to other companies. VV also plans to make a copy of this software and use it for its accounting operation. The copy of software used by VV for its accounting operation is not subject to use tax.

5. WAC 458-20-15501 (302)(e), the following changes were made in the last two sentences of this subsection that reads: Additionally, income received for ~~customer~~ client access and use of the software is subject to service and other activities B&O tax. PFC is hosting its own software for ~~customer~~ client access and use. See subsection (401)(g) of this section for treatment of gross income received for providing remote access to software applications such as an ASP provides. **The second sentence was updated to match changes to subsection 401(g).**

6. WAC 458-20-15501 (303)(a)(ii)(A), (B), (C), and (D), the following examples were edited to better reflect the principles of subsection (303).

- **WAC 458-20-15501 (303)(a)(ii) - (ii) Examples.** The examples presume sellers have nexus with Washington.
- **WAC 458-20-15501 (303)(a)(ii)(A) - (A)** UM Computers, Inc., is a software developer that develops engineering software. UM sells the prewritten computer software at wholesale to OX Computers, Inc., in shrink-wrapped packages. UM delivers the software to OX. OX then resells the software to customers in the same shrink-wrapped packages. Sales of prewritten computer software by UM are subject to wholesaling B&O tax. Sales by OX to consumers are retail sales subject to retailing B&O tax and retail sales tax.
- **WAC 458-20-15501 (303)(a)(ii)(B) - (B)** GB Computers, Inc., is a software developer that develops engineering software. GB grants ~~an intangible right to~~ SE Computers, Inc., the right to ~~for~~ reproducing

and distributing copies of the prewritten computer software for sale. GB retains all of its ownership rights to the software and delivers one copy of the software to SE to reproduce. Royalties Amounts received from GB granting an intangible the right to reproduce and distribute prewritten computer software to SE are subject to royalties B&O tax. Sales by SE to consumers are retail sales subject to retailing B&O tax and retail sales tax.

- **WAC 458-20-15501 (303)(a)(ii)(C) – (C)** DH Computers, Inc., is a software developer that develops engineering software. DH sells grants the right to sell its engineering prewritten computer software at wholesale to WK Computers, Inc. DH does not allow WK to reproduce copies of the prewritten computer software for sale to end users. DH delivers the software electronically to WK. WK then resells the same software to its customers, who download the software from WK. Sales of prewritten computer software by Income to DH are is subject to wholesaling royalties B&O tax. Sales of prewritten computer software by WK to its customers are retail sales subject to retail sales tax.
- **WAC 458-20-15501 (303)(a)(ii)(D) – (D)** AJ Soft, Inc., is a software developer of architectural drafting software. AJ Soft enters into an agreement with DJ Sales, Inc. to sell AJ Soft's drafting software. DJ Sales must pay a fee for each copy DJ Sales sells through its website. AJ Soft does not allow DJ Sales to reproduce the drafting software. Customers download the software, but are unaware the software is downloaded directly from AJ Soft. AJ Soft is making a wholesale sale of software to DJ Sales subject to wholesaling B&O tax. DJ sales is making a retail sale to its Washington customers subject to retail sales tax.

Edits to all the examples addressing the retail sales by OX, SE, WK and DJ add the tax treatment for the retailer. The other changes to example (B) clarify what rights are being granted so that the example is not so conclusory. The department edited the facts to clarify example (C), resulting in a different conclusion, to make the example clearer. Example (D) was then added to provide a clear example with the original conclusion from example (C).

7. WAC 458-20-15501 (304)(a), the first change to this subsection was to uniformly use the word "customer" throughout. The second was to take out the word "used" from the description of when retail sales tax applies to avoid confusion with use tax applications. The third was to add third parties to possible providers of hosted software and reference to the new subsection (401)(g). (a) **Retail sales of a site license.** Gross proceeds of sales of a site license to a consumer are subject to B&O tax under the retailing classification, whether or not ownership or title passes to the buyer consumer, and regardless of any express or implied restrictions upon the buyer consumer. Delivery occurs when and where when any copy of the prewritten computer software to be used by the buyer created under subject to the site license is received by the consumer, whether it is through tan-

gible storage media or any electronic means, regardless of the method of delivery. See WAC 458-20-145 (sourcing) for more information on sourcing prewritten computer software. See also WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods) for details regarding reporting procedures and revenue recognition of retail sales of a site license. Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer consumer in determining when and where the sale takes place. Persons making retail sales are responsible for collecting retail sales tax at the time of sale and remitting the tax to the department, unless the sale is specifically exempt by law.

If the prewritten software is hosted by the licensor or a third party for remote access by the licensee (e.g., an Application Service Provider (ASP)), then see Part IV, subsection (401)(g) of this section.

8. WAC 458-20-15501 (304)(c), the following edits were made: (c) **Use of a site license partly in this state and partly outside this state.** Where the use of a site license is partly in this state and partly outside this state, the part of the site license used by the person in this state is subject to use tax, provided Washington state sales tax was not previously paid. For example, a person purchases and takes delivery of a site license in California. Pursuant to the multiple site license agreement, this person is licensed to use one thousand copies of prewritten computer software, of which four hundred copies will be used in Washington. Use tax is due on the four hundred copies of prewritten computer software used in this state. If the prewritten software purchased by the licensee is delivered in Washington, then the entire charge for the site license is subject to retail sales tax if purchased from a seller responsible for collecting Washington's sales tax. If the original prewritten computer software for which the site license was purchased and delivered in Washington, then the entire charge of the site license is subject to retail sales tax. **This edit clarifies that retail sales tax is only applicable to the charge for all site licenses when delivery occurs in Washington, otherwise, use tax applies to those site licenses used in Washington.**

9. WAC 458-20-15501 (304)(e)(i), this subsection was edited to clarify the location of the taxpayer in the example. (i) DEF Computers, Inc., is located in Washington and sells in this state at retail a multiple site license of its prewritten computer software to P's Design, Inc.

10. WAC 458-20-15501 (306)(b), this subsection was changed to clarify the fact that two distinct sales occurred. (b) **Example.** Same facts as (a) of this subsection, except that ZZ sells makes two separate sales at retail of two types of prewritten computer software to Customer Q Jack. One is server software, and the other is client software (which is different from client access licenses). ZZ delivers the server software to Jack Q in Washington where Jack Q's server is located. ZZ delivers the client software to Jack Q outside Washington where all of Jack Q's personal computers are located. Only the sale of server software to Jack Q is subject to retailing B&O tax, and ZZ must collect retail sales tax from Jack Q for the same sale.

11. WAC 458-20-15501 (307)(a)(vi)(A), reference to sales agreements was added to this example to better match the example to the explanation in this subsection. (A) Tee, Inc., is in need of financial modeling software that can tie into most of its existing computer systems. Because of its unique business, however, Tee needs the industry-wide computer software offered by PQR Computers, Inc., that is modified to meet the needs of Tee. Both Tee and PQR are in-state corporations, and the software is delivered in this state. PQR provides a separately stated charge to Tee for customization of prewritten computer software performed in this state that is supported by the terms of the sales agreement. PQR is subject to retailing B&O tax, and it must collect retail sales tax from Tee for the sale of prewritten computer software in Washington. PQR, in addition, is subject to service and other activities B&O tax for the customization of prewritten computer software in Washington.

12. WAC 458-20-15501 (401)(a)(ii)(C), this example was simplified by removing the reference to "on-line access." (C) WW Travel, Inc., bills its customers a monthly fee for having ~~on-line~~ access to a travel reservation system that includes a charge for dedicated telephone lines. WW is subject to service and other activities B&O tax for providing information services, rather than a telecommunications service. The provider of dedicated telephone lines to WW must collect retail sales tax from WW on the sale of telecommunications service. WW is the consumer of telecommunications service.

13. WAC 458-20-15501 (401)(g), the title of this subsection was changed to reflect that access to software can be provided by other processes other than application service providers (ASP), such as Software as a Service (SaaS). (g) Sales of remote access to applications prewritten software, provided by i.e. application service providers (ASPs) or Software as a Service (SAAS). Gross income received for providing remote access to applications on the ASP's host's servers are subject to service and other activities B&O tax, when the service is performed in Washington. Sellers of remote access to applications (e.g., ASPs) may be able to apportion income if they perform activities in multiple states (i.e., servers used in multiple states to host the software). See WAC 458-20-194 (apportionment).

"ASP" means a provider that generally offers customers with electronic access to applications on the ASP's server. ASP generally does not provide computer software for customers to download. ASP, however, may provide downloadable codes in order for customers to access its applications on its server that are only incidental to the services provided to customers.

14. WAC 458-20-15501 (401)(h)(i), reference to the B&O rate in RCW 82.04.280 for newspapers as defined in RCW 82.04.214 was added to this subsection. (i) **Sales of on-line advertising services.** Gross income received for on-line advertising services are subject to service and other activities B&O tax. See RCW 82.04.280 and RCW 82.04.-214 for tax treatment of the electronic form of a printed newspaper.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: December 16, 2008.

Alan R. Lynn
Rules Coordinator

NEW SECTION

WAC 458-20-15501 Computer hardware, computer software, information service, and computer services. (1) Introduction. This section explains the business and occupation (B&O), retail sales, and use tax treatment of activities related to computer hardware, computer software, information service, and computer services. Such activities include, but are not limited to, selling, leasing, manufacturing, installing, repairing, and maintaining computer hardware and software, as well as developing, duplicating, configuring, licensing, downloading, and accessing computer software.

This section contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results in all situations must be determined after a review of all facts and circumstances.

The information provided in this section is divided into five parts:

(a) Part I provides information on taxation of computer systems.

(b) Part II provides information on taxation of computer hardware.

(c) Part III provides information on taxation of computer software.

(d) Part IV provides information on taxation of information services and computer services.

(e) Part V provides reference to WAC 458-20-155 (Information and computer services) on the distinction between sales of products and sales of services.

PART I - TAXATION OF COMPUTER SYSTEM

(101) Taxation of computer systems.

(a) **What is a computer?** A "computer" is an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. RCW 82.04.215. Examples of a computer include, but are not limited to, mainframe computer, laptop, workstation, and desktop computer. "Computer" also includes automatic data processing equipment, which is a computer used for data processing purposes. "Computer" does not include any computer software or peripheral devices.

(b) **Computer systems and computer networks distinguished.** A "computer system" is a functional unit, consisting of one computer and associated computer software, whereas a computer network is two or more computers and associated computer software that uses common storage. A computer system may or may not include peripheral devices.

(c) **Wholesale sale of computer systems.** Gross proceeds of sales of computer systems to persons other than consumers (e.g., sales for resale without intervening use) are subject to B&O tax under the wholesaling classification. To verify the wholesale nature of the sale, the seller should obtain a resale certificate from the buyer as provided by WAC 458-20-102 (Resale certificates).

(d) **Retail sale of computer systems.** Gross proceeds of sales of computer systems to consumers are subject to B&O tax under the retailing classification. Persons making retail sales are responsible for collecting retail sales tax at the time of sale and remitting the tax to the department, unless the sale is specifically exempt by law. If the seller is required to collect Washington sales tax (such as in the case of the seller having nexus with Washington), but does not collect Washington sales tax, the buyer is responsible for remitting retail sales tax (commonly referred to as deferred sales tax), unless the sale is specifically exempt by law. If the seller is not required to collect Washington sales tax, then the buyer is responsible for remitting use tax, unless the transaction is specifically exempt by law. Separately stated charges for custom software sold with the computer system are subject to service B&O tax. See subsection (302) of this section.

(e) **Manufacturing of computer systems.** Persons manufacturing computer systems are subject to manufacturing B&O tax upon the value of the products. See WAC 458-20-112 (Value of products) and 458-20-136 (Manufacturing, processing for hire, fabricating). Manufacturers of computer systems who sell their products at retail or wholesale are also subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) B&O tax classifications and may claim a multiple activities tax credit (MATC). See WAC 458-20-19301 (Multiple activities tax credits) for detailed information about the MATC.

(i) Separately stated charges for custom programming sold with the computer system are not subject to manufacturing B&O tax, but are subject to service B&O tax. See subsection (302) of this section.

(ii) Separately stated charges for computer software sold and installed after the sale of a computer system are not subject to manufacturing B&O tax.

(iii) The combining of a computer system with certain peripheral devices is considered a packaging activity not subject to manufacturing B&O tax, when the following occurs:

(A) The peripheral devices remain in the original packaging;

(B) The person does not attach its own label to the peripheral devices;

(C) The person maintains a separate inventory of the peripheral devices for sale apart from the sale of the computer system; and

(D) The charge for the sale of peripheral devices is separately stated from the charge for the sale of computer systems.

(102) **Examples.**

(a) ABC Computers, Inc., an in-state manufacturer, manufactures and sells at retail computer systems. ABC sells a computer system to Steve for one flat charge. The computer system includes a disk drive, memory, CPU, keyboard, mouse, monitor, and bundled prewritten computer software. ABC is subject to retailing B&O tax and must collect retail sales tax on the sale to Steve. In addition, ABC is subject to manufacturing B&O tax on the value of the product sold (which is generally the sales price). ABC is entitled to claim a multiple activities tax credit.

(b) ADE Computers, Inc., manufactures and sells computer systems at retail to customers. ADE sells to Julie a computer system with certain peripheral devices at separate charges. The computer system without the peripheral devices consists of a disk drive, memory, CPU, and bundled prewritten computer software. The peripheral devices include a keyboard, mouse, and monitor. All peripheral devices remain in the original packaging of the manufacturers. ADE does not attach its own label to the peripheral devices. Finally, ADE maintains a separate inventory of the peripheral devices for sale apart from the sale of ADE's computer systems. ADE is subject to retailing B&O tax and must collect retail sales tax from Julie on the sales of the computer system including the peripheral devices. ADE is subject to manufacturing B&O tax on the value of the computer system excluding the peripheral devices. ADE is entitled to claim a multiple activities tax credit. ADE is not subject to manufacturing B&O tax on the value of the peripheral devices, because the combining of a computer system with the peripheral devices in this case constitutes packaging activities.

(c) AFG Computers, Inc., an in-state company, manufactures and sells at retail computer systems. AFG sells a computer system to Joe for a lump sum. Joe purchases from AFG, as part of the sales package, prewritten computer software developed by a third-party software developer. AFG installs the prewritten computer software to Joe's computer. AFG is subject to retailing B&O tax and must collect retail sales tax from Joe on the sale of the computer system, including the bundled prewritten computer software. Also, AFG is subject to manufacturing B&O tax on the value of the computer system, including the value of the prewritten computer software. AFG is entitled to claim a multiple activities tax credit.

(d) Same facts as (c) of this subsection, except that AFG sells and installs the prewritten computer software after Joe purchases and takes possession of the computer system. AFG is subject to retailing B&O tax and must collect retail sales tax from Joe on the sale of the computer system and the prewritten computer software. Also, AFG is subject to manufacturing B&O tax on the value of the computer system. AFG is entitled to claim a multiple activities tax credit. AFG is not subject to manufacturing B&O tax on the value of the prewritten computer software, because the installation of the software by AFG is not a part of AFG's manufacturing activity.

PART II - TAXATION OF COMPUTER HARDWARE

(201) Taxation of computer hardware, both internal and external peripheral devices.

(a) **What is computer hardware?** For purposes of this section, "computer hardware" includes, but is not limited to, the mechanical, magnetic, electronic, or electrical components of a computer system such as towers, motherboards, central processing units (CPU), hard disk drives, memory, as well as internal and external peripheral devices such as compact disk read-only memory (CD-ROM) drives, compact disk rewriteable (CD-RW) drives, zip drives, internal and external modems, wireless fidelity (Wi-Fi) devices, floppy disks, compact disks (CDs), digital versatile disks (DVDs), cables, mice, keyboards, printers, monitors, scanners, web cameras, speakers, and microphones.

(b) **Wholesale sale of computer hardware.** Gross proceeds of sales of computer hardware to persons other than consumers (e.g., sales for resale without intervening use) are subject to B&O tax under the wholesaling classification. To verify the wholesale nature of the sale, the seller should obtain a resale certificate from the buyer as provided by WAC 458-20-102 (Resale certificates).

(c) **Retail sale of computer hardware.** Gross proceeds of sales of computer hardware to consumers are subject to B&O tax under the retailing classification. Persons making retail sales are responsible for collecting retail sales tax at the time of sale and remitting the tax to the department, unless the sale is specifically exempt by law.

(d) **Manufacturing of computer hardware.** Persons manufacturing computer hardware are subject to manufacturing B&O tax upon the value of the products. See WAC 458-20-112 (Value of products) and 458-20-136 (Manufacturing, processing for hire, fabricating). Manufacturers of computer hardware who sell their products at retail or wholesale are also subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) B&O tax classifications and may claim a multiple activities tax credit (MATC). See WAC 458-20-19301 (Multiple activities tax credits) for detailed information about the MATC.

(202) Examples.

(a) ALM Computers, Inc., purchases used computers. ALM replaces a built-in CD-ROM drive with a CD-RW drive and adds a zip drive, additional memory, and an upgraded CPU. ALM is engaged in manufacturing activity subject to manufacturing B&O tax with respect to that computer.

(b) AJK Computers, Inc., acquires damaged computers for refurbishment and sale. AJK removes damaged hardware components and replaces them with new components without upgrading these components. Refurbishing computers in this manner is not a manufacturing activity. Retail sales of such refurbished computers are subject to retailing B&O tax and retail sales tax.

(c) APQ Computers, Inc., purchases computers for refurbishment and sale. APQ replaces the failed zip drive on one of the computers with an upgraded zip drive because the

upgrade is the nearest version of the failed component that is available. The manufacturer has discontinued manufacturing the original version of the zip drive because of a flaw in the design. APQ is not engaged in manufacturing activity with respect to that computer. Retail sale of that refurbished computer is subject to retailing B&O tax and retail sales tax.

(d) ATV Computers, Inc., is hired by a call center company to repair damaged computers. ATV removes damaged hardware components and replaces them with new components without upgrading these components. Refurbishing computers in this manner is not a manufacturing activity; however, it is a retail service. Refurbishing computers in this manner is subject to retailing B&O tax and retail sales tax must be collected. See WAC 458-20-173 (services on tangible personal property) for more information on repairs and maintenance.

(203) Taxation of other activities associated with computer hardware.

(a) **Installing computer hardware.** Gross proceeds of sales for installing computer hardware are subject to wholesaling or retailing B&O tax, as the case may be. Installation of computer hardware for consumers is subject to retail sales tax. See WAC 458-20-145 (sourcing) for more information on sourcing retail sales of computer services. See WAC 458-20-173 (services on tangible personal property) for more information on installations.

(b) **Repairing or maintaining computer hardware.** Gross proceeds of sales for repair or maintenance of computer hardware are subject to wholesaling or retailing B&O tax. Repair of computer hardware for consumers is subject to retail sales tax. See WAC 458-20-145 (sourcing) for more information on sourcing retail sales. See WAC 458-20-173 (services on tangible personal property) for more information on repairs and maintenance. Also, see WAC 458-20-257 (Warranties and maintenance agreements) for information about repair performed as part of a warranty or maintenance agreement.

PART III - TAXATION OF COMPUTER SOFTWARE

(301) **What is computer software?** RCW 82.04.215 provides that "computer software" is a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. All software is classified as either prewritten or custom. "Computer software" includes only those sets of coded instructions intended for use by an end user and specifically excludes retained rights in software and master copies of software. Computer software does not include data.

(a) **How is computer software delivered?** Computer software may be delivered either by intangible means such as electronically or by tangible means such as tangible storage media.

(b) **What is automatic data processing equipment?** "Automatic data processing equipment" includes computers used for data processing purposes and their peripheral equipment.

(c) **What are retained rights?** "Retained rights" means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade

secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sublicensee, or distributor. RCW 82.04.215.

(d) **What are master copies of software?** "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensee, or distributor makes copies for sale or license. RCW 82.04.215.

(i) **Development of a master copy of software.** Development of a master copy of software by a software developer, or a third party hired by the software developer, that is used to produce copies of software for sale or commercial or industrial use, is not a manufacturing activity. A third-party charge for development of a master copy of software is a charge for custom software development and is subject to service and other activities B&O tax.

(ii) **Use of prewritten computer software by software developer.** The internal use of prewritten computer software by the developer of that software is not subject to use tax because the software developer is not an end user of its own internally developed software. For example, VV Software, Inc., an in-state software developer, creates accounting software generally used by small businesses. VV plans to sell its newly created software to other companies. VV also plans to make a copy of this software and use it for its accounting operation. The copy of software used by VV for its accounting operation is not subject to use tax.

(302) **What is custom software?** "Custom software" is software created for a single person. RCW 82.04.215. The use of library files in software development does not preclude such software from being characterized as custom software, as long as the software is created for a single person. The nature of custom software does not change when ownership is transferred to a person with no rights retained by the transferor.

For purposes of this section, "library files" are a collection of precompiled and frequently used routines that a software developer can use in developing the software.

(a) **Creation of custom software.** Gross income received for creating custom software is subject to service and other activities B&O tax.

(b) **Duplication of custom software.** Duplication of custom software for the same person, or by the same person for the person's own use, does not change the character of the custom software. RCW 82.04.29001. Duplication of custom software for the same person, or by the same person for its own use, is not subject to manufacturing B&O tax.

If a person duplicates custom software for sale to or use by another person other than the original purchaser, the software becomes prewritten computer software as defined in subsection (303) of this section and is subject to manufacturing B&O tax if the prewritten computer software is delivered by tangible storage media.

(c) **Sale of custom software.** If custom software is sold to another person other than the original purchaser, the software loses its character as custom software and becomes prewritten computer software as defined in subsection (303) of this section.

(d) **Use of custom software.** Use of custom software is not subject to use tax.

(e) **Example.** PFC, Inc., offers data base management software on-line to its client through remote access for a monthly fee. PFC developed its software for the specific client and stored the software on its server. PFC is not subject to manufacturing B&O tax or use tax because the data base management software is custom software. PFC's income from the sale of the custom software to the one specific client is subject to service and other activities B&O tax. Additionally, income received for client access and use of the software is subject to service and other activities B&O tax. PFC is hosting its own software for client access and use. See subsection (401)(g) of this section for treatment of gross income received for providing remote access to software applications such as an ASP provides.

(303) **What is prewritten computer software?** RCW 82.04.215 provides that "prewritten computer software" is computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser.

The combining of two or more prewritten computer software programs or prewritten portions thereof does not result in custom software. Configuration of prewritten computer software to work with other computer software does constitute customization of prewritten computer software.

Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser.

Where a person, who is not the author or creator, modifies or enhances prewritten computer software, that person is deemed to be the author or creator only of the modifications or enhancements made. Prewritten computer software, or a portion thereof, that is modified or enhanced to any degree, remains prewritten computer software, even though the modification or enhancement is designed and developed to the specifications of a specific purchaser. Where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement will not be considered prewritten computer software.

(a) **Wholesale sales of prewritten computer software.** Gross proceeds from sales of prewritten computer software to persons other than consumers (e.g., sales for resale without intervening use) are subject to B&O tax under the wholesaling classification, whether or not ownership or title passes to the buyer, and regardless of any express or implied restrictions upon the buyer. The method of delivery of prewritten computer software does not alter the wholesale nature of the transaction, whether it is through tangible storage media or any electronic means. Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer in determining when and where the sale takes place. To verify the wholesale nature of the sale, the seller obtains a resale certificate from the buyer as provided by WAC 458-20-102 (Resale certificates).

(i) **Distinction between wholesale sales of prewritten computer software and royalties received for the licensing of prewritten computer software.** Sales of prewritten computer software constitute wholesale sales if the reseller, who

has no right to reproduce the software for further sales, sells the same software to its customers. The true object of the sale to the reseller is the sale of the software. On the other hand, income received for granting an intangible right to reproduce and distribute copies of prewritten computer software for sale constitutes royalties. The true object of the transaction that generates royalty income is the right to reproduce and relicense the software. See subsection (308) of this section for more information on royalties.

(ii) **Examples.** The examples presume sellers have nexus with Washington.

(A) UM Computers, Inc., is a software developer that develops engineering software. UM sells the prewritten computer software at wholesale to OX Computers, Inc., in shrink-wrapped packages. UM delivers the software to OX. OX then resells the software to customers in the same shrink-wrapped packages. Sales of prewritten computer software by UM are subject to wholesaling B&O tax. Sales by OX to consumers are retail sales subject to retailing B&O tax and retail sales tax.

(B) GB Computers, Inc., is a software developer that develops engineering software. GB grants SE Computers, Inc., the right to reproduce and distribute copies of the prewritten computer software for sale. GB retains all of its ownership rights to the software and delivers one copy of the software to SE to reproduce. Amounts received from GB granting the right to reproduce and distribute prewritten computer software to SE are subject to royalties B&O tax. Sales by SE to consumers are retail sales subject to retailing B&O tax and retail sales tax.

(C) DH Computers, Inc., is a software developer that develops engineering software. DH grants the right to sell its engineering prewritten computer software to WK Computers, Inc. DH delivers the software electronically to WK. WK then sells the software to its customers, who download the software from WK. Income to DH is subject to royalties B&O tax. Sales of prewritten computer software by WK to its customers are retail sales subject to retail sales tax.

(D) AJ Soft, Inc., is a software developer of architectural drafting software. AJ Soft enters into an agreement with DJ Sales, Inc., to sell AJ Soft's drafting software. DJ Sales must pay a fee for each copy DJ Sales sells through its web site. AJ Soft does not allow DJ Sales to reproduce the drafting software. Customers download the software, but are unaware the software is downloaded directly from AJ Soft. AJ Soft is making a wholesale sale of software to DJ Sales subject to wholesaling B&O tax. DJ Sales is making a retail sale to its Washington customers subject to retail sales tax.

(b) **Retail sales of prewritten computer software.** Gross proceeds of sales of prewritten computer software to consumers are subject to B&O tax under the retailing classification, whether or not ownership or title passes to the buyer, and regardless of any express or implied restrictions upon the buyer. The method of delivery of prewritten computer software does not alter the retail nature of the transaction, whether it is through tangible storage media or any electronic means. Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer in determining when and where the sale takes

place. Persons making retail sales are responsible for collecting retail sales tax at the time of sale and remitting the tax to the department, unless the sale is specifically exempt by law.

(c) **Use of prewritten computer software.** Prewritten computer software, regardless of the method of delivery, is generally subject to use tax upon use in this state if Washington retail sales tax was not previously paid. However, use of prewritten computer software is not taxable, if it is provided free of charge, or if it is provided for temporary use in viewing information, or both. RCW 82.12.020. This exception from use tax is limited to prewritten computer software provided free of charge or for temporary use in viewing information, such as free promotional software, donated software, free download of software, and software provided in beta testing to a third party free of charge.

For purposes of this use tax exception, "beta testing" means the last stage of testing for prewritten computer software prior to its commercial release including the release to manufacturing (RTM). Beta testing may involve sending the software to a third party for the use of the third party. Beta testing is often preceded by a round of testing called alpha testing.

(i) **Example.** DS Computers, Inc., is a software developer. In order to perform beta testing of its new accounting software prior to commercial release, DS sends a copy of the software free of charge to KG Technologies, Inc. DS is not subject to use tax for the release of the beta software to KG. KG is not subject to use tax for the use of beta software free of charge.

(ii) **Example.** DH, Inc., provides free card games on-line to its customers. The customers, however, must download DH's free software in order to be able to play card games on-line at DH's web site. Wendy downloads the software free of charge. Wendy is not subject to use tax for the use of the software.

(iii) **Example.** DW, Inc., provides free software to the public for anyone to watch videos on-line. Roger downloads the software free of charge. Roger is not subject to use tax for the use of the software.

(d) **Manufacturing of prewritten computer software.** Persons engaged in manufacturing prewritten computer software are subject to manufacturing B&O tax upon the value of the products. See WAC 458-20-112 (Value of products) and WAC 458-20-136 (Manufacturing, processing for hire, fabricating). Manufacturers of prewritten computer software who sell their products at retail or wholesale are also subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) B&O tax classifications and may claim a multiple activities tax credit (MATC). See WAC 458-20-19301 (Multiple activities tax credits) for detailed information about the MATC.

(e) **Duplication of prewritten computer software.** Duplication of prewritten computer software for sales to or use by more than one person is subject to manufacturing B&O tax upon the value of products. Duplication of prewritten computer software outside this state is not subject to manufacturing B&O tax regardless of where software development takes place.

Duplication of prewritten computer software is a manufacturing activity only if the prewritten computer software is delivered from the seller to the purchaser by means of tangible storage media which is retained by the purchaser. RCW 82.04.120.

When a software developer contracts with a third party to duplicate prewritten computer software, the parties must take into account the value of all tangible and intangible materials or ingredients, including the software code, when determining the relative value of all materials or ingredients furnished by each party. If the third party furnishes less than twenty percent of the total value of all materials or ingredients that become a part of the produced product, then the third party is presumed to be a processor for hire and the software developer is presumed to be a manufacturer. See WAC 458-20-136 (Manufacturing, processing for hire, fabricating) for more information.

(304) Site license of prewritten computer software. A site license provides a consumer acquiring prewritten computer software with the right to duplicate prewritten computer software for use on its own computers, based on the number of computers, the number of workers using the computers, or some other criteria. A site license agreement may cover one site or multiple sites of a purchaser.

(a) Retail sales of a site license. Gross proceeds of sales of a site license to a consumer are subject to B&O tax under the retailing classification, whether or not ownership or title passes to the consumer, and regardless of any express or implied restrictions upon the consumer. Delivery occurs when and where the prewritten computer software subject to the site license is received by the consumer, whether it is through tangible storage media or any electronic means, regardless of the method of delivery. See WAC 458-20-145 (sourcing) for more information on sourcing prewritten computer software. See also WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods) for details regarding reporting procedures and revenue recognition of retail sales of a site license. Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the consumer in determining when and where the sale takes place. Persons making retail sales are responsible for collecting retail sales tax at the time of sale and remitting the tax to the department, unless the sale is specifically exempt by law.

If the prewritten software is hosted by the licensor or a third party for remote access by the licensee (e.g., an Application Service Provider (ASP)), then see subsection (401)(g) of this section.

(b) Duplication of prewritten computer software by a person under a site license. A seller of a site license is subject to manufacturing B&O tax for its own duplication of prewritten computer software. Duplication of prewritten computer software is subject to manufacturing B&O tax only if the prewritten computer software is delivered from the seller to the purchaser by means of tangible storage media which is retained by the purchaser. RCW 82.04.120. Purchaser of a site license is not subject to manufacturing B&O tax for the duplication of prewritten computer software for its own use, pursuant to a site license agreement with the seller.

(c) Use of a site license partly in this state and partly outside this state. Where the use of a site license is partly in this state and partly outside this state, the part of the site license used by the person in this state is subject to use tax, provided Washington state sales tax was not previously paid. For example, a person purchases and takes delivery of a site license in California. Pursuant to the multiple site license agreement, this person is licensed to use one thousand copies of prewritten computer software, of which four hundred copies will be used in Washington. Use tax is due on the four hundred copies of prewritten computer software used in this state. If the prewritten software purchased by the licensee is delivered in Washington, then the entire charge for the site license is subject to retail sales tax if purchased from a seller responsible for collecting Washington's sales tax.

(d) Sales and use of additional copies of prewritten computer software under the same site license. In some cases, the buyer of a site license may subsequently purchase additional copies of prewritten computer software under the same site license agreement. The seller may or may not deliver any additional copy of the software to the buyer, because the original copy of the software has already been delivered.

(i) Retail sales of additional copies of prewritten computer software under the same site license. Retail sales of the additional copies of software occurs when and where the seller delivers any additional copy of prewritten computer software to the buyer, whether it is through tangible storage media or any electronic means, regardless of the method of delivery. See WAC 458-20-145 (sourcing) for more information on sourcing retail sales of prewritten computer software. If the seller does not deliver any additional copy of the software to the buyer, then the sales occur when the sales agreements are made to purchase the additional copies and where the original copy or copies of prewritten computer software was delivered. If the original sale of the site license was subject to manufacturing B&O tax, then the sale of additional licenses are also subject to manufacturing B&O tax.

Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer in determining when and where the sale takes place.

(ii) Use of additional copies of prewritten computer software under the same site license. Where the use of the additional copies of software is partly in this state and partly outside this state and was not previously subject to Washington sales tax, the part of the additional copies of software used by the person in this state is subject to use tax.

(e) Examples.

(i) DEF Computers, Inc., is located in Washington and sells in this state at retail a multiple site license of its prewritten computer software to P's Design, Inc. A copy of the prewritten computer software is electronically delivered to P's Design in Washington. P's Design then electronically duplicates the software and distributes the software in Washington and several other states for its use. Neither DEF nor P's Design is subject to manufacturing B&O tax. DEF, however, is subject to retailing B&O tax, and it must collect retail sales tax from P's Design for the entire sale of the software.

(ii) Same facts as (e)(i) of this subsection, except that in addition, DEF delivers a backup copy of the software to P's Design outside Washington. The backup copy of the software is for disaster recovery purposes and is not downloaded to any of P's Design's computers for use. There is no separate charge for the delivery of the backup software. The software manuals are mailed to P's Design in Washington. DEF is still subject to retailing B&O tax, and it must collect retail sales tax from P's Design for the entire sale of the software. Delivery of the software manuals and the backup copy of the software are not relevant in determining when and where the sale takes place. This transaction is not subject to manufacturing B&O tax.

(iii) Same facts as (e)(i) of this subsection, except that in addition, P's Design subsequently purchases 50 additional copies of the software from DEF under the same site license agreement. P's Design merges with another company, and the additional copies are needed for the use of its new employees. No additional copy of the software is delivered to P's Design in fulfilling this new agreement. Neither DEF nor P's Design is subject to manufacturing B&O tax. DEF, however, is subject to retailing B&O tax, and it must collect retail sales tax from P's Design for the subsequent sale of the 50 additional copies of software because the original copy of the software was delivered in Washington. However, if the original sale of the license had included delivery of the pre-written software by a tangible storage device (and was therefore subject to manufacturing B&O tax), then the licensor is also subject to manufacturing B&O tax based on the value of the additional licenses.

(iv) GH Computers, Inc., sells at retail a multiple site license of its prewritten computer software to Quick, Inc. GH is located outside Washington, while Quick is located in Washington and in other states and outside the U.S. The desktop software is licensed on an unlimited basis, which means that there are no restrictions of its use by Quick. The software is delivered to Quick outside Washington. Quick then electronically duplicates the software and distributes the software to all of its 500 employees, of which 100 employees are located in Washington. The software is electronically downloaded into the desktop computers of all employees and is immediately put into use. Use tax is due on the value of the 100 copies of prewritten computer software used in Washington.

(v) Same facts as (e)(iv) of this subsection, except that under the original site license agreement, Quick is entitled to reproduce, distribute, and use up to 500 copies of the desktop software. Then Quick merges with another company, and additional copies are needed for the use of its new employees. Quick, therefore, subsequently purchases 100 additional copies of the software from GH under the same site license agreement. No additional copy of the software is delivered to Quick in fulfilling this new agreement. Quick distributes the additional copies of the software to its 100 new employees, of which 50 employees are located in Washington. Use tax is due on the value of the 50 additional copies of prewritten computer software used in Washington.

(vi) JJ Computers, Inc., sells at retail a multiple site license of its prewritten computer (server) software to Rest, Inc. JJ is located outside Washington, but Rest is located in

Washington and in other states. The server software is delivered to Rest outside Washington. Rest then electronically duplicates the software and distributes the software to its three servers for immediate use. One of the servers is located in Washington, and the other two servers are located outside Washington. Use tax is due on the value of the copy of the prewritten computer (server) software on the server in Washington.

(305) Key to activate computer software. A key, or an enabling or activating code, may be required in some instances to activate computer software and put the software into use, and the key may be delivered to a purchaser after the software is already delivered and in possession of the same purchaser. In such instances, the entire sale of computer software occurs when both the key and the software are delivered to the purchaser. The sale takes place where the software is received by the purchaser in accordance with RCW 82.32.-730. However, if the receiving location for the software is unavailable to the vendor because the software was delivered by a third party, then the sale takes place where the key is received in accordance with RCW 82.32.730. There is no separate sale of the key from the software, regardless of how such sale may be characterized by the vendor or by the purchaser.

See subsection (304) of this section for more information if a site license of prewritten computer software is involved. If the sale of the prewritten software is subject to manufacturing B&O tax, then the sale of the key required by that prewritten software is also subject to manufacturing B&O tax. The income from the sale of a key is part of a sale of prewritten computer software, whether the sales transactions are together or separate.

(a) Example. JKL Computers, Inc., an in-state business, sells at retail prewritten computer software to Rebecca. JKL delivers the software to Rebecca in this state. The prewritten computer software, however, cannot be activated without a key. JKL subsequently delivers the key in this state to Rebecca for a separate price. JKL is subject to retailing B&O tax, and it must collect retail sales tax from Rebecca on the entire sale of the software including the separate charge for the key. The entire sale takes place in this state (where the software is delivered) when both the software and the key are delivered to Rebecca. There is no separate sale of the key, regardless of the fact that JKL delivers the key to Rebecca for a separate charge.

(b) Example. Same facts as (a) of this subsection, except that JKL subsequently delivers the key outside this state to Rebecca for a separate price. JKL is subject to retailing B&O tax, and it must collect retail sales tax from Rebecca on the entire sale of the software including the separate charge for the key. The entire sale takes place in this state (where the software is delivered) when both the software and the key are delivered to Rebecca. There is no separate sale of the key, regardless of the fact that JKL delivers the key to Rebecca for a separate charge.

(c) Example. MNO Computers, Inc., is an in-state software developer. TKO Computers, Inc., an out-of-state original equipment manufacturer (OEM), agrees in contract with MNO to distribute MNO's prewritten computer software. TKO delivers MNO's inoperable software to Sally as part of

the sale of the computer system. Sally, however, must purchase a key directly from MNO in order to activate and use the software. MNO has no knowledge of where the software was initially delivered to Sally, but MNO knows that the key is delivered to Sally in this state. MNO is subject to retailing B&O tax, and it must collect retail sales tax from Sally on the entire sale of the key and the inoperable software. The entire sale takes place in this state because the key is delivered in this state and MNO has no knowledge of where the inoperable software was initially delivered by TKO. Assuming TKO delivers MNO's software to Sally electronically, then duplication of the key would not be subject to manufacturing B&O tax. If TKO delivers the software on tangible storage media, then the key would be subject to manufacturing B&O tax.

(306) Client access license and server license for the server software. A server license, paid for at the time the server software is purchased, grants the buyer the right to install the server software on the buyer's server. A client access license (CAL) grants the buyer the right to access the server software. The CAL is not computer software and is not downloaded into the buyer's computer.

Charges for server licenses and CAL are a part of the sale of the server software, even if the charges are separately stated. The sales take place where the server software is delivered to the buyer.

In cases where server software is delivered to the buyer and used in multiple locations, see subsection (304) of this section on site licenses for more information.

(a) Example. ZZ Computers, Inc., an in-state business, sells at retail server software to Jack. ZZ delivers the server software to Jack in Washington. ZZ also provides Jack with client access licenses allowing Jack the right to access the server software from his personal computers. The sale of server software to Jack is subject to retailing B&O tax, and ZZ must collect retail sales tax from Jack for the same sale.

(b) Example. Same facts as (a) of this subsection, except that ZZ makes two separate sales at retail of two types of prewritten computer software to Jack. One is server software, and the other is client software (which is different from client access licenses). ZZ delivers the server software to Jack in Washington where Jack's server is located. ZZ delivers the client software to Jack outside Washington where all of Jack's personal computers are located. Only the sale of server software to Jack is subject to retailing B&O tax, and ZZ must collect retail sales tax from Jack for the same sale.

(307) Other activities associated with computer software.

(a) Customizing prewritten computer software. Gross income received for customizing prewritten computer software is subject to service and other activities B&O tax. RCW 82.04.29001.

(i) What is customizing prewritten computer software? RCW 82.04.215 provides that "customization of prewritten computer software" is any alteration, modification, or development of applications using or incorporating prewritten computer software for a specific person.

"Customization of prewritten computer software" includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of prewritten

computer software does not change the underlying character or taxability of the original prewritten computer software.

(ii) Combined charge for prewritten computer software, customization, and routine installation. If a lump-sum charge is made for a sale of prewritten computer software, customization of prewritten computer software, and routine installation, the entire charge is considered to be a sale of prewritten computer software. See (a)(iv) of this subsection for more information on routine installation.

(iii) Separately stated charge for customization of prewritten computer software. Where there is a reasonable separately stated charge on an invoice or other statement of the price given to the purchaser for customization of prewritten computer software (including installation that is not routine, see (a)(i) of this subsection), such customization is subject to service and other activities B&O tax. If a charge for customization of prewritten computer software is not separately stated from a sale of prewritten computer software, the entire charge is considered a sale of prewritten computer software.

(iv) Customization of prewritten computer software versus routine installation. Customization of prewritten computer software does not include routine installation. "Routine installation" means the process of loading program files and installation files onto a computer. Routine installation does not include installation of the customized elements of prewritten computer software.

(v) Separately stated charge for routine installation from customization of prewritten computer software. Where there is a separately stated charge on an invoice or other statement of the price given to the purchaser for routine installation from customization of prewritten computer software, routine installation is subject to retailing B&O tax and retail sales tax. If a charge for routine installation is not separately stated from customization of prewritten computer software, the predominant nature of the transaction determines taxability.

(vi) Examples.

(A) Tee, Inc., is in need of financial modeling software that can tie into most of its existing computer systems. Because of its unique business, however, Tee needs the industry-wide computer software offered by PQR Computers, Inc., that is modified to meet the needs of Tee. Both Tee and PQR are in-state corporations, and the software is delivered in this state. PQR provides a separately stated charge to Tee for customization of prewritten computer software performed in this state that is supported by the terms of the sales agreement. PQR is subject to retailing B&O tax, and it must collect retail sales tax from Tee for the sale of prewritten computer software in Washington. PQR, in addition, is subject to service and other activities B&O tax for the customization of prewritten computer software in Washington.

(B) Same facts as (a)(vi)(A) of this subsection, except that, in addition, PQR provides a separately stated charge to Tee for routine installation of prewritten computer software in this state. This charge represents installation of only the prewritten portion of the software. In addition to the tax treatments in (a)(vi)(A) of this subsection, PQR is subject to retailing B&O tax and it must collect retail sales tax from Tee for the routine installation in Washington.

(b) Installing or uninstalling computer software.

(i) Gross income received from installing or uninstalling custom software is subject to service and other activities B&O tax.

(ii) Gross proceeds of sales for routine installation of prewritten computer software are subject to retailing B&O tax and retail sales tax. See (a)(iv) of this subsection for more information on routine installation. See WAC 458-20-145 (sourcing) for more information on sourcing retail sales of prewritten software and routine installation. Routine installation of prewritten computer software includes charges for labor and services in respect to the installation, such as travel costs for the routine installation of the software. As of July 1, 2008, if the routine installation occurs through remote access by someone outside the state of Washington, then the installation is sourced to where first use occurs. For example, XYZ Computers, Inc., is hired by Dan for routine installation of prewritten software onto Dan's computers. XYZ's out-of-state employee remotely accesses Dan's computers in Washington to install the prewritten software on his computers. If XYZ has nexus with Washington, then it must collect and remit the sales tax. If XYZ does not have nexus, then Dan must pay use tax.

Gross proceeds of sales of uninstalling prewritten computer software are subject to retailing B&O tax and retail sales tax.

For example, XYZ Computers, Inc., is hired by Dan to remove spy ware from his computers. Spy ware is prewritten computer software. Removal of spy ware requires uninstalling the spy ware from the computer. XYZ sends an employee to Dan's location to remove spy ware from its computers. Charges for removal of spy ware are subject to retailing B&O tax and retail sales tax.

(c) Repairing, altering, or modifying computer software. Repair of prewritten computer software for more than one person may be distributed as a fix or patch by tangible storage media or electronically in the nature of software upgrades and updates. The sale of prewritten computer software upgrades and updates is a sale of prewritten computer software subject to retailing B&O tax and retail sales tax. See WAC 458-20-145 (sourcing) for more information on sourcing retail sales of computer services.

Alteration or modification of prewritten computer software performed for a specific person is subject to the service and other activities B&O tax. Such alteration or modification of prewritten computer software for a specific person constitutes customization of prewritten computer software. See RCW 82.04.215.

Alteration or modification of custom software is subject to service and other activities B&O tax.

(i) **Example.** STU Computers, Inc., a Washington company, is hired by Betty to perform repairs via remote access on her prewritten computer software in Washington. STU is performing alteration or modification of prewritten computer software for a specific person and is subject to service and other activities B&O tax.

(ii) **Example.** VW Computers, Inc., an out-of-state service provider, is hired by Clyde to perform alterations or modifications via remote access on his prewritten computer software located in this state. VW's facility is located outside

this state. VW may be subject to service and other activities B&O tax if it has nexus with Washington. See WAC 458-20-194 (Apportionment).

(d) **Maintaining computer software.** Computer software maintenance agreements typically include, but are not limited to, support activities such as telephone consulting, help desk services, remote diagnostic services, and software upgrades and updates.

(i) **Tax treatment of computer software maintenance agreements in general.** Sales of stand-alone computer software maintenance agreements that include telephone consulting, help desk services, remote diagnostic services, and other professional services are taxable under the service and other activities B&O tax. However, if the services are part of a sale of an extended warranty on or after July 1, 2005, then the sale is subject to retailing B&O tax and retail sales tax. See WAC 458-20-257 (Warranties and maintenance agreements) for information about extended warranties.

Stand-alone sales of updates or upgrades to prewritten computer software are retail sales of tangible personal property subject to retailing B&O tax and retail sales tax.

(ii) **Prewritten computer software maintenance agreement with mixed elements.** The sale of a prewritten computer software maintenance agreement that includes professional service components such as telephone consulting and retail components such as upgrades and updates of prewritten computer software is a retail sale subject to retailing B&O tax and retail sales tax.

In cases where the charges for the professional service component(s) and the retail component(s) are separately stated within a prewritten computer software maintenance agreement and invoice, then each activity is taxed according to the nature of the activity.

(iii) **Duplication of prewritten computer software upgrades and updates.** Duplication of prewritten computer software upgrades and updates is subject to manufacturing B&O tax upon the value of products, if the software upgrades and updates are delivered by means of tangible storage media which is retained by the purchaser. This is the case regardless of any maintenance agreement with mixed elements involved. The measure of tax is presumed to be the contract price of the maintenance agreement, unless the person can prove otherwise. See WAC 458-20-112 (Value of products) for more information.

If the software upgrades and updates are delivered from the seller by means other than tangible storage media which is retained by the purchaser, then the software upgrades and updates are not subject to manufacturing B&O tax.

(iv) **Maintenance agreement on custom software and customized elements of prewritten computer software.** Sales of maintenance or support services relating to custom software or the customized elements of prewritten computer software are subject to the service and other activities B&O tax. Such services, including upgrades and updates, are rendered in respect to the custom or customized software and take on the underlying character and taxability of the custom or customized software.

(v) Examples.

(A) On December 15, 2005, CBA Computers, Inc., sells at retail a prewritten computer software maintenance agree-

ment to Frank for his software. The software maintenance agreement includes an extended warranty for the software, software upgrades and updates, and telephone consulting services. CBA delivers the software upgrades and updates electronically, as well as provides the maintenance services to Frank at one charge. CBA is subject to retailing B&O tax, and it must collect retail sales tax from Frank for the sale of the mixed agreement.

(B) Same facts as (d)(v)(A) of this subsection, except that CBA delivers the software upgrades and updates on compact disks. CBA is subject to retailing B&O tax, and it must collect retail sales tax from Frank for the sale of the mixed agreement. In addition, CBA is subject to manufacturing B&O tax on duplication of software upgrades and updates. The measure of tax is presumed to be the contract price of the maintenance agreement, unless CBA can prove otherwise.

(C) Same facts as (d)(v)(A) of this subsection, except that CBA provides a separately stated charge for each component of the maintenance agreement. CBA is subject to retailing B&O tax, and it must collect retail sales tax from Frank for the charges on software upgrades and updates and on the extended warranty purchased after July 1, 2005. CBA is subject to service and other activities B&O tax for the charge on telephone consulting services.

(D) FED Computers, Inc., sells at retail a computer software maintenance agreement to Greta for her software. The maintenance agreement covers only software upgrades and updates. Greta's software is prewritten computer software with customized elements. FED provides the maintenance services to Greta at one charge. FED is subject to retailing B&O tax, and it must collect retail sales tax from Greta for the sale of the entire maintenance agreement of the prewritten computer software.

(E) Same facts as (d)(v)(D) of this subsection, except that FED provides a separately stated charge for maintaining the customized elements. FED is subject to service and other activities B&O tax for the charge on maintaining the customized elements. FED is subject to retailing B&O tax, and it must collect retail sales tax from Greta for the charge on maintaining prewritten computer software.

(e) **Computer software training.** Gross income received for training on the use of custom software is subject to service and other activities B&O tax. Gross income received for training on the use of prewritten computer software is subject to service and other activities B&O tax, if the charge for such training is separately stated from the sale of prewritten computer software. If the charge for software training is not separately stated from the sale of prewritten computer software, the entire charge is considered to be a sale of prewritten computer software subject to retailing B&O tax and retail sales tax.

(308) **Licensing computer software - royalties.** Income received from charges in the nature of royalties for the licensing of computer software is taxable under the royalties B&O tax classification.

(a) **What are royalties?** RCW 82.04.2907 provides that "royalties" is compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, trade names, and similar items. The true object of a transac-

tion involving royalties is to grant an intangible right to reproduce and distribute copies of computer software for sale. It does not, however, include compensation for the licensing of prewritten computer software to the end user. The manner in which computer software is sold (e.g., volume of transactions, subscription license, term license, or perpetual license) or the manner in which payment amount is determined (e.g., fixed fee per copy, percentage of receipts, lump sum, etc.) does not alter the royalty nature of the transaction.

(b) **Royalties versus site license.** Regarding royalties, the true object of the transaction is to grant an intangible right to reproduce and distribute copies of computer software for sale. In contrast, the true object of a site license is the sale to an end user of prewritten computer software for use on its computers. See subsection (304) of this section for more information on site licenses.

(c) **Royalties versus wholesale sales of prewritten computer software.** See subsection (303)(a) of this section for more information.

(d) **Examples.**

(i) HG Computers, Inc., an original equipment manufacturer (OEM), acquires prewritten computer software from LL Software, Inc., under a license to reproduce and distribute the prewritten computer software as part of a bundled computer hardware and software package HG sells to end users. LL retains all of its ownership rights to the software. The gross income received by LL from granting intangible rights to reproduce and distribute prewritten computer software to HG is subject to royalties B&O tax.

(ii) Same facts as (d)(i) of this subsection, except that, in addition, HG acquires a site license from LL for the purposes of using the prewritten computer software as an end user. LL delivers the software to HG. Amounts received by LL for the sale of a site license are subject to retailing B&O tax and retail sales tax.

(309) Special use tax exemption for computer hardware and computer software donated to certain schools or colleges. Use tax does not apply to the use of computer hardware and computer software irrevocably donated to any public or private nonprofit school or college, as defined under chapter 84.36 RCW. RCW 82.12.0284.

PART IV - TAXATION OF INFORMATION SERVICES AND COMPUTER SERVICES

(401) **Activities associated with information services and computer services.** For services described below that are subject to service and other activities B&O tax, see WAC 458-20-194 (Doing business inside and outside the state) for more information on the apportionment of service and other activities B&O tax for taxpayers who maintain places of business both within and without the state that contribute to the rendition of the services.

(a) **Sales of information services.** Gross income received for information services is subject to service and other activities B&O tax.

(i) **What are information services?** "Information services" means every business activity, process, or function by which a person transfers, transmits, or conveys data, facts, knowledge, procedures, and the like to any user of such information through any tangible or intangible medium. "Infor-

mation services" does not include transfers of tangible personal property such as computer hardware or standard pre-written software programs. Neither does "information services" include telecommunication services defined under RCW 82.04.065.

Effective August 1, 2007, and in accordance with RCW 82.08.705 and 82.12.705, a sales and use tax exemption is provided for sales of electronically delivered standard financial information, if the sale is to an investment management company or a financial institution. Standard financial information is defined as "any collection of financial data or facts, not compiled for a specific consumer, including financial market data, bond ratings, credit ratings, and deposit, loan, or mortgage reports." See RCW 82.08.705.

(ii) **Examples.**

(A) XX Statistical Data, Inc., sells statistical data at the specific request of each customer. XX does not compile such statistical information to be available for all customers. Instead, each customer submits its own request of the statistical information based on its needs. XX compiles, analyzes, and summarizes the statistical information it gathers and sends the information to customers in a tangible medium. XX is subject to service and other activities B&O tax for the sales of statistical information, because XX is providing an information service at the specific request of each customer.

(B) ZZ Statistical Data, Inc., allows its customers to perform on-line research of statistical information through its data base. ZZ bills its customers a monthly fee for having on-line access to the data base for research. Its customers do not download any information onto their computers. ZZ is subject to service and other activities B&O tax for providing information services to its customers.

(C) WW Travel, Inc., bills its customers a monthly fee for having access to a travel reservation system that includes a charge for dedicated telephone lines. WW is subject to service and other activities B&O tax for providing information services, rather than a telecommunications service. The provider of dedicated telephone lines to WW must collect retail sales tax from WW on the sale of telecommunications service. WW is the consumer of telecommunications service.

(D) VV Telephone, Inc., provides a satellite-based tracking and communications system that includes instant messaging between vehicles in transit and dispatch centers. Both the vehicles and the dispatch centers are operated by its customers, and information is both generated and received by the customers. This is not a sale of information service. The true object of the transaction is the transmission of data between the vehicles and the dispatch centers through VV's communications system. VV is providing telecommunications services subject to retailing B&O tax, and it must collect retail sales tax on the sale of telecommunications services. See RCW 82.32.520 for sourcing of telecommunications services.

(E) AA Data, Inc., provides a daily report of bond ratings for electronic download by its investment management company consumers. Each investment management company downloads the same report. As of August 1, 2007, AA provides standard financial information that falls within the exemption found in RCW 82.08.705 and 82.12.705. Therefore, AA does not collect or remit retail sales tax.

(b) **Sales of data processing services.** Gross income received for data processing services is subject to service and other activities B&O tax.

"Data processing services" includes, but is not limited to, word processing, data entry, data retrieval, data search, information compilation, payroll processing, business accounts processing, data production, and other computerized data and information storage or manipulation. "Data processing services" also includes the use of a computer or computer time for data processing whether the processing is performed by the provider of the computer or by the purchaser or other beneficiary of the service.

(i) **Example.** JK Processing, Inc., provides payroll processing services to other businesses. JK is subject to service and other activities B&O tax for providing data processing services.

(ii) **Example.** KL Processing, Inc., processes payroll data related to its employees. KL is not subject to manufacturing B&O tax or use tax for the electronic processing of its own data.

(c) **Sales of internet services.** Gross income received for internet services are subject to service and other activities B&O tax.

(i) **What is the internet?** "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web. RCW 82.04.297.

(ii) **What are internet services?** "Internet service" is a service furnished by an internet service provider (ISP) that allows users access to the internet. The ISP must provide the service through use of computer processing applications that either provide the user with additional or restructured information or permit the user to interact with stored information through the internet or a proprietary subscriber network. "Internet service" includes the following services furnished by the ISP:

- Provision of internet electronic mail;
- Access to the internet for information retrieval; and
- Hosting of information for retrieval over the internet.

"Internet service" does not include telecommunications service as defined in RCW 82.04.065.

(iii) **What is a proprietary subscriber network?** "Proprietary subscriber network" means proprietarily or privately owned network in which its services are available to the public for fees. Proprietary subscriber network does not include intranets.

(iv) **Examples.**

(A) ISP, Inc., is an internet service provider that provides customers with access to the internet. ISP does not furnish any telephone lines to its customers in providing this access. ISP maintains its operation in Washington. Amelia is charged a monthly internet access fee from ISP for access to the internet in Washington. ISP is subject to service and other activities B&O tax for the monthly internet access fee charged to Amelia.

(B) Same facts as (c)(iv)(A) of this subsection, except that ISP provides customers with access to the internet along with telephone lines used to provide that access. Amelia is charged a combined monthly fee for access to the internet in

Washington using the telephone lines. ISP is subject to service and other activities B&O tax for the combined fee, because the true object of the transaction is to provide access to the internet, rather than to provide telecommunications service.

(C) Telecomm Co. provides customers with telephone lines for telecommunications, including long distance service, and for access to the internet (internet services). Zoe is charged a combined monthly fee for access to the internet and for communication services in Washington using the telephone lines. Telecomm Co. is subject to retailing B&O tax for the combined fee because the primary purpose of the transaction is to provide telecommunications service, rather than to provide access to the internet. However, if Telecomm Co. separately states or can reasonably identify from its books and records the fees for telecommunications service and internet access, then Telecomm Co. will be subject to retail and service classifications respectively.

(D) DD Computers, Inc., provides access to information through its web site for which it charges its users a fee. DD charges Stan, an out-of-state customer, a transaction fee to use DD's web site to search and retrieve real estate appraisal information. DD is not providing internet service because DD is not an ISP and does not provide customers with access to the internet. DD, however, is providing Stan access to its web site for informational search and retrieval which is subject to service and other activities B&O tax.

(d) **Sales of intranet services.** Gross proceeds of sales of intranet services are sales of telecommunications service defined under RCW 82.04.065 and are subject to retailing B&O tax and retail sales tax.

"Intranet service" means the service of providing a private or intracompany network used by a person to facilitate the sharing or accessing of internal information by the person's employees or other authorized parties.

(e) **Sales of Voice over Internet Protocol (VoIP) services.** "VoIP service" is a service that enables subscribers to use the internet as the transmission medium for telephone calls by sending voice data in packets in internet protocol. Gross proceeds of sales of VoIP services are sales of telecommunications service defined under RCW 82.04.065 subject to retailing B&O tax and retail sales tax.

(f) **Sales of network system support services.** Gross income received for network system support services is subject to service and other activities B&O tax. "Network system support" activities include analyzing and interpreting problems using diagnostic software, monitoring network to ensure network availability to users, and performing network system configurations. Network system support activities may be performed through remote telephone support or on-site consulting.

(g) **Sales of remote access to prewritten software. I.e., application service providers (ASPs) or software as a service (SAAS).** Gross income received for providing remote access to applications on the host's servers are subject to service and other activities B&O tax, when the service is performed in Washington. Sellers of remote access to applications (e.g., ASPs) may be able to apportion income if they perform activities in multiple states (i.e., servers used in mul-

multiple states to host the software). See WAC 458-20-194 (apportionment).

"ASP" means a provider that generally offers customers with electronic access to applications on the ASP's server. ASP generally does not provide computer software for customers to download. ASP, however, may provide downloadable codes in order for customers to access its applications on its server that are only incidental to the services provided to customers.

(i) **Example.** BE Software, Inc., offers a variety of prewritten software products on-line, but not for download, to its customers for a monthly subscription fee. BE Software is subject to service and other activities B&O tax for its subscription fees received.

(ii) **Example.** Same facts as (g)(i) of this subsection, except that, in addition, BE provides computer software for customers to download before the on-line software can be used. The downloaded software does not provide any function other than confirm registration and provide access codes necessary for a customer to be able to use the on-line software. The downloaded software is provided as part of the monthly subscription fee. Once the subscription ends, the access software the customers downloaded will not perform any function. BE Software is subject to service and other activities B&O tax for its subscription fees received, because the true object of the transaction is to provide on-line software to its customers.

(iii) **Example.** Same facts as (g)(i) of this subsection, except that, in addition, BE offers an option to allow its customers to download a limited number of software applications for an additional fee. Kelly purchases and downloads a number of additional prewritten software packages from BE in this state. BE is subject to retailing B&O tax, and BE must collect retail sales tax from Kelly on the additional fee for the sale of downloaded software.

(h) **Sales of web site development or hosting services.** Gross income received for web site development or hosting services are subject to service and other activities B&O tax.

"Web site development service" means the design and development of a web site provided by a web site developer to a customer. "Web site hosting service" means providing server space to host a customer's web site.

(i) **Sales of on-line advertising services.** Gross income received for on-line advertising services are subject to service and other activities B&O tax. See RCW 82.04.280 and 82.04.214 for tax treatment of the electronic form of a printed newspaper.

For example, BB.com sells souvenir items through the internet. BB.com provides on-line advertising services for third parties. Income received for on-line advertising services is subject to service and other activities B&O tax.

(j) **Sales of data warehousing services.** Gross income received for data warehousing services is subject to service and other activities B&O tax. "Data warehousing service" means the service of a provider offering server space for a customer to store its data and to access, retrieve, or use the data as needed.

(i) **Example.** HH Recovery, Inc., provides substitute computer systems so that its customers may access its computer facilities for disaster recovery purposes, if such custom-

ers experience unplanned computer system failures. Lance pays a monthly subscription fee for this service. HH is subject to service and other activities B&O tax for the sale of data warehousing services to Lance.

(ii) **Example.** Same facts as (j)(i) of this subsection, except that, in addition, HH performs "live" data backup for disaster recovery purposes. HH purchases prewritten computer software to perform "live" backup of data. HH is subject to use tax for the use of prewritten computer software to perform "live" backup of data.

PART V - DISTINCTION BETWEEN SALES AND SERVICES

(501) **Current WAC 458-20-155 makes a distinction between sales and services.** Liability for sales or use tax depends upon whether the subject of the sale is a product or a service. Professional and personal services rendered to a client are not generally subject to retail sales or use tax. If the consumer's true object of the transaction is obtaining professional or personal services, similar to those performed by a public accountant, architect, lawyer, etc., then the retail sales or use tax is not applicable. The retail sales and use tax is not applicable because these services are performed to meet a consumer's specific needs and any property transferred in the transaction is considered the medium in or on which those services are rendered and is merely the tangible evidence of a professional service rendered.

If the true object of the transaction is a product made available to any consumer and not created to meet the particular needs of a specific consumer, regardless of the method of delivery, then the transaction is taxable under the retailing B&O tax classification and taxable as a retail sale. The term "product" includes tangible personal property, such as prewritten software. This is no different from a usual inventory of tangible personal property held for sale or lease, and the sale or lease of such products is a sale at retail subject to retail sales tax or use tax.

Please see WAC 458-20-155 for more information.

WSR 09-01-094

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed December 16, 2008, 11:50 a.m., effective January 16, 2009]

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

Purpose: The department amended chapter 16-442 WAC, Winter pears, by making changes that are necessary to update the chapter and increase its clarity. No substantive changes are made to chapter 16-442 WAC. The amendments are only to make the rule language clear and readable; pear standards are not changed.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-442-010, 16-442-130 and 16-442-140; and amending WAC 16-442-005, 16-442-020, 16-442-030, 16-442-040, 16-442-050, 16-442-060, 16-442-070, 16-442-080, 16-442-090, 16-442-100, 16-442-110, 16-442-120, 16-442-150, and 16-442-160.

Statutory Authority for Adoption: Chapter 15.17 RCW, Standards of grades and packs, specifically RCW 15.17.030 Enforcement—Director's duties—Rules and chapter 34.05 RCW, Administrative Procedure Act.

Adopted under notice filed as WSR 08-21-168 on October 22, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 14, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 14, Repealed 3.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 14, Repealed 3.

Date Adopted: December 16, 2008.

Robert W. Gore
Acting Director

AMENDATORY SECTION (Amending Order 322, effective 7/29/40)

WAC 16-442-005 (~~(Application and when mandatory.)~~) **Purpose.** ~~((+))~~ This ~~((order is applicable to))~~ chapter establishes standards for D'Anjou, Bosc, Winter ~~((Nellis))~~ Nellis and all other varieties of winter pears~~((; and~~ ~~((2) Effective and mandatory when))~~ that are packed or marketed within the state of Washington.

NEW SECTION

WAC 16-442-008 Adoption of United States standards for winter pears. (1) In addition to the standards contained in this chapter, the Washington state department of agriculture adopts the United States Department of Agriculture United States Standards for Grades of Winter Pears, 7 CFR § 51.1300 et seq., effective September 10, 1955.

(2) The department maintains a copy of this document for public inspection. The standards may be found on the internet at: <http://www.ams.usda.gov/standards/pearswin.pdf>.

AMENDATORY SECTION (Amending Order 322, effective 7/29/40)

WAC 16-442-020 Washington extra fancy or U.S. extra No. 1. Washington extra fancy or U.S. extra No. 1 ~~((shall consist of))~~ are pears ~~((of one variety which))~~ that are mature ~~((+))~~, but not overripe ~~((2))~~, carefully ~~((hand-picked (3)))~~ picked, clean ~~((4))~~, well formed ~~((5))~~, free from decay, internal breakdown, scald, freezing injury, worm holes, black end ~~((6))~~, hard end, and drought spot~~((; and~~ and free from injury ~~((7))~~ caused by russetting ~~((7a))~~, limb rubs ~~((7b))~~, hail ~~((7c))~~, scars ~~((7e))~~, cork spot ~~((7d))~~, sun-

burn ~~((7e))~~, sprayburn ~~((7e))~~, stings or other insect injury ~~((7f))~~, or injury from mechanical or other means ~~((7))~~, ~~except that they shall~~. Washington extra fancy or U.S. extra No. 1 pears must be free from damage ~~((9))~~ caused by bruises ~~((9b))~~, broken skins ~~((9e))~~, or disease ~~((9k))~~. ~~((See tolerances and condition after storage or transit.))~~

AMENDATORY SECTION (Amending Order 322, effective 7/29/40)

WAC 16-442-030 U.S. No. 1. U.S. No. 1 ~~((shall consist of))~~ are pears ~~((of one variety which))~~ that are mature ~~((1))~~ but not overripe ~~((2))~~, carefully ~~((handpicked (3)))~~ picked, clean ~~((4))~~, fairly well formed ~~((8))~~, free from decay, internal breakdown, scald, freezing injury, worm holes, black end ~~((6))~~; and free from damage ~~((9))~~ caused by hard end ~~((9a))~~, bruises ~~((9b))~~, broken skins ~~((9e))~~, russetting ~~((9d))~~, ~~((limbrubs (9e)))~~ limb rubs, hail ~~((9f))~~, scars ~~((9f))~~, cork spot ~~((9g))~~, drought spot ~~((9h))~~, sunburn ~~((9i))~~, sprayburn ~~((9i))~~, stings or other insect injury ~~((9j))~~, disease ~~((9k))~~, or damage from mechanical or other means ~~((9))~~. ~~((See tolerances and condition after storage or transit.))~~

AMENDATORY SECTION (Amending Order 322, effective 7/29/40)

WAC 16-442-040 Washington fancy or U.S. No. 2. Washington fancy or U.S. No. 2 ~~((shall consist of))~~ are pears ~~((of one variety which))~~ that are mature ~~((1))~~ but not overripe ~~((2))~~, carefully ~~((handpicked (3)))~~ picked, clean ~~((4))~~, not seriously misshapen ~~((10))~~, free from decay, internal breakdown, scald, freezing injury, worm holes, black end ~~((6))~~; and free from damage ~~((9))~~ caused by hard end ~~((9a))~~, or broken skins ~~((9e))~~. The pears ~~((shall))~~ must also be free from serious damage ~~((11))~~, caused by bruises, russetting ~~((11a))~~, ~~((limbrubs (11b)))~~ limb rubs, hail ~~((11e))~~, scars ~~((11e))~~, cork spot ~~((11d))~~, drought spot ~~((11e))~~, sunburn ~~((11f))~~, sprayburn ~~((11f))~~, stings or other insect injury ~~((11g))~~, disease ~~((11h))~~, or serious damage caused by mechanical or other means ~~((11))~~. ~~((See tolerances and condition after storage or transit.))~~

AMENDATORY SECTION (Amending Order 322, effective 7/29/40)

WAC 16-442-050 Washington combination or U.S. combination grade. A combination of U.S. No. 1 and U.S. No. 2 may be packed. When such a combination is packed, at least ~~((50))~~ fifty percent of the pears in any container ~~((shall))~~ must meet the requirements of U.S. No. 1. ~~((See tolerances and condition after storage or transit.))~~

AMENDATORY SECTION (Amending Order 322, effective 7/29/40)

WAC 16-442-060 Washington commercial. A combination of extra fancy and fancy may be packed together as "Washington commercial grade" when at least ~~((50))~~ fifty percent of the pears in any container meet the requirements of Washington extra fancy ~~((;))~~ and the remainder meet the

requirements of Washington fancy ~~((except that))~~. Broken skins or skin punctures not to exceed three-sixteenths of an inch in diameter ~~((shall not be))~~ are not considered a defect for this grade ~~((;))~~.

AMENDATORY SECTION (Amending Order 610, effective 8/21/51)

WAC 16-442-070 Washington third grade. Washington third grade shall consist of pears ~~((of one variety which))~~ that are mature, ~~((hand))~~ carefully picked, clean, sound, not very seriously misshapen ~~((12))~~, free from black end, free from damage caused by hard end, broken skins, and from serious damage caused by cork spot or bruises.

AMENDATORY SECTION (Amending Order 322, effective 7/29/40)

WAC 16-442-080 Culls. Pears, which are not graded in conformity with the foregoing grades, must be designated as culls.

NEW SECTION

WAC 16-442-082 Injury defects. The following specific defects, or any combination of them when the combined seriousness exceeds the maximum allowed for any one defect, are considered injury to winter pears.

(1) **Russetting:** On any winter pear varieties, any amount of characteristic russetting is permitted, whether caused by natural or by artificial means. Leaf whips or light limb rubs that resemble and blend into russet areas are considered russet.

(a) **Slightly rough russetting or thick russetting** characteristic of frost injury is considered injury when the aggregate area exceeds one-half inch in diameter on Comice, Anjou, and other smooth-skinned varieties.

(b) **Smooth solid russetting** is considered injury when the aggregate area exceeds one-half inch in diameter on Anjou or other smooth-skinned varieties or when smooth netlike russetting exceeds fifteen percent of the pear's surface.

(c) **Smooth solid or smooth netlike russetting** is considered injury when the aggregate area exceeds one-third of the surface on Comice pears. On Anjou, Comice, and other smooth-skinned varieties, any amount of characteristic smooth russetting is permitted on the portion of the calyx end that is invisible for more than one-half inch along the contour of the pear when the pear is placed calyx end down on a flat surface.

(d) **Rough or thick russetting**, none allowed, except russetting characteristic of frost injury is considered damage when the aggregate area exceeds one-half inch in diameter for Bosc, Seckel, and other similar varieties.

(2) **Limb rubs** are considered injury when they are cracked or softened or more than very slightly depressed or not light in color or exceed an aggregate area of three-fourths inch in diameter.

(3) **Hail marks** or other similar depressions or scars are considered injury when they are not very shallow or superficial or when they affect an aggregate area of more than one-fourth inch in diameter.

(4) **Cork spots** are considered injury when a pear shows depressions or other external evidence of the disease.

(5) **Sunburn or sprayburn** is considered injury when the normal color of the pear has been materially changed or the skin is blistered or cracked or the flesh is softened or discolored.

(6) **Insect stings** are considered injury when there are more than two healed slight stings or depressions or the stings materially affect the general appearance of a pear.

(7) **Blister mite or canker worm injury** is considered injury when it is not shallow and superficial or when it affects an aggregate area of more than one-fourth inch in diameter.

NEW SECTION

WAC 16-442-085 Damage defects. The following specific defects or any combination of them, when the combined seriousness exceeds the maximum allowed for any one defect, are considered damage to winter pears:

(1) **Russetting:**

(a) **Excessively rough russetting** that shows "frogging" or slight cracking on all pear varieties when the russetting exceeds one-half inch in diameter and is excessively rough.

(b) **Slightly rough or thick russetting** that is characteristic of frost injury on Anjou and other smooth-skinned varieties when it exceeds three-fourths inch in diameter.

(c)(i) **Smooth solid or smooth netlike russetting** that exceeds one-third of the surface on Anjou pears or covers more than fifteen percent of the surface on other smooth-skinned varieties.

(ii) On Anjou and other smooth-skinned varieties, any amount of characteristic smooth russetting is permitted on the portion of the calyx end that is invisible for more than one-half inch along the contour of the pear when the pear is placed calyx end down on a flat surface.

(d)(i) **Rough or thick russetting** that is characteristic of frost injury when it exceeds three-fourths inch in diameter on Bosc, Seckel, and other similar varieties.

(ii) On Bosc, Seckel, and similar varieties, any amount of characteristic russetting is permitted, whether caused by natural or artificial means.

(iii) Light limb rubs that resemble and blend into russet areas are considered russet.

(2) **Hard end** pears are considered defects of all grades.

(3) **Skin breaks** when the pear has one skin break that is more than three-sixteenths inch in diameter or deeper than three-sixteenths inch or has more than one skin break that is at least one-eighth inch in diameter or at least one-eighth inch deep.

(a) Small inconspicuous skin breaks that are less than one-eighth inch in diameter or less than one-eighth inch deep are not considered damage.

(b) At a maximum, fifteen percent of the pears in any container may have no more than one skin break per pear ranging in size from one-eighth inch to three-sixteenths inch in diameter or depth.

(4) **Limb rubs** when they cause:

(a) Cracks, softening, or more than slight depressions; or

(b) Black discoloration that exceeds an aggregate area of three-eighths inch in diameter; or

(c) Dark brown discoloration or excessive roughness that exceeds an aggregate area of one-half inch in diameter; or

(d) A slightly rough, light colored discoloration that exceeds an aggregate area of three-fourths inch in diameter; or

(e) Smooth, light colored discoloration that exceeds an aggregate area of one inch in diameter.

(5) **Hail marks** or other similar depressions or scars that are not shallow or superficial or when they affect an aggregate area of more than three-eighths inch in diameter.

(6) **Cork spot** when more than one spot is externally visible or when the externally visible injury affects an aggregate area of more than three-eighths inch in diameter.

(7) **Drought spot** when there is more than one spot or the external injury exceeds an aggregate area of three-eighths inch in diameter or the appearance of the flesh is materially affected by corky tissue or brownish discoloration.

(8)(a) **Sunburn or sprayburn** when the skin is blistered, cracked, or shows any light tan or brownish color or the shape is appreciably flattened or the flesh is appreciably softened or changed in color.

(b) Sprayburn of a russet character must be considered under the definition of russetting in subsection (1) of this section.

(9) **Insect stings** when there are more than two healed codling moth stings or a sting is over three thirty-seconds of an inch in diameter or when other insect stings affect the pear's appearance.

(10) **Blister mite or canker worm injury** that is not shallow or superficial or when it affects an aggregate area of more than three-eighths inch in diameter.

(11)(a) **Scab spots** when they are black and cover an aggregate area of more than one-eighth inch in diameter.

(b) Scab spots of a russet character must be considered under the definition of russetting in subsection (1) of this section.

(12) **Sooty blotch** when it is thinly scattered over more than five percent of the pear's surface or when it appears as dark, heavily concentrated spots affecting an aggregate area of more than three-eighths inch in diameter.

AMENDATORY SECTION (Amending Order 610, effective 8/21/51)

WAC 16-442-090 Definitions ((of terms)). ((As used in these standards:

(+)) In addition to the definitions found in RCW 15.17.-020, the following definitions apply to this chapter:

"Aggregate area" means areas under consideration on a pear's surface that may be combined into one circular area with a diameter equal to the maximum diameter specified for the particular blemish.

"Black end" means a blemish that is evidenced by an abnormally deep green color around the calyx; or black spots usually occurring on one-third of the surface nearest to the calyx; or by an abnormally shallow calyx cavity.

"Carefully picked" means the pears do not show evidence of rough handling or of having been on the ground.

"Clean" means a pear free from excessive dirt, dust, spray residue or other foreign material.

"Department" means the Washington state department of agriculture.

"Director" means the director of the department or the director's representative.

"Ground color" means green, light green, yellowish green, and yellow.

"Hard end" means the pear shows an abnormally yellow color at the blossom end; or has a smooth, rounded base with little or no depression at the calyx; or there is dry, tough or woody flesh near the calyx. Hard end pears are defects of all grades.

"Lot" means any number of containers of fresh winter pears offered as a unit for inspection, sale, or shipment.

"Mature" means ~~((that))~~ the pear has reached the stage of maturity which will ~~((insure))~~ ensure the proper completion of the ripening process.

Before a mature pear becomes overripe, it will show varying degrees of firmness depending upon the stage of the ripening process. Therefore, a statement of firmness should be given in order to indicate the state of the ripening process. A description of the ground color should also be given.

~~((The following terms should be used for describing the ground colors "green," "light green," "yellowish green," and "yellow."))~~

The following terms should be used for describing the firmness of pears:

"Hard" means ~~((that))~~ the flesh of the pear is solid and does not yield appreciably even to considerable pressure. ~~((Such))~~ Hard pears are in suitable condition for long storage periods for the variety~~((s))~~.

"Firm" means ~~((that))~~ the flesh of the pear is fairly solid but yields somewhat to moderate pressure. The ripening process in firm pears is further advanced than in hard pears and they cannot be held in storage as long. Winter varieties at the firm stage may be held longer than the early varieties~~((s))~~.

"Firm ripe" means ~~((that))~~ the flesh of the pear yields readily to moderate pressure. ~~((Such))~~ A firm ripe pear is approaching the stage at which it is in prime eating condition but may be held for a brief period, although winter varieties can be held longer than the early varieties~~((s))~~.

"Ripe" means ~~((that))~~ the pear is at the stage where it is in its most desirable condition for eating.

~~((2))~~ **"Overripe"** means the pear is dead ripe, very mealy ~~((or))~~, soft, ~~((past))~~ and has no commercial ~~((utility;))~~ value.

~~((3))~~ **"Carefully handpicked"** means that the pears do not show evidence of rough handling or of having been on the ground;

(4) **"Clean"** means free from excessive dirt, dust, spray residue or other foreign material;

(5) **"Well formed"** means having the shape characteristic of the variety. Slight irregularities of shape from type which do not appreciably detract from the general appearance of the fruit shall be considered well formed;

(6) **"Black end"** is evidenced by an abnormally deep green color around the calyx, or black spots usually occurring on the one third of the surface nearest to the calyx, or by an abnormally shallow calyx cavity;

(7) **"Injury"** means any blemish or defect that more than slightly affects the appearance, edible or shipping quality. The following shall be considered as injury:

(7a) Russeting which exceeds the following shall be considered as injury:

On all varieties any excessively rough russeting (russeting which shows "frogging" or slight cracking):

On Comice, and on Anjou and other smooth-skinned varieties, slightly rough russeting, or thick russeting such as is characteristic of frost injury, when the aggregate area exceeds 1/2 inch in diameter;

On Anjou and other smooth-skinned varieties, smooth solid russeting when the aggregate area exceeds 1/2 inch in diameter and smooth netlike russeting when the aggregate area exceeds 15 percent of the surface, and on Comice, smooth solid or smooth netlike russeting when the aggregate area exceeds one third of the surface, except that, in addition, on these and similar varieties, any amount of characteristic smooth russeting shall be permitted on that portion of the calyx and not visible for more than 1/2 inch along the contour of the pear, when it is placed calyx end down on a flat surface;

On any of the following and other similar varieties, rough or thick russeting such as is characteristic of frost injury when the aggregate area exceeds 1/2 inch in diameter. On any of these varieties any amount of characteristic russeting is permitted whether due to natural causes such as weather or stimulated by artificial means; leaf whips or light limb rubs which resemble and blend into russeted areas shall be considered as russet:

Bose	Pound
Clairgeau	Seekel
Easter Beurre	Sheldon
Kieffer	Winter Nelis, and other similar varieties;
P. Barry	

Any one of the following defects or any combination thereof, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as injury:

(7b) Limbrubs which are cracked, softened, more than very slightly depressed, not light in color, or exceeding an aggregate area of 3/4 inch in diameter;

(7c) Hail marks or other similar depressions or sears which are not very shallow or superficial, or which affect an aggregate area of more than 1/4 inch in diameter;

(7d) Cork spot when a pear shows depressions or other external evidence of the disease;

(7e) Sunburn or sprayburn if the normal color of the fruit has been materially changed, or if the skin is blistered or cracked, or the flesh softened or discolored;

(7f) More than two healed slight stings or depressions, or any stings which materially affect the general appearance of the fruit.

Blister mite or canker worm injury which is not very shallow and superficial or where the injury affects an aggregate area or more than 1/4 inch;

(8) **"Fairly well formed"** means that the pear may be slightly abnormal in shape but not to an extent which detracts materially from the appearance of the fruit. Winter Nelis

pears with characteristic slight sutures or with slight flattening on one side and/or other slight irregularities which do not materially detract from the general appearance of the pear shall be considered fairly well formed;

(9) "Damage" means any injury or defect which materially affects the appearance, edible or shipping quality;

(9a) Hard end, if the pear shows an abnormally yellow color at the blossom end, or an abnormally smooth rounded base with little or no depression at the calyx, or if the flesh near the calyx is abnormally dry and tough or woody;

(9b) Slight handling bruises and package bruises such as are incident to good commercial handling in the preparation of a tight pack shall not be considered damage;

(9c) Any pear with one skin break larger than 3/16 inch in diameter or depth, or with more than one skin break 1/8 inch or larger in diameter or depth, shall be considered damaged, and scored against the grade tolerance.

Small inconspicuous skin breaks, less than 1/8 inch in diameter or depth, shall not be considered damage. In addition, not more than 15 percent of the pears in any container may have not more than one skin break from 1/8 inch to 3/16 inch inclusive in diameter or depth;

(9d) Russeting which exceeds the following shall be considered as damage:

On all varieties excessively rough russeting (russeting which shows "frogging" or slight cracking) when the aggregate area exceeds 1/2 inch in diameter;

On Anjou and other smooth-skinned varieties, slightly rough russeting, or thick russeting such as is characteristic of frost injury, when the aggregate area exceeds 3/4 inch in diameter;

On Anjou, smooth solid or smooth netlike russeting when the aggregate area exceeds one-third of the surface, and on other smooth-skinned varieties, 15 percent of the surface, except that, in addition, on Anjou and other smooth-skinned varieties, any amount of characteristic smooth russeting shall be permitted on that portion of the calyx end not visible for more than 1/2 inch along the contour of the pear, when it is placed calyx end down on the flat surface;

On any of the following and other similar varieties, rough or thick russeting such as is characteristic of frost injury, when the aggregate area exceeds 3/4 inch in diameter; on any of these varieties any amount of characteristic russeting is permitted, whether due to natural causes such as weather or stimulated by artificial means; leaf whips or light limb rubs which resemble and blend into russeted areas shall be considered as russet:

Bosc	Pound
Clairgeau	Seekel
Comice	Sheldon
Easter Beurre	Winter Nelis, and other similar varieties;
Kieffer	
P. Barry	

Any one of the following defects or any combination thereof, the seriousness of which exceeds the maximum allowed for any one defect shall be considered as damage:

(9e) Any limb rubs which are cracked, softened, or more than slightly depressed:

Black discoloration caused by limb rubs which exceeds an aggregate area of 3/8 inch in diameter.

Dark brown discoloration or excessive roughness caused by limb rubs which exceeds an aggregate area of 1/2 inch in diameter.

Slightly rough, light colored discoloration caused by limb rubs which exceeds an aggregate area of 3/4 inch in diameter.

Smooth, light colored discoloration caused by limb rubs which exceeds an aggregate area of 1 inch in diameter;

(9f) Hail marks or other similar depressions or scars which are not shallow or superficial, or where the injury affects an aggregate area of more than 3/8 inch in diameter;

(9g) Cork spot, when more than one in number visible externally, or when the visible external injury affects an area of more than 3/8 inch in diameter;

(9h) Drought spot when more than one in number, or when the external injury exceeds an aggregate area of 3/8 inch in diameter, or when the appearance of the flesh is materially affected by corky tissue or brownish discoloration;

(9i) Sunburn or sprayburn where the skin is blistered, cracked, or shows any light tan or brownish color, or the shape of the pear is appreciably flattened, or the flesh is appreciably softened or changed in color, except that sprayburn of a russet character shall be considered under the definition of russeting (9d);

(9j) Insects.

More than two healed codling moth stings, or any insect sting which is over 3/32 of an inch in diameter, or other insect stings affecting the appearance to an equal extent.

Blister mite or canker worm injury which is not shallow or superficial, or where the injury affects an aggregate area of more than 3/8 inch in diameter;

(9k) Disease.

Seab spots which are black and which cover an aggregate area of more than 1/8 inch in diameter, except that seab spots of a russet character shall be considered under the definition of russeting (9d).

Sooty blotch which is thinly scattered over more than 5 percent of the surface, or dark, heavily concentrated spots which affect an area of more than 3/8 inch in diameter;

(10) "Seriously misshapen" means that the pear is excessively flattened or elongated for the variety, or is constricted or deformed so it will not cut three fairly uniform good quarters, or is so badly misshapen that the appearance is seriously affected;

(11) "Serious damage" means any injury or defect which seriously affects the appearance, edible or shipping quality:

(11a) Russeting which in the aggregate exceeds the following shall be considered as serious damage:

On all varieties, excessively rough russeting (russeting which shows "frogging" or slight cracking) when the aggregate area exceeds 3/4 inch in diameter;

On all varieties, thick russeting such as is characteristic of frost injury, 15 percent of the surface;

On Anjou, smooth solid or smooth netlike russeting when the aggregate area exceeds two-thirds of the surface, except that, in addition, any amount of characteristic smooth russeting shall be permitted on that portion of the calyx end

not visible for more than 1/2 inch along the contour of the pear, when it is placed calyx end down on a flat surface;

Any one of the following defects or combination thereof, the seriousness of which exceeds the maximum allowed for any one defect shall be considered as serious damage:

(11b) Limb rubs which are more than slightly cracked, or excessively rough limb rubs or dark brown or black discoloration caused by limb rubs which exceeds an aggregate area of 3/4 inch in diameter;

Other limb rubs which affect an aggregate area of more than one-tenth of the surface;

(11c) Hail marks or other similar depressions or scars which affect an aggregate area of more than 3/4 inch in diameter, or which materially deform or disfigure the fruit;

(11d) Cork spot, when more than two in number visible externally, or when the visible external injury affects an aggregate area of more than 1/2 inch in diameter;

(11e) Drought spot when more than two in number, or where the external injury affects an aggregate area of more than 3/4 inch in diameter, or when the appearance of the flesh is seriously affected by corky tissue or brownish discoloration;

(11f) Sunburn or sprayburn where the skin is blistered, cracked or shows any brownish color, or where the shape of the pear is materially flattened, or the flesh is softened or materially changed in color, except that sprayburn of a russet character shall be considered under the definition of russetting (11a);

(11g) Insects:

Worm holes:

More than three healed codling moth stings, of which not more than two may be over 3/32 inch in diameter, or other insect stings affecting the appearance to an equal extent.

Blister mite or canker worm injury which affects an aggregate area of more than 3/4 inch in diameter or which materially deforms or disfigures the fruit;

(11h) Disease:

Scab spots which are black, and which cover an aggregate area of more than 1/4 inch in diameter, except that scab spots of a russet character shall be considered under the definition of russetting (11a);

Sooty blotch which is thinly scattered over more than 15 percent of the surface, or dark heavily concentrated spots which affect an area of more than 3/4 inch in diameter;

(12) Very seriously misshapen means that the pear is excessively flattened, elongated for variety, or is constricted or deformed so it will not cut one good half or two fairly uniform quarters.) **"Shape."** The following terms define the shapes of winter pears:

"Well formed" means pear is considered well formed when its shape is characteristic of the variety. Pears with slight irregularities of shape that do not appreciably detract from the general appearance of the fruit are considered well formed.

"Fairly well formed" means a pear is considered fairly well formed when its shape is slightly abnormal, but not to an extent that it materially detracts from the appearance of the fruit. Winter Nellis pears with characteristic slight sutures or with slight flattening on one side and/or slight irregularities

that do not materially detract from the general appearance of the pear are considered fairly well formed.

"Seriously misshapen" means the pear is excessively flattened or elongated for the variety or constricted or deformed so that it cannot be cut into three fairly uniform good quarters or is so badly misshapen that the appearance is seriously affected.

"Very seriously misshapen" means the pear is excessively flattened or elongated for the variety or is constricted or deformed so that it cannot be cut into one good half or two fairly uniform quarters.

"Size" means the greatest transverse diameter of the pear taken at right angles to a line running from the stem to the blossom end.

"Sound" means pears, at the time of packing, are free from visible defects such as decay, breakdown, scald, bitter pit, or free from physical injury affecting keeping quality.

NEW SECTION

WAC 16-442-095 Serious damage. The following defects, or any combination of them when the combined seriousness exceeds the maximum allowed for any one defect, are considered serious damage to winter pears:

(1) **Russetting:**

(a) **Excessively rough russetting** that shows "frogging" or slight cracking and exceeds three-fourths inch in diameter on all winter pear varieties.

(b) **Thick russetting** characteristic of frost injury that covers fifteen percent of the pear's surface on all varieties.

(c)(i) **Smooth solid or smooth netlike russetting** that exceeds two-thirds of the surface of Anjou pears.

(ii) On Anjou, any amount of characteristic smooth russetting is permitted on the portion of the calyx end that is invisible for more than one-half inch along the contour of the pear when the pear is placed calyx end down on a flat surface.

(2) **Limb rubs** when they are:

(a) More than slightly cracked or excessively rough; or

(b) Dark brown or black in color and exceed an aggregate area of three-fourths inch in diameter.

(c) Other limb rubs when they exceed an aggregate area of one-tenth of the surface of the pear.

(3) **Hail marks** or other similar depressions or scars when they affect an aggregate area of more than three-fourths inch in diameter or materially deform or disfigure the pear.

(4) **Cork spot** when more than two spots are externally visible or the externally visible injury affects an aggregate area of more than one-half inch in diameter.

(5) **Drought spot** when:

(a) There are more than two or the external injury affects an aggregate area of more than three-fourths inch in diameter; or

(b) The appearance of the flesh is seriously affected by corky tissue or brownish discoloration.

(6)(a) **Sunburn or sprayburn** when the skin is blistered, cracked, or shows any brownish color or the shape is materially flattened or the flesh is softened or materially changed in color.

(b) Sprayburn of a russet character must be considered under the definition of russetting in subsection (1) of this section.

(7) **Worm holes** when any worm holes are evident.

(8) **Insect stings** when there are more than three healed codling moth stings, of which not more than two may be over three thirty-seconds inch in diameter or when other insect stings affect the pear's appearance.

(9) **Blister mite or canker worm injury** when it affects an aggregate area of more than three-fourths inch in diameter or materially deforms or disfigures the pear.

(10)(a) **Scab spots** when they are black and cover an aggregate area of more than one-fourth inch in diameter.

(b) Scab spots of a russet character must be considered under the definition of russetting in subsection (1) of this section.

(11) **Sooty blotch** when it is thinly scattered over more than fifteen percent of the surface of the pear or appears as dark, heavily concentrated spots affecting an aggregate area of more than three-fourths inch in diameter.

AMENDATORY SECTION (Amending Order 322, effective 7/29/40)

WAC 16-442-100 Tolerances ((for preceding grades)) for winter pears. (1) ((In order to allow for variations incident to proper grading and handling, not)) (a) For all grades, no more than ((a total of 10)) ten percent of the pears in any container may be below the grade requirements ((of grade, provided that not)) of this chapter, including no more than ((5)) five percent ((shall)) may be seriously damaged by insects, and not more than ((4)) one percent ((shall)) may be allowed for decay or internal breakdown.

(b) No more than five percent of the pears in any container may be out of compliance with the size requirements of this chapter, except when both maximum and minimum sizes are stated on the container.

(c) When both maximum and minimum sizes are stated on the container, an additional ten percent tolerance is allowed for pears that are larger than the maximum stated size.

(d) No more than ten percent of the containers in any lot may be out of compliance with the packing requirements of this chapter.

(2) When applying the ((foregoing)) tolerances in subsection (1) of this section to the U.S. combination grade ((no part of any)), tolerances ((shall)) may not be used to reduce the percentage of U.S. No. 1 pears required in the combination((; but)). However, if the entire lot averages within the specified percentage, individual containers may ((have not more than 10)) contain up to ten percent less than the percentage of U.S. No. 1 pears required((; provided that the entire lot averages within the percentage specified)).

(3) The tolerances for the standards are on a container basis. However, individual packages in any lot may vary from the specified tolerances if the averages for the entire lot, based on sample inspection, are within the tolerances specified.

(a) For a tolerance of ten percent or more, individual packages in any lot may contain not more than one and one-

half times the tolerance specified. When the package contains fifteen specimens or less, individual packages may contain not more than double the tolerance specified.

(b) For a tolerance of less than ten percent, individual packages in any lot may contain not more than double the tolerance specified. At least one specimen that does not meet the requirements is allowed in any one package.

AMENDATORY SECTION (Amending Order 322, effective 7/29/40)

WAC 16-442-110 Condition after storage or transit. Decay, scald or other deterioration, which may have developed on pears after they have been in storage or transit, shall be considered as affecting condition and not the grade.

AMENDATORY SECTION (Amending Order 322, effective 7/29/40)

WAC 16-442-120 Standard pack. (1) ((Sizing. The numerical count, or the minimum size of the pears packed in closed containers shall be indicated on the package. The number of pears in the box shall not vary more than 3 from the number indicated on the box.

(2) When the numerical count is marked on western standard or special pear boxes the pears shall not vary more than 3/8 inch in their transverse diameter for counts 120 or less; 1/4 inch for counts 135 to 180 inclusive; and 3/16 inch for counts 193 or more.

(3) When the numerical count is marked on western standard half boxes or special half boxes packed three tiers deep, the pears shall not vary more than 1/4 inch for counts 90 or less, and 3/16 inch for counts 100 or more.

(4) When the numerical count is marked on western standard half boxes or special half boxes packed two tiers deep, the pears shall not vary more than 3/8 inch for counts 50 or less; 1/4 inch for counts 55 to 60 inclusive; and 3/16 inch for counts 65 or more.

(5) When the numerical count is not shown, the minimum size shall be plainly stamped, stenciled or otherwise marked on the container in terms of whole inches, whole and half inches, whole and quarter inches, or whole and eighth inches, as 2-1/2 inches minimum, 2-1/4 inches minimum, or 2-5/8 inches minimum, in accordance with the facts. It is suggested that both minimum and maximum sizes be marked on the container, as 2-1/4 to 2-3/4 inches, 2-1/2 to 2-3/4 inches, as such marking is especially desirable for pears marketed in the export trade.

(6) "Size" means the greatest transverse diameter of the pear taken at right angles to a line running from the stem to the blossom end.

(7) Packing. Each package shall be packed so that the pears in the shown face shall be reasonably representative in size and quality of the contents of the package.

(8) Pears packed in any container shall be tightly packed. All packages shall be well filled but the contents shall not show excessive or unnecessary bruising because of overfilled packages.

(9) Pears packed in boxes shall be arranged in containers according to the approved and recognized methods with the pears packed lengthwise. A bridge shall not be allowed in any

standard pack. When wrapped each pear shall be fairly well enclosed by its individual wrapper.

(10) Pears packed in round stave bushel baskets, tubs or in barrels shall be ring faced.) Except when jumbled, all packed pears must be arranged in clean cartons according to industry approved and recognized methods.

(2) When packed, pears in any container must be tightly packed and all packages must be well filled. The pears must not show excessive or unnecessary bruising because of over-filling. Any wrapped pear must be well wrapped.

(3) The pears in the top layer of each package must be reasonably representative of the size and quality of the pears in the package.

(4) When the numerical count is marked on the container, percentages must be calculated on the basis of count.

(5) When the minimum diameter or minimum and maximum diameters are marked on the container, percentages must be calculated on the basis of weight or an equivalent basis.

(6) When the pears are in bulk, percentages must be calculated on the basis of weight or an equivalent basis.

(7) The numerical count or the minimum size of the pears packed in closed containers must be indicated on the container. The number of pears in a carton must not vary more than three from the number indicated on the carton.

(8) When the numerical count is not shown, the minimum size must be plainly stamped, stenciled or otherwise marked on the container in terms of:

- (a) Whole inches (such as 2 inches);
- (b) Whole and half inches (2 1/2 inches);
- (c) Whole and quarter inches (2 1/4 inches); or
- (d) Whole and eighth inches (2 3/8 inches).

AMENDATORY SECTION (Amending Order 322, effective 7/29/40)

WAC 16-442-150 Container marking ((boxes)) requirements. (1) When pears are shipped, the ((box shall)) container must bear the:

(a) Correct name of the variety((-)) or marked "variety unknown," or, when more than one variety and/or commodity is in the container, the name of each variety and/or commodity;

(b) The name and address of the grower, packer, or shipper((-, and his address,)); and

(c) The grade and the number of pears or the net contents either in terms of dry measure or weight. ((Any of these marks may be printed on the label but in case they are not, they must be stamped on the end of the box. The grower's, packer's or shipper's name and address, if not included on the label, must be placed either in line with the grade marks above the label or on the opposite end of the box.))

(2) ((When boxes are marked as to number, they shall comply with the specifications mentioned under size.)) Consumer packages and jumbled packs must be marked with minimum diameter. Count may be used if pears can be readily counted.

(3) Any marking requirements of subsections (1) and (2) of this section may be printed on the container label, but if

they are not, they must be shown on the principal display panel.

AMENDATORY SECTION (Amending Order 322, effective 7/29/40)

WAC 16-442-160 Other grades and brands. (1) Any person, firm, or organization wishing to pack pears under ~~((any other))~~ a grade or brand ~~((than those described in the foregoing rules shall))~~ not covered by this chapter, must file with the director a certified copy of the description of ~~((such))~~ the private grade or brand ~~((with the director of agriculture at Olympia, Washington,))~~ before the first day of August of the year in which the pears ~~((so to be packed))~~ are grown.

(2) If ~~((such))~~ the director approves the private grade or brand ~~((is approved by the director of agriculture))~~, pears may be packed under ~~((such))~~ the private grade or brand instead of the official state grading rules~~((, and))~~. All boxes of pears ((so)) packed ((shall)) under the private grade or brand must be marked with that grade or brand.

NEW SECTION

The following section of the Washington Administrative Code is decodified as follows:

Old WAC Number	New WAC Number
16-442-090	16-442-006

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-442-010	Introduction.
WAC 16-442-130	Tolerances for standard pack.
WAC 16-442-140	Box packs.

WSR 09-01-095

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed December 16, 2008, 11:52 a.m., effective January 16, 2009]

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

Purpose: The department amended chapter 16-439 WAC, Pears, summer and fall, by making changes that are necessary to update the chapter and increase its clarity. No substantive changes are made to chapter 16-439 WAC. The amendments are only to make the rule language clear and readable; pear standards are not changed.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-439-250; and amending WAC 16-439-001, 16-439-200, 16-439-210, 16-439-220, 16-439-230, 16-439-240, 16-439-260, 16-439-270, and 16-439-280.

Statutory Authority for Adoption: Chapter 15.17 RCW, Standards of grades and packs, specifically RCW 15.17.030 Enforcement—Director's duties—Rules and chapter 34.05 RCW, Administrative Procedure Act.

Adopted under notice filed as WSR 08-21-167 on October 22, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 7, Amended 9, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 7, Amended 9, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 7, Amended 9, Repealed 1.

Date Adopted: December 16, 2008.

Robert W. Gore
Acting Director

AMENDATORY SECTION (Amending Order 1033, filed 10/10/66, effective 11/10/66)

WAC 16-439-001 (~~(Promulgation-)~~) Purpose. (~~(I, Donald W. Moos, director of agriculture of the state of Washington, by virtue of the authority vested in me under chapter 15.17 RCW, after due notice and public hearing held at Olympia, Washington on September 30, 1966, (pursuant to chapters 42.32 and 34.04 RCW), do hereby establish the Washington))~~ This chapter establishes standards for Bartlett and other summer and fall pears (, container minimum size and marking requirements)) that are packed and marketed within the state of Washington.

AMENDATORY SECTION (Amending Order 1033, filed 10/10/66, effective 11/10/66)

WAC 16-439-200 Definitions (~~(of terms)~~). (~~The following regulations and~~) In addition to the definitions found in RCW 15.17.020, the following definitions (~~(shall)~~) apply to all varieties and grades under this (~~order~~.

(1) "Mature" means having reached the stage of maturity which will insure a proper completion of the ripening process. Firmness of the flesh shall be considered only in connection with other factors to determine the degree of maturity.

(2) "Hand picked" means that pears do not show evidence of rough handling or of having been on the ground.

(3) chapter:

"Aggregate area" means areas under consideration on a pear's surface that may be combined into an area with a diameter equal to the maximum diameter specified.

"Carefully picked" means pears do not show evidence of either rough handling or having been on the ground.

"Clean" means reasonably free from dust, dirt, or honey dew.

~~((4) "Sound" means that pears at time of packing are free from visible defects such as decay, breakdown, scald, bitter pit, or physical injury affecting keeping quality.~~

~~(5) "Aggregate area" means that all the areas of the blemish under consideration may be assembled into one circular area of the maximum diameter specified.)~~ "Department" means the Washington state department of agriculture.

"Director" means the director of the department or the director's representative.

"Free from damage" means the fruit is free from any blemish that materially affects the appearance of the fruit.

"Free from serious damage" means the fruit is not seriously deformed or disfigured or the edible or culinary value is not seriously affected by defects. Healed insect depressions or other surface blemishes that do not prevent the cutting of one good half are not considered serious damage.

"Hard end pear" means a pear that shows an abnormally yellow or green color at the blossom end, or an abnormally smooth, rounded base with little or no depression at the calyx, or a pear with an abnormally dry and tough or woody flesh near the calyx. Hard end pears are considered defects of all grades.

"Mature" means pears that have reached a stage of maturity that will ensure proper completion of the ripening process.

"Not seriously misshapen" means the pear must have a shape that permits the cutting of three fairly uniform quarters, is not excessively flattened or elongated for the variety, and is free from excessive creases or folds.

"Rat tail pear" means any rat tail shaped or second bloom pear that is tough or ridged. Rat tail pears are considered defects of all grades.

"Sound" means pears, at the time of packing, are free from visible defects such as decay, breakdown, scald, bitter pit, or from physical injury that affects keeping quality.

"Well formed" means having the shape characteristic of the variety.

AMENDATORY SECTION (Amending Order 1033, filed 10/10/66, effective 11/10/66)

WAC 16-439-210 Grades. (~~(Washington extra fancy~~ shall consist of pears of one variety which are mature, hand picked, clean, well formed, sound, and free from drought spot, cork spot, and visible black end, and from damage caused by broken skin, bruises, limbruks, sunburn, sprayburn, hail marks, russeting, disease, insects, mechanical or other means:

(1) "Well formed" means having the shape characteristic of the variety; and is further defined by variety as follows:

(a) Bartletts shall have a characteristic pyriform shape of a length not less than 1 1/4 times the diameter of the pear, except that the shape may be slightly irregular provided it does not detract from the general appearance of the pear.

(b) In other varieties slight irregularities of shape from type which do not materially detract from the general appearance of the fruit shall be considered well formed.

(2) "Free from damage" means that no blemish shall be allowed which materially affects the appearance of the fruit. The following blemishes shall not be considered as damage:

(a) Slight handling bruises and box bruises such as are incident to good commercial handling in the preparation of a tight pack.

(b) Sunburn, if the normal color of the fruit has not been materially changed, without any softening of the flesh or blistering or cracking of the skin.

(c) Spray burn, same as sunburn.

(d) Russeting, characteristic of the variety as follows:

(i) On Bartlett, characteristic russeting shall be permitted at the calyx end provided such russeting is not visible for more than 1/2 inch when the pear is placed calyx end down on a flat surface.

(e) Light russeting not characteristic of the variety, when the affected area does not exceed an aggregate of 15% of the surface.

(f) Slight pebbling on Bartletts which does not materially detract from the appearance.

In addition to the above, a pear may show any one or a combination of the following, the aggregate of which does not exceed 3/4 inch in diameter:

(g) Limbrubs which are light and not soft and which affect an aggregate area not to exceed 3/4 inch in diameter.

(h) Hail marks when the injury is superficial and which affect an aggregate area not to exceed 1/4 inch in diameter.

(i) Heavy russeting, such as is characteristic of frost injury when the aggregate area does not exceed 1/2 inch in diameter.

(j) Two slight, healed depressions which do not materially affect the general appearance of the fruit.

(k) Sooty blotch when affecting an aggregate area of more than 10% slight or thin, or 1/2 inch moderate, or 3/8 inch heavy.

(3) **Washington fancy** shall consist of pears of one variety which are mature, hand picked, clean, not seriously misshapen, sound, and free from cork spot, and visible black end, and from damage caused by broken skin, and from serious damage caused by bruises, limbrub, sunburn, spray burn, hail marks, drought spot, russeting, disease, insects, mechanical or other means.

(4) "Not seriously misshapen" means in Bartletts and other varieties, the pear shall have a shape which will permit the cutting of three fairly uniform quarters, and which is neither excessively flattened or elongated for the variety, and which shall be free from excessive creases or folds.

(5) "Free from serious damage" means that the defects taken singly or collectively shall not seriously deform or disfigure the fruit, or seriously affect the edible or culinary value. The following blemishes shall not be considered as serious damage:

(a) Slight handling bruises and box bruises, such as are incident to good commercial handling in the preparation of a tight pack.

(b) Sunburn, if the normal color of the fruit has been but slightly changed without any softening of the flesh or blistering or cracking of the skin.

(c) Spray burn, same as sunburn.

(d) Russeting characteristic of the variety.

(i) On Bartlett, characteristic russeting shall be permitted at the calyx end provided such russeting is not visible for more than 1/2 inch when the pear is placed calyx end down

on a flat surface and in addition smooth russeting shall be permitted on the entire surface.

(ii) On other varieties, smooth russeting not characteristic of the variety will be permitted on the entire surface of the fruit.

(e) Pebbling on Bartletts which does not seriously affect the culinary or edible value of the fruit.

(f) Limbrubs on Bartletts and other varieties which are light and which are not soft and which do not affect an aggregate area to exceed 10% of the surface of the fruit.

(g) Drought spots which do not affect an aggregate area exceeding 1/4 inch.

In addition to the above, a pear may show any one or a combination of the following, the aggregate of which does not exceed the maximum area specified on each variety mentioned below:

(h) Heavy or dark heavy limbrubs on Bartletts and other varieties which are not soft and which do not affect an aggregate area to exceed 3/4 of an inch.

(i) Hail marks when the injury does not affect an aggregate area to exceed 3/4 inch in diameter on Bartlett pears, and 1/2 inch in diameter on other varieties of pears.

(j) **Frost rings.**

(i) Bartletts: Frost rings which do not completely encircle the pear and when the surface is only slightly grooved; and frost damage, such as occurs at the calyx end and which does not materially detract from the appearance of the pear.

(ii) On other varieties frost injury of the nature of heavy russet shall be considered under heavy limbrubs.

(k) Scab spot affecting an aggregate area not to exceed 1/2 inch in diameter.

(l) Shallow healed depressions which do not seriously affect the general appearance of the fruit and which do not affect an aggregate area to exceed 3/4 of an inch in diameter.

(m) Sooty blotch when affecting an aggregate area of not more than 50% of the surface area of thin, widely scattered spots, or not more than 1 1/4 inches of moderate, or not more than 3/4 inch of heavy.

(6) **Washington C grade** shall consist of pears of one variety which are mature, hand picked, clean, sound and free from hard end; and free from serious damage caused by (a) broken skin, (b) insects, disease, hail marks, limbrubs, heavy russet, or other means; and shall not be so excessively elongated or flattened as to preclude the cutting of one good half.

(a) Broken skin exceeding 1/4 inch in diameter.

(b) "Free from serious damage" means defects when taken singly or collectively shall not seriously affect the edible or culinary value of the fruit. The following conditions shall not be considered serious damage: Healed insect depressions or other surface blemishes which do not prevent the cutting of one good half.

(c) Hard end is defined as those pears which show an abnormally yellow or green color at the blossom end or an abnormally smooth rounded bases with little or no depression at the calyx, or if the flesh near the calyx is abnormally dry and tough or woody.

(d) Pears affected by hard end shall be considered defects of all grades.

(e) Rat-tail shaped pears, or second bloom pears that are tough or ridged shall be considered defects of all grades.

(7) Combination grades.

~~A. When extra fancy and fancy pears are packed together, the packages may be marked "combination extra fancy and fancy." In this grade at least 50%, by count, of the fruit must meet the requirements of extra fancy.~~

~~B. When extra fancy, fancy, and C grade pears are packed together, the packages may be marked "combination extra fancy, fancy and C grade" but must contain at least 50%, by count, of pears meeting the requirements of extra fancy grade.~~

~~C. When extra fancy and C grade pears are packed together, the packages may be marked "combination extra fancy, and C grade," but must contain at least 50%, by count, of pears meeting the requirements of extra fancy grade.~~

~~D. When fancy and C grade pears are packed together, the packages may be marked "combination fancy and C grade," but must contain at least 50%, by count, of pears meeting the requirements of fancy grade.)~~ (1) The following grades apply to summer and fall pears packed and marketed in Washington state:

(a) Washington extra fancy;

(b) Washington fancy;

(c) Washington combination; and

(d) Washington C grade.

(2) All pears packed and marketed in Washington state that are graded to U.S. grade standards must also meet the requirements of the lowest Washington state grade or better.

NEW SECTION

WAC 16-439-212 Washington extra fancy. (1) Washington extra fancy pears are mature, carefully picked, clean, well formed, sound; free from drought spot, cork spot, visible black end, hard end, and rat tail pears; and free from damage caused by broken skin, bruises, limb rubs, sunburn, sprayburn, hail marks, russetting, disease, insects, and damage caused by mechanical or other means.

(2) Bartlett pears must have a characteristic pyriform shape of a length not less than one and one-fourth times the diameter of the pear. Bartlett pears may be slightly irregular as long as the shape does not detract from the general appearance of the pear.

(3) Other varieties shall have shapes characteristic of the varieties or slightly irregular shapes as long as they do not detract from the general appearance of the fruit.

NEW SECTION

WAC 16-439-213 Washington fancy. Washington fancy pears are mature, carefully picked, clean, not seriously misshapen, sound, and free from cork spot, visible black end, hard end, and rat tail pears; free from damage caused by broken skin; and free from serious damage caused by bruises, limb rubs, sunburn, sprayburn, hail marks, drought spot, russetting, disease, insects, and caused by mechanical or other means.

NEW SECTION

WAC 16-439-214 Washington C grade. Washington C grade pears are mature, carefully picked, clean, sound and

free from hard end or rat tail pears; and free from serious damage caused by broken skin exceeding one-fourth inch in diameter; free from serious damage caused by insects, disease, hail marks, limb rubs, heavy russet, or other means, and are not excessively elongated or flattened as to preclude the cutting of one good half.

NEW SECTION

WAC 16-439-215 Washington combination grade. Washington combination grade pears consist of more than one grade packed together.

(1) When extra fancy and fancy pears are packed together, the packages may be marked "Washington combination extra fancy and fancy." At least fifty percent of the pears, by count, shall be extra fancy.

(2) When extra fancy, fancy, and C grade pears are packed together, the packages may be marked "Washington combination extra fancy, fancy, and C grade." At least fifty percent of the pears, by count, must be extra fancy.

(3) When extra fancy and C grade pears are packed together, the packages may be marked "Washington combination extra fancy and C grade." At least fifty percent of the pears, by count, must be extra fancy.

(4) When fancy and C grade pears are packed together, the packages may be marked "Washington combination fancy and C grade." At least fifty percent of the pears, by count, must be fancy.

NEW SECTION

WAC 16-439-217 Damage defects. (1) More than the following shall be considered damage:

(a) Slight handling bruises and carton bruises that are incident to proper handling.

(b) Sunburn or sprayburn, if there is no change in the normal color of the fruit, softening of the flesh, or blistering or cracking of the skin.

(c) Russetting at the calyx end of Bartlett pears, as long as the russetting is not visible for more than one-half inch when the pear is placed calyx end down on a flat surface.

(d) Light russetting that is not characteristic of the variety, when the affected area does not exceed an aggregate of fifteen percent of the surface.

(e) Slight pebbling on Bartlett pears that does not materially detract from the appearance.

(2) In addition, a pear may show one or a combination of the following as long as the aggregate area does not exceed three-fourths inch in diameter:

(a) Limb rubs that are light, not soft, and affect an aggregate area not to exceed three-fourths inch in diameter.

(b) Hail marks when the injury is superficial and affects an aggregate area not to exceed one-fourth inch in diameter.

(c) Heavy russetting, such as is characteristic of frost injury, as long as the aggregate area does not exceed one-half inch in diameter.

(d) Two slight, healed depressions that do not materially affect the general appearance of the fruit.

(e) Sooty blotch that affects an aggregate area of ten percent when the blotch is slight or thin, or one-half inch when

the blotch is moderate, or three-eighths inch when the blotch is heavy.

NEW SECTION

WAC 16-439-218 Serious damage defects. (1) More than the following shall be considered serious damage:

(a) Slight handling bruises and carton bruises that are incident to proper handling.

(b) Sunburn or sprayburn, if there is only a slight change to the normal color of the fruit and no softening of the flesh or blistering or cracking of the skin.

(c) Russeting that is characteristic of the variety.

(d) Pebbling on Bartlett pears that does not seriously affect the culinary or edible value of the fruit.

(e) Limb rubs that are light, not soft, and do not affect an aggregate area to exceed ten percent of the surface of the fruit.

(f) Drought spots that affect an aggregate area not to exceed one-fourth inch in diameter.

(2) In addition, a pear may show any one or a combination of the following as long as the aggregate area does not exceed the maximum area specified for each variety mentioned below:

(a) Heavy or dark heavy limb rubs that are not soft and do not affect an aggregate area exceeding three-fourths of an inch in diameter.

(b) Hail marks when they affect an aggregate area exceeding three-fourths inch in diameter.

(c) Frost damage.

(i) Frost rings on Bartlett pears that do not completely encircle the pear and when the surface is only slightly grooved.

(ii) Frost damage on Bartlett pears such as occurs at the calyx end and does not materially detract from the appearance of the pear.

(iii) On other varieties other than Bartlett, heavy russeting by frost that is not soft and affects an aggregate area not to exceed three-fourths inch in diameter.

(d) Scab spot affecting an aggregate area not to exceed one-half inch in diameter.

(e) Shallow healed depressions not seriously affecting the general appearance of the fruit and affecting an aggregate area not to exceed three-fourths of an inch in diameter.

(f) Sooty blotch that affects an aggregate area of not more than fifty percent of the surface when the spots are thin and widely scattered, or not more than one and one-fourth inch in diameter when the blotch is moderate, or not more than three-fourths inch in diameter when the blotch is heavy.

AMENDATORY SECTION (Amending Order 1033, filed 10/10/66, effective 11/10/66)

WAC 16-439-220 Tolerances. (1) Tolerances ~~((which))~~ that apply at time of packing:

(a) In order to allow for variations incident to commercial grading and handling, ~~((in each of the foregoing grades))~~ not more than ~~((10%))~~ ten percent, by count, of the pears in any lot may be below the requirements of the grade, and not more than ~~((one-tenth))~~ one percent, by count, of ~~((this))~~ that amount ~~((shall be))~~ is allowed for decay ~~((and))~~ or internal

breakdown. Slight imperfections ~~((which))~~ that are not discernible in good commercial sorting practice ~~((shall not be))~~ are not considered ~~((as))~~ defects of grade.

~~((b))~~ ~~((In addition to the above, a 10% tolerance for a total of all defects from the standards defined for uniformity of size, wrapping, and tightness of pack shall be permitted, and shall be computed by counting, weighing, or measuring the specimens judged to be below the standard.~~

~~((e))~~ In order to allow for variations incident to proper sizing, not more than five percent, by count, of the pears in any lot may be below any specified minimum size and not more than ten percent, by count, of the pears in any lot may be above any specified maximum size.

~~((d))~~ (c) For a tolerance of ten percent or more, individual packages in any lot may contain not more than one and one-half times the tolerance specified. For tolerances less than ten percent, individual packages in any lot may contain not more than double the tolerance specified. At least one specimen that does not meet the requirements is allowed in any one package.

(2) Additional tolerance: No more than fifteen percent of the pears in any container may have more than one skin break measuring one-eighth inch to three-sixteenths inch, inclusive, in diameter or depth. Small inconspicuous skin breaks~~((s))~~ less than one-eighth inch in diameter or depth~~((s))~~ are not ~~((be))~~ considered damage. ~~((In addition, not more than 15 percent of the pears in any container may have not more than one skin break from one-eighth inch to three-sixteenths inch, inclusive, in diameter or depth.~~

(2) Tolerances which apply after pears have been placed in storage or in transit in Washington state: After pears have been placed in storage or in transit, scald, breakdown, decay, bitter pit, or physical injury affecting keeping quality which may have developed or may only have become evident after pears are packed are defined as applying to condition rather than to grade.

NEW SECTION

WAC 16-439-225 Condition after storage or transit.

After pears have been placed in storage or in transit, defects that develop or become evident and affect a pear's keeping quality, such as scald, breakdown, decay, bitter pit, or physical injury are defined as applying to condition rather than to grade.

AMENDATORY SECTION (Amending Order 1033, filed 10/10/66, effective 11/10/66)

WAC 16-439-230 Culls. (1) ~~((Pears which are not graded in conformity with foregoing grades and standards and which contain not more than 5% serious insect damage shall be designated as "culls."))~~ Culls are pears that do not conform to the grades and standards of pears in this chapter or contain serious insect damage of not more than five percent.

(2) ~~((Pears which are not graded in conformity with the foregoing grades and which contain 5% or more))~~ are pears that do not conform to the grades and standards of pears in this chapter and contain at least five percent infestation from codling moth, San Jose scale, ~~((and))~~ or

other horticultural pests(~~(, shall be designated as "infested eulls.")~~).

AMENDATORY SECTION (Amending Order 1033, filed 10/10/66, effective 11/10/66)

WAC 16-439-240 ((Size.)) Containers, pack, and size requirements. ~~((1) The following packs shall be recognized as standard for determining range in sizes: 70, 80, 90, 100, 110, 120, 135, 165, 180, 193, 210, 228, 245.~~

~~(2) The following terms will be used for description of degrees of uniformity of sizing of pears in packed containers.~~

~~(a)) The following lists the terms and describes the degrees of uniform sizing required of pears packed in containers. Packing shall conform to industry practices.~~

~~(1) A ten percent tolerance for all defects from the standards for uniformity of size, wrapping, and tightness of pack is allowed. To compute the tolerance, the pears considered below standard must be counted, weighed, or measured.~~

~~(2) Uniform ((when the container contains not more than two sizes, the majority of which must be of the size with which the container is marked;~~

~~(b) Fairly uniform when the container actually contains a range of not more than three sizes, one size larger and one size smaller than the size with which the container is marked;~~

~~(c) Slightly irregular when not more than 10% of the pears in the container exceed the range of three sizes mentioned above;~~

~~(d) Irregular when more than 10% of the pears in the container exceed the range of three sizes mentioned above. (Note: Packages in which the size must be described as "irregular" do not comply with the state grading and packing regulations and cannot legally be shipped.)); The container must not contain more than two sizes of pears, and the majority of the pears must be the size that is marked on the container.~~

~~(3) Fairly uniform: The container contains a range of three sizes or less, and pears are one size larger and/or one size smaller than the size marked on the container.~~

~~(4) Slightly irregular: No more than ten percent of the pears in the container can exceed the three-size range "fairly uniform" requirement in subsection (3) of this section.~~

(5) Irregular:

~~(a) More than ten percent of the pears in the container exceed the three-size range mentioned in the fairly uniform requirement.~~

~~(b) Packages describing the content size as "irregular" do not comply with Washington state grading and packing regulations and cannot be legally shipped in Washington state.~~

(6) Standard carton packs:

~~(a) Except when jumbled, all packed pears must be arranged in clean cartons according to industry approved and recognized methods.~~

~~(b) Pears in standard carton packs must be tightly packed and all packages must be well filled.~~

~~(c) Each wrapped pear must be well wrapped.~~

(7) Tray packs:

~~(a) All pears packed in tray pack containers must be uniformly sized and arranged according to the approved method for the tray pack.~~

~~(b) Pears packed in trays must be properly sized to minimize movement.~~

~~(c) Tray packs must be packed with the same size and count of fruit as listed on the container.~~

AMENDATORY SECTION (Amending Order 1033, filed 10/10/66, effective 11/10/66)

WAC 16-439-260 Minimum weight for Bartlett pears. ~~((The smallest container for shipment of fresh Bartlett pears shall contain at least 14 lbs. net weight of pears. (Except for overwrap trays or other consumer type packages packed in master containers.)) (1) The minimum carton weight for fresh Bartlett pears shall be at least fourteen pounds net weight, except for overwrap trays or other consumer type packages packed in master containers.~~

~~(2) Upon request, the director may((after receiving application, grant)) approve the use of experimental ((packages)) shipping containers.~~

AMENDATORY SECTION (Amending Order 1033, filed 10/10/66, effective 11/10/66)

WAC 16-439-270 Container marking requirements. ~~((Packed or loose in containers.) (1) When shipped, the container shall bear the)) The following information must be printed on the container label or stamped on the end of the container:~~

~~(1) Correct name of the variety or marked "variety unknown," ((the)) or when more than one variety and/or commodity is in the container, the name of each variety and/or commodity;~~

~~(2) Name and address of the grower, packer, or shipper((, and his address, the));~~

~~(3) Grade((, and the));~~

~~(4) Correct number of pears ((or)) and the net contents either in terms of dry measure or weight. ((Any of these marks may be printed on the label but in case they are not, they must be stamped on the end of the container. The grower's, packer's, or shipper's name and address, if not included on the label, must be placed either in line with the grade marks above the label or on the opposite end of the container.~~

~~(2) When pears are packed in other than standard boxes or tray cartons, the container shall be marked with the correct number of pears and the net weight.)) (5) Consumer packages and jumbled packs must be marked with minimum diameter. Count may be used if pears can be readily counted.~~

AMENDATORY SECTION (Amending Order 1033, filed 10/10/66, effective 11/10/66)

WAC 16-439-280 Adoption of United States standards for summer and fall pears. (1) ~~((The following U.S. grades may be used for Bartlett and other summer and fall pears: U.S. No. 1, U.S. No. 2, and U.S. combination, as promulgated in the U.S.)) In addition to the standards contained in this chapter for summer and fall pears, the Washington state department of agriculture adopts the United States Department of Agriculture United States Standards for Sum-~~

mer and Fall Pears (~~and adopted~~), 7 CFR § 51.1260 et seq., effective August 20, 1955.

(2) ~~((When U.S. grades are used, pears must meet the requirements of the lowest Washington state grade or better.))~~ The department maintains a copy of this document for public inspection. The information may be found on the internet at: <http://www.ams.usda.gov/standards/pears-mer.pdf>.

NEW SECTION

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

Old WAC Number	New WAC Number
16-439-230	16-439-216
16-439-280	16-439-205

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-439-250 Containers.

WSR 09-01-106 PERMANENT RULES SECRETARY OF STATE

[Filed December 17, 2008, 3:11 p.m., effective January 17, 2009]

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

Purpose: To implement chapter 19.09 RCW changes made in the 2007 legislative session. These rules pertain to the charitable advisory council, amend the filing requirements of charitable solicitation organizations to reflect changes in the RCW, and administer the charitable organization education program.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-120-125, 434-120-212 and 434-120-265; and amending WAC 434-120-025, 434-120-030, 434-120-040, 434-120-045, 434-120-100, 434-120-103, 434-120-105, 434-120-110, 434-120-130, 434-120-140, 434-120-145, 434-120-175, 434-120-200, 434-120-210, 434-120-215, 434-120-220, 434-120-225, 434-120-250, 434-120-260, 434-120-270, 434-120-310, and 434-120-355.

Statutory Authority for Adoption: RCW 19.09.097, [19.09.]315, [19.09.]540, 43.07.125.

Adopted under notice filed as WSR 08-21-116 on October 17, 2008.

Changes Other than Editing from Proposed to Adopted Version: Added a definition of annual gross revenue, clarified an interpretive note, added a form to the financial reporting section.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 22, Repealed 3.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 22, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 22, Repealed 3.

Number of Sections Adopted Using Negotiated Rule Making: New 4, Amended 22, Repealed 3; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 17, 2008.

Steve Excell
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-025 Definitions. (1) A "bona fide officer or employee" of a charitable organization is one:

(a) Whose conduct is subject to direct control by such organization;

(b) Who does not act in the manner of an independent contractor in his or her relation with the organization; and

(c) Whose compensation is not computed on funds raised or to be raised.

(2) "Annual gross revenue" means, for any accounting period, the gross receipts received by or on behalf of a charitable organization from all sources of revenue, without subtracting any costs or expenses.

(3) "Charitable organization" means any entity that solicits or collects contributions from the general public where the contribution is or is purported to be used to support a charitable ((activity)) purpose, but does not include any commercial fund-raiser ((or)), commercial fund-raising entity, commercial coventurer, or any fund-raising counsel, as defined in this section. ("Charitable":

(a) Is not limited to its common law meaning unless the context clearly requires a narrower meaning;

(b) Does not include religious or political activities; and

(c) Includes, but is not limited to, educational, recreational, social, patriotic, legal defense, benevolent, and health causes.

(2)) Churches and their integrated auxiliaries are not charitable organizations, but are subject to RCW 19.09.100 (12), (15), and (18).

(4) "Charitable purpose" means any religious, charitable, scientific, testing for public safety, literary, or educational purpose or any other purpose that is beneficial to the community, including but not limited to recreational, environmental, humanitarian, patriotic, or civic purposes, the support of national or international amateur sports competition, the prevention of cruelty to children or animals, the advancement of social welfare, or the benefit of law enforcement personnel, fire fighters, and other persons who protect public safety. The term "charitable" is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of govern-

ment; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

(5) "Charitable trust" means any real or personal property right held by an entity or person that is intended to be used for a charitable purpose(s). The trust may be created by will, deed, articles of incorporation, or other governing instrument. It may be express or constructive.

~~((3))~~ (6) "Commercial coventurer" means a corporation, partnership, sole proprietorship, limited liability company, limited partnership, limited liability partnership, individual, or other entity that:

(a) Is regularly and primarily engaged in making sales of goods or services for profit directly to the general public; and

(b) Is not otherwise regularly or primarily engaged in making charitable solicitations in this state or otherwise raising funds in this state for one or more charitable organizations; and

(c) Represents to prospective purchasers that if they purchase a good or service from the commercial coventurer, a specified portion of the sales price or a certain sum of money or some other specified thing of value will be donated to a named charitable organization; and

(d) Does not ask purchasers to make checks or other instruments payable to a named charitable organization or any entity other than the commercial coventurer itself under its regular commercial name.

~~((4))~~ (7) "Commercial fund-raiser" or "commercial fund-raising entity" means any entity that for compensation or other consideration within this state directly or indirectly solicits or receives contributions for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of or is held out to persons in this state as independently engaged in the business of soliciting or receiving contributions for such purposes. However, a commercial coventurer, fund-raising counsel, or consultant, as defined by this section, is not a commercial fund-raiser or commercial fund-raising entity.

(8) "Compensation," means salaries, wages, fees, commissions, or any other remuneration or valuable consideration. Compensation shall not include reimbursement for expenses incurred and documented or noncash awards or prizes, valued at one hundred dollars or less, given annually to each volunteer.

~~((5))~~ "Solicitation," means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:

(a) Any appeal is made for any charitable purpose; or

(b) The name of any charitable organization is used as an inducement for consummating the sale; or

(c) Any statement is made that implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization; or

(d) The solicitation shall be deemed completed when made, whether or not the person making it receives any contribution or makes any sale.

(6) "Solicitation," as defined in RCW 19.09.020(16), for the purposes of these regulations, shall not include any of the following:

(a) An application or request for application for a grant, contract, or similar funding from any foundation, corporation, governmental agency or similar entity which has an established application and review procedure for reviewing such requests;

(b) The attempt to sell a service or good which constitutes the basis of the charitable organization's activities under which the federal income tax exemption was granted, or is the primary purpose for the existence of the charitable organization. This includes, but is not limited to, admission to a theatrical or other performance presented by a charitable organization that is a drama, musical, dance, or similar group and fees for services such as a hospital provides or use of the charitable organization's facilities; or

(c) Bingo activities, raffles, and amusement games conducted under chapter 9.46 RCW and applicable rules of the Washington state gambling commission.

(7) "Commercial fund-raiser" or "commercial fund-raising entity" means any entity that for compensation or other consideration within this state directly or indirectly solicits, receives or raises contributions for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of or is held out to persons in this state as independently engaged in the business of soliciting or receiving contributions for such purposes. However, the following shall not be deemed a "commercial fund-raiser" or "commercial fund-raising entity":

(a) Any entity that provides fund-raising advice or consultation to a charitable organization within this state but neither directly nor indirectly solicits or receives or raises any contribution for or on behalf of any such charitable organization; or

(b) A bona fide officer or other employee of a charitable organization.

(8) "Renewal date" means the fifteenth day of the fifth month after the close of the organization's fiscal or accounting year.)

(9) ("Secretary" means the secretary of state or the secretary's designee, or authorized representative.) "Contribution" means the payment, donation, promise, or grant, for consideration or otherwise, of any money or property of any kind or value which contribution is wholly or partly induced by a solicitation. Reference to dollar amounts of "contributions" or "solicitations" in this chapter means in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights.

(10) "Cost of solicitation" means and includes all direct and indirect costs, expenditures, debts, obligations, salaries, wages, commissions, fees, or other money or thing of value paid or incurred in making a solicitation.

(11) "Entity" means an organization, individual or institution with its own existence for legal and/or federal tax purposes. It has the capacity to enter into agreements or contracts, assume obligations, incur and pay debts, sue and be sued in its own right, and to be held responsible for its actions. Entity may include, but is not limited to, an individ-

ual, organization, corporation, association, limited liability company, trust, group, partnership, proprietorship, company, estate, agency or unit of state government, person as defined in RCW 1.16.080, or any combination thereof.

For purposes of complying with registration requirements under Washington's Charitable Solicitations Act, "entity" does not include a branch, chapter, unit, affiliate or similar subordinate of another entity if said subordinate:

(a) Is under the direct supervision and control of the related entity;

(b) Does not have its own separate existence from the related entity for legal and/or federal tax purposes; and

(c) The related entity maintains registration under chapter 19.09 RCW.

Regardless of whether or not a subordinate is required to register under the act, it shall comply with the conditions set forth under RCW 19.09.100.

Interpretive note: Notwithstanding other facts that may be indicative of a separate existence for legal and federal tax purposes, a branch, chapter, unit, affiliate or similar subordinate: (i) has its own existence for legal purposes if said subordinate has an organizational structure separate from a related entity; and (ii) has its own existence for federal tax purposes if it has been issued a federal employer identification number separate from a related entity, falls under a central organization's IRS group exemption, has obtained its own federal tax exempt status separate from a related entity, is required to file a separate federal informational return, or is included in a central organization's group return.

(12) "Fund-raising counsel" or "consultant" means any entity or individual who is retained by a charitable organization for a fixed fee or rate, that is not computed on a percentage of funds raised, or to be raised, under a written agreement only to plan, advise, consult, or prepare materials for a solicitation of contributions in this state, but who does not manage, conduct, or carry on a fund-raising campaign and who does not solicit contributions or employ, procure, or engage in any compensated person to solicit contributions, and who does not at any time, have custody or control of contributions. A volunteer, employee, or salaried officer of a charitable organization maintaining a permanent establishment or office in this state is not a fund-raising counsel. An attorney, investment counselor, or banker who advises an individual, corporation, or association to make a charitable contribution is not a fund-raising counsel as a result of the advice.

(13) "General public" or "public" means any individual located in Washington state without a membership or other official relationship with a charitable organization before a solicitation by the charitable organization.

(14) "Income-producing assets" means assets that are purchased with the prospect that the assets will generate income or appreciate in the future. In finance, an investment is a monetary asset purchased with the idea that the asset will provide income in the future or appreciate and be sold at a higher price; these investments would include, but are not limited to stocks, bonds or real property.

(15) "Membership" means that for the payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor, or other direct benefit, in addition to the right to vote,

elect officers, or hold office. The term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation.

(16) "Other employee" of a charitable organization means any person:

(a) Whose conduct is subject to direct control by such organization;

(b) Who does not act in the manner of an independent contractor in his or her relation with the organization; and

(c) Who is not engaged in the business of or held out to persons in this state as independently engaged in the business of soliciting contributions for charitable purposes or religious activities.

(17) "Political organization" means those organizations whose activities are subject to chapter 42.17 RCW or the Federal Election Campaign Act of 1971, as amended.

(18) "Religious organizations" means those entities that are not churches or integrated auxiliaries as defined and includes nondenominational ministries, interdenominational and ecumenical organizations, mission organizations, speakers' organizations, faith-based social agencies, and other entities whose principal purpose is the study, practice, or advancement of religion.

(19) "Renewal date" means the fifteenth day of the fifth month after the close of the organization's fiscal or accounting year.

(20) "Secretary" means the secretary of state or the secretary's designee, or authorized representative.

(21) "Signed" means hand-written, or, if the secretary adopts rules facilitating electronic filing that pertain to this chapter, in the manner prescribed by those rules.

(22)(a) "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:

(i) Any appeal is made for any charitable purpose; or

(ii) The name of any charitable organization is used as an inducement for consummating the sale; or

(iii) Any statement is made that implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization.

(b) The solicitation shall be deemed complete when made, whether or not the person making it receives any contribution or makes any sale.

(c) A commercial fund-raiser is considered to solicit or receive contributions from the public directly if contributions are solicited or received by the fund-raiser or by any officer, employee, principal, or shareholder of the commercial fund-raiser, including immediate family members.

(d) Contributions are considered to be solicited or received indirectly if they are solicited or received by:

(i) Any organization owned or controlled by the commercial fund-raiser or owned or controlled by any officer, employee, principal, or shareholder of the commercial fund-raiser, including immediate family members; or

(ii) Any person or organization, other than the charitable organization for which funds are solicited, with which the commercial fund-raiser as a contractual relationship governing the solicitation or receipt of contributions.

(e) "Solicitation" as defined in RCW 19.09.020(21), for the purposes of these regulations, does not include any of the following:

(i) An application or request for application for a grant, contract, or similar funding from any foundation, corporation, governmental agency or similar entity which has an established application and review procedure for reviewing such requests;

(ii) The attempt to sell a service or good which constitutes the basis of the charitable organization's activities under which the federal income tax exemption was granted, or is the primary purpose for the existence of the charitable organization. This includes, but is not limited to, admission to a theatrical or other performance presented by a charitable organization that is a drama, musical, dance, or similar group and fees for services such as a hospital provides or use of the charitable organization's facilities; or

(iii) Bingo activities, raffles, and amusement games conducted under chapter 9.46 RCW and applicable rules of the Washington state gambling commission.

AMENDATORY SECTION (Amending WSR 94-01-004, filed 12/1/93, effective 1/1/94)

WAC 434-120-030 Public records. Except as provided by RCW 42.17.310, all public records of the corporations division, which includes ~~((the))~~ charitable organization, commercial fund-raiser and charitable trust registrations ~~((and charitable trust section))~~, are available for public inspection and copying pursuant to rules of procedures in chapter 434-120 WAC ~~((and WAC 434-110-075))~~. Registrations of trusts with several or mixed purposes shall not be made public under RCW 11.110.040 and 11.110.075.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-040 Public information derived from registration. (1) Registration forms, and attachments, filed by charitable organizations and commercial fund-raisers pursuant to WAC 434-120-105 and 434-120-215, are available for public inspection or copying. For purposes of public reports derived from that registration information, the secretary shall calculate, and make available to the public, the following information:

(2) For charitable organizations, the percentage of total expenditures in a reporting year allocated to charitable program services. This shall be calculated by dividing the amount reported as expended for charitable purposes by the amount reported as total expenses, and multiplying by 100.

(3) For commercial fund-raisers the percentage of the proceeds of charitable solicitations which are paid to or retained by charitable organizations. This shall be calculated by dividing the amount reported pursuant to WAC 434-120-215 (2)(l)(iii)(B) by the amount reported pursuant to WAC 434-120-215 (2)(l)(iii)(A), and multiplying by 100.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-045 Change in status, notification. An entity required to register under ~~((this))~~ chapter 19.09 RCW shall notify the charities program in writing of ~~((a))~~ any changes ~~((in:~~

(1) Principal officer, owner, or Washington representative within thirty days after the change.

(2) Business structure within thirty days, register the restructured or newly named entity as a new commercial fund-raiser and include evidence of separate bonding.

(3) Business name within thirty days, register the new name, and include evidence of bonding in the new name. If the fund-raiser will use both the existing name and the new name, include evidence of separate bonding for each name and include a fee of ten dollars)) to its registration pursuant to WAC 434-120-105 and 434-120-215, or any other changes within thirty days after the change.

The organization shall submit changes using the form available from the charities program. The fee for information changes is ten dollars per submittal of change.

NEW SECTION

WAC 434-120-046 Record retention. Charitable organizations and commercial fund-raisers shall keep, for a three-year period, the annual solicitation reports and the supporting documents including books, ledgers, prepared statements, compilations, reviews, or audit reports, or any other records on which they were based. Charitable trusts shall keep, for a three-year period, their annual financial information, and the supporting documents including books, ledgers, prepared statements, compilations, reviews, or audit reports, or any other records on which they were based. Solicitation reports, financial statements, and any other records, shall be available to the attorney general or county prosecutor on request.

AMENDATORY SECTION (Amending WSR 96-10-021, filed 4/24/96, effective 5/25/96)

WAC 434-120-100 Who shall register. (1) Any entity that will conduct a charitable solicitation or solicit funds from the general public for charitable purposes shall register with the ~~((corporations division))~~ charities program under the solicitations act.

(2) Entities exempt from registration are the following:

(a) ~~((Any entity that provides fund-raising advice or consultation to a charitable organization within this state but neither directly nor indirectly solicits or receives any contribution for or on behalf of any such charitable organization;))~~ Fund-raising counsel as defined in WAC 434-120-025(11);

(b) Any ~~((entity whose sole purpose is religious or))~~ political organization as defined in WAC 434-120-025(16);

(c) Any entity ~~((who))~~ which raises less than twenty-five thousand dollars in revenue in any accounting year, all of whose activities including fund-raising are conducted by volunteers, and whose officers or members do not receive assets of or benefits from the organization;

(d) A bona fide officer or other employee of the charitable organization for which the funds are solicited; and

(e) ~~((Charitable organizations located outside of the state of Washington that meet the statutory requirements under RCW 19.09.076(2)-))~~ Any appeal for funds on behalf of a specific individual named in the solicitation, but only if all of the proceeds of the solicitation are given to or expended for the direct benefit of that individual. This does not include organizations that conduct solicitations for one or more individuals on a repeated or ongoing basis.

(3) Any entity exempt from registration by these regulations soliciting or conducting a solicitation shall comply with the conditions for solicitations as described in RCW 19.09.100.

(4) Interpretive note: The secretary of state does not interpret RCW 19.09.065 as requiring a registration by an employee of an educational institution who, as part of his or her employment with the institution, solicits contributions on behalf of a nonprofit charitable foundation affiliated with that institution, if the foundation is registered and the educational institution is either:

(a) A public school, college, or university operated by the state of Washington, one of its school districts, or a comparable public institution of another state or nation; or

(b) A private entity that is nonprofit and charitable, having a program of primary, secondary, or collegiate instruction comparable in scope to that of any public school or college operated by the state of Washington or any of its school districts.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-103 Required forms and filings. (1) A charitable organization complies with the filing and registration requirements of this chapter by filing the following documents with the secretary of state at the times, and in the manner, prescribed by these rules either the:

(a) State registration form described in WAC 434-120-105. This form is available through the charities program; or

(b) Unified Registration Statement developed by the National Association of State Charity Officials (NASCO), if accompanied by the components identified for filing in Washington in the unified registration statement ~~((appendix))~~ addendum.

(2) These forms are used for original registration form, as well as for ~~((periodic))~~ annual renewal. The purpose of this report is to provide basic information about the organization, as described in RCW 19.09.075.

(3) The state registration form or the unified registration statement must be filed together with:

(a) Solicitation report. This financial report is filed by all charitable organizations, except those exempted by these rules. The purpose of this report is to provide information regarding solicitations conducted during the reporting period. Solicitation reports are filed as part of an annual renewal; and

(b) All contracts between the commercial fund-raiser and all charitable organizations for which it solicits, as provided by WAC 434-120-240.

(4) The unified registration statement and the ~~((appendix))~~ addendum are available for download at: ~~((http://www.nonprofits.org/library/gov))~~ http://www.multistatefiling.org.

(5) The financial statement required by WAC 434-120-130 does not need to be filed with the office of the secretary of state. The purpose of this statement is to verify and support the information filed in the solicitation report. This statement must be available upon request as provided in this chapter.

(6) This section is intended to be explanatory of other rules in this chapter, and not to modify or diminish the requirements of those rules.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-105 Charitable organization registration—Form and requirements. (1) Charitable organizations registering under this act shall submit the registration form described in WAC 434-120-103. The secretary's failure to affirmatively reject or return an incomplete registration or other filing that does not fully comply with these rules or chapter 19.09 RCW shall not excuse the failure to comply.

(2) A registration is not complete, and will not be accepted for filing, unless it includes:

(a) The name of the organization, and every address (including both physical address and any mailing address if different), telephone number(s), fax number(s), and taxpayer identification number, ~~((including those of all offices, chapters, branches, and affiliates used in charitable solicitations reflected in the registration))~~ including any electronic mail or internet addresses used by the organization. Private mail boxes must be identified through use of the designation "PMB" followed by the box number;

(b) All of the names under which the organization will solicit contributions, including, but not limited to, ~~((the names of all offices, chapters, branches, and affiliates))~~ acronyms, abbreviations, DBAs and program names used in charitable solicitations reflected in the registration;

(c) The type of organization and taxpayer identification number, the unified business identifier, if the organization is registered in Washington and date established, and if the organization is incorporated, the state and date of incorporation;

(d) The ~~((end))~~ beginning and ending dates of its current fiscal or accounting year;

(e) The court or other forum, case number and title of all legal actions, if any, in which a judgment or final order was entered, or action is currently pending, against any organization or individual required to be identified in the registration. "Actions" include any administrative or judicial proceeding alleging that the entity has failed to comply with these rules, chapter 19.09 RCW, or state or federal laws pertaining to taxation, revenue, charitable solicitation, or recordkeeping, whether such action has been instituted by a public agency or a private person or entity;

(f) A list of all states where the organization is registered for charitable solicitations;

(g) The name, address, and telephone number of the officers or of persons accepting responsibility for the organization, including the:

(i) Members of the board of directors or any committee or group serving the function of a board of directors, regardless of the name of the committee or group; and

(ii) Officers of the charitable organization, or the persons serving the function of officers, regardless of the title of the position;

(h) The names of the three officers or employees receiving the greatest amount of compensation from the organization;

(i) The purpose of the charitable organization, including, if applicable, the names and addresses of any specific beneficiaries which the charitable organization supports and to whom assets would be distributed to in the event of dissolution. When filing a renewal or an updated registration, the organization is not required to submit a list of beneficiaries if there have been no changes to that list;

(j) A statement indicating whether the organization is exempt from federal income tax, and copy of the letter by which the Internal Revenue Service granted the organization tax exempt status if the Internal Revenue Service has granted the organization such status. The organization shall indicate the section of the Internal Revenue Code under which they are exempt from the federal income tax;

(k) The name and address of the person or entity with authority for the preparation of financial statements or the maintenance of financial information on behalf of the organization;

(l) The name, address, and telephone number of an individual with expenditure authority who can respond to questions regarding expenditures of funds, and the names and addresses of any commercial fund-raiser (~~and any commercial coventurer~~) who ~~(have)~~ has the authority to expend funds or incur obligations on behalf of the organization;

(m) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305;

(n) A solicitation report of the charitable organization for the preceding fiscal or accounting year including, but not limited to:

(i) The types of solicitations conducted;

(ii) The name, physical address, and telephone number of any commercial fund-raiser (~~including any commercial coventurer~~) conducting solicitations on behalf of the organization in Washington during the period covered by this report; and

(iii) The total dollar value of ~~(all support)~~ contributions received from solicitations, which includes but is not limited to, special events, sale of inventory, and amounts collected on behalf of the charitable organization by a commercial fund-raiser (~~or commercial coventurer~~);

(iv) The total dollar value of revenue from all other sources;

(v) Gross receipts, including amounts collected on behalf of the charitable organization by a commercial fund-raiser or commercial coventurer regardless of custody of funds. "Gross receipts" include, but are not limited to, contributions, gross revenue from special events, sales of inventory, goods or services (including tickets to events), and all other revenue from solicitations;

(vi) The amount of total expenditures used directly for charitable program services, including payments to affiliates if costs involved are not connected with the administrative or fund-raising functions of the reporting organization;

(vii) The amount of total expenditures used for administrative and fund-raising costs, including amounts paid to or retained by a commercial fund-raiser or ~~(commercial coventurer)~~ fund-raising counsel. "Administrative and fund-raising costs" include, but are not limited to, the following expenses if not directly related to program services; salaries, wages, compensation, legal, accounting, occupancy, equipment costs, printing and publications, telephone, postage, supplies, travel, meetings, fees for services (including fund-raising consultation), and cost of goods or inventory sold that are not directly related to program services.

(viii) Total expenditures, including, but not limited to, amounts paid to or retained by a commercial fund-raiser, or ~~(commercial coventurer)~~ fund-raising counsel, amounts expended for charitable program services, administrative expenses, fees for services, and fund-raising costs incurred by the charitable organization.

(ix) Beginning assets; and

(x) Ending assets.

(o) A copy of the charitable organization's federal informational ~~(tax)~~ return (Form 990, ~~(Form)~~ 990PF, ~~(or Form)~~ 990EZ, or 990T) reflecting the fiscal or accounting year covered by this report; if the federal informational return does not contain the total amount of money applied to charitable purposes, fund-raising costs and other expenses as required pursuant to RCW 19.09.075 (7)(c), a supplemental report may be required by the secretary. The supplemental report shall be in the form prescribed by the secretary.

(p) The charitable organization may provide additional information which the organization believes would be of assistance in understanding other reported information, or to provide context for reported information.

(3) The organization shall report actual figures, and shall not use estimates, when completing a solicitation report or a supplemental solicitation report.

~~(4) (A parent organization may file a consolidated registration form when registering, including the solicitation information required for each of its related foundations, supporting organizations, chapters, branches, or affiliates that solicit in the state of Washington, which are supervised or controlled by the parent organization. Registration and subsequent financial reporting requirements may be satisfied either separately or in consolidated form for all subsidiary organizations. A filing by the parent organization relieves each subsidiary organization identified in that filing of any duty to file independently.~~

~~(5))~~ All charitable ~~(solicitation)~~ organization registrations shall be signed and dated by the president, treasurer, or comparable officer of the organization or, in the absence of officers, person responsible for the organization.

NEW SECTION

WAC 434-120-107 Audited financial report—Tiered reporting requirements (effective January 1, 2010). (1) Charitable organizations submitting an initial registration, shall meet the financial reporting requirements, specified in RCW 19.09.075 or WAC 434-120-105. If an organization does not file a federal form (990, 990PF, 990EZ, 990T), the

organization must complete the solicitation report contained in the form prescribed by the secretary.

(2) Charitable organizations that have more than one million dollars in annual gross revenue averaged over the last three fiscal years, shall have the federal financial reporting form (990, 990EZ, 990PF or 990T) prepared or reviewed by

a certified public accountant or other professional, independent third-party who normally prepares or reviews the federal returns in the ordinary course of their business. The independent review must be submitted to the secretary in substantially the following form:

Independent Report Form

Report For:

Organization Name _____ Charities Registration Number _____
Review of IRS Form _____ (Form Name) For Fiscal/Accounting Year Ending _____

Prepared or Reviewed By:

Name _____
Company _____
Address _____
City, State, Zip _____
Phone _____ E-mail _____

Please check one of the following:

- _____ I am a Certified Public Accountant.
_____ I have prepared or been responsible for the preparation of such forms in the ordinary course of my business.

I am independent with respect to the affairs of this organization as described by the Internal Revenue Service. My review did not include any direct investigation of the accuracy of the information submitted using this form or of the underlying data from which it was prepared. Based solely on the form as it was provided to me, I reviewed its completeness and internal consistency to the extent appropriate, based on my professional judgment, giving due consideration to the nature of the activities of the organization. On the basis of this review, I am satisfied that the organization has taken proper care to meet the requirement for entering information on and assembling the form for submission.

The filing organization is solely responsible for assuring the accuracy of the form and its suitability for the purposes for which it may be submitted.

Signature _____ Date _____
Printed Name _____

(3) Charitable organizations that have more than three million dollars in annual gross revenue averaged over the last three fiscal years, shall submit an audited financial statement prepared by an independent certified public accountant for the year immediately following the year in which the organization achieved a three year average of more than three million dollars.

(4) The secretary may waive the requirement to file audited financial statements prepared by an independent certified public accountant when the organization can demonstrate that they have reached a three year average of more than three million dollars in gross revenue through unusual or nonreoccurring revenue received in a single year without which they would have not met the three year annual gross average threshold.

- (5) This rule becomes effective January 1, 2010.
(5) The secretary offers this optional registration because some grant making entities and programs require registration

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-110 Organizations exempt from filing requirements—Optional filing. (1) Charitable organizations exempt from the filing requirements of this chapter under RCW 19.09.076(1) and WAC 434-120-100 (2)(a), (b) ((a)), (c), or (e) may register with the charities program.

- (2) Charitable organizations choosing to register under this section shall register by:
(a) Completing the registration form specified by the secretary; and
(b) Paying the registration fee of twenty dollars.
(3) Charitable organizations registered under this section may change or update their registration by:
(a) Filing the update with the charities program; and
(b) Paying the ten-dollar update fee.
(4) Expedited processing under WAC 434-112-080 is available for registrations and updates under this section. with the charities program.

AMENDATORY SECTION (Amending WSR 97-16-035, filed 7/30/97, effective 8/30/97)

WAC 434-120-130 Financial standards. Upon the request of the attorney general, secretary or the county prosecutor, a charitable organization shall submit a financial statement containing, but not limited to, the following information within thirty days from date of request.

(1) The gross amount of the contributions pledged and the gross amount collected.

(2) The amount thereof, given or to be given to charitable purposes represented together with details as to the manner of distribution as may be required.

(3) The aggregate amount paid and to be paid for the expenses of such solicitation.

(4) The amounts paid to and to be paid to commercial fund-raisers or charitable organizations.

(5) Copies of any annual or periodic reports furnished by the charitable organization, of its activities during or for the same fiscal period ~~((, to its parent organization, subsidiaries, or affiliates, if any)).~~

AMENDATORY SECTION (Amending WSR 96-10-021, filed 4/24/96, effective 5/25/96)

WAC 434-120-140 How and when. (1) Original registration: An entity required to register as a charitable organization shall complete the form described in WAC 434-120-105 and submit it with the fee in WAC 434-120-145 prior to conducting any solicitation.

(2) Annual renewal:

(a) An entity shall renew its charitable registration by no later than the fifteenth day of the fifth month after the end of its fiscal year.

(b) The renewal shall include the same information required for registration as described in WAC 434-120-105 and RCW 19.09.075, except that a determination letter from the Internal Revenue Service need not be attached if it was previously filed. The solicitation report will be based on the most recent filing with the Internal Revenue Service or if the organization does not file with the Internal Revenue Service, the solicitation report will be based on the most recently completed fiscal year. No organization may submit the same fiscal information for two consecutive years.

(c) No change in an entity's fiscal year shall cause the due date of a renewal to be more than one year after the previous registration or renewal. For purposes of renewals that include financial information for a partial year, due to a change of fiscal year, threshold levels for registration and financial statement requirements shall be determined on a prorated basis.

(3) ~~((Change in status, notification:))~~ An organization shall notify the ~~((corporations division))~~ charities program of a change in organization name, mailing address, organization structure, principal officer, ((owner,)) Washington representative, tax status, fiscal year, or any other information filed under RCW 19.09.075 or WAC 434-120-105 ~~((, within thirty days after the change)).~~

(4) The organization shall submit changes using the form available from the charities program within thirty days after the change and include the ten dollar fee.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-145 Fees. (1) Original registration: Entities registering as charitable organizations shall pay a fee of twenty dollars for the first year of registration.

(2) Annual renewal: Organizations ~~((reregistering))~~ shall pay a renewal fee of ten dollars.

(3) Information changes: Organizations filing changes of information described in WAC 434-120-105, shall pay a fee of ten dollars for each submittal of change(s).

(4) Photocopy fees: For copy of a charitable organization registration form or letter, including the finance and solicitation reports, the fee is five dollars.

(5) Expedited service fees: For in-person service at the counter, or on-line filings, the fee is twenty dollars for one or more transactions in each charitable organization file requested.

(6) For service of process on a registered charity, ~~((commercial coventures,))~~ commercial fund-raiser, or charitable trust, the fee is fifty dollars.

AMENDATORY SECTION (Amending WSR 94-01-004, filed 12/1/93, effective 1/1/94)

WAC 434-120-175 Voluntary verification information. Each organization registering under the act may submit additional information, not required by law, for its file if the information is intended to inform the public about its programs and activities and to verify its existence. The ~~((corporations division))~~ charities program may place such information in the organization's file for a specified period of time. Persons coming into the office may read such information; however, no voluntary verification information shall be mailed out.

NEW SECTION

WAC 434-120-180 Education program. The secretary may develop and operate an education program for charitable organizations, their board members, and the general public. The secretary shall consult with the nonprofit and charitable sector and the charitable advisory council created in RCW 19.09.550 to develop curricula and other materials intended to educate charitable organizations, their board members, and the general public.

NEW SECTION

WAC 434-120-185 Charitable advisory council. The purpose of the charitable advisory council is to advise the secretary in the following areas:

(1) Training and education needs of charitable organizations within the state;

(2) Model policies related to governance and administration of charitable organizations in accordance with fiduciary principles;

(3) Emerging issues and trends affecting charitable organizations; and

(4) Other related issues at the request of the secretary.

The council will consist of thirteen members chosen by the secretary to represent a broad range of charities by size, purpose, geographic regions of the state, and general expertise in management and leadership of charitable organizations. An ex officio member will be appointed by the attorney general per RCW 19.09.510.

Members serve at the pleasure of the secretary. Terms are staggered, with the original board drawing lots for two- and three-year terms. All following terms are three years but all terms expire no later than when the appointing secretary leaves office. Vacancies may be filled by the secretary upon notice of a vacancy from the member.

The council will elect a chairperson from its members annually. The frequency of meetings will be at least twice a year, but additional meetings may be called by the secretary or the council. Council members are not compensated for their service, but may be reimbursed for expenses incurred in the conduct of their official duties. Reimbursement is at current state rates for travel and all reimbursement requests must be received within thirty days of incurring the expense.

AMENDATORY SECTION (Amending WSR 95-11-135, filed 5/24/95, effective 6/24/95)

WAC 434-120-200 Required filings. (1) A commercial fund-raiser complies with the filing and registration requirements of this chapter by filing the following documents with the secretary of state at the times, and in the manner, prescribed by these rules:

(a) Commercial fund-raiser registration form. This form is used as an original registration form, as well as an annual renewal form. The purpose of this report is to provide basic information about the organization, as described in RCW 19.09.079;

(b) Solicitation report. These reports are filed (~~periodically~~) annually by all commercial fund-raisers, except those exempted by these rules. The purpose of these reports (~~are~~) is to provide information regarding solicitations conducted during the reporting period, of an informational nature to the public. These reports must be filed in the time and manner specified in WAC 434-120-215;

(c) All surety bonds required by WAC 434-120-260; and

(d) All contracts between the commercial fund-raiser and all charitable organizations for which it solicits, as provided by WAC 434-120-240.

(2) The financial statement required by WAC 434-120-255 does not need to be filed with the office of the secretary of state. The purpose of this statement is to verify and support the information filed in the solicitation report. This statement must be available upon request as provided in this chapter.

(3) This section is intended to be explanatory of other rules in this chapter, and not to modify or diminish the requirements of those rules.

AMENDATORY SECTION (Amending WSR 97-16-036, filed 7/30/97, effective 8/30/97)

WAC 434-120-210 Who shall register. (1) Every commercial fund-raiser, as described in RCW 19.09.020(~~(8)~~) (5), shall register each year, pursuant to WAC 434-120-215(~~(~~

~~except that commercial coventurers may instead register pursuant to WAC 434-120-212)).~~

(2) Suppliers of goods and services to charitable organizations for fund-raising purposes are exempt from registration, if they are not otherwise engaged in the business of charitable fund-raising.

(3) If a commercial fund-raiser does business under more than one name, each name used by that entity must be registered and bonded separately.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-215 Commercial fund-raiser registration—Form and requirements. (1) Commercial fund-raisers registering under this act shall use the commercial fund-raiser registration form available in the office of the charities program. The secretary's failure to affirmatively reject or return an incomplete registration or other filing that does not fully comply with these rules or chapter 19.09 RCW, shall not excuse the failure to comply. The secretary's acceptance of a registration or other filing which violates these rules or chapter 19.09 RCW shall not excuse the violation.

(2) A registration is not complete, and will not be accepted for filing, unless it includes:

(a) The name of the organization, and every address (including both physical address and any mailing address if different), telephone number(s), fax number(s), of the commercial fund-raising entity under which contributions are being solicited or received, including any electronic mail or Internet addresses used by the organization. Private mail boxes must be identified through use of the designation "PMB" followed by the box number;

(b) The name(s); address(es); and telephone number(s) of the individual(s) responsible for fund-raising activities of the entity in Washington state;

(c) The type of organization, taxpayer identification number, the unified business identifier if the organization is registered in Washington and date established, and if the organization is incorporated, the state and date of incorporation;

(d) The end date of its current fiscal or accounting year;

(e) The court or other forum, case number and title of all legal actions, if any, in which a judgment or final order was entered, or action is currently pending, against any organization or individual required to be identified in the registration. "Actions" include any administrative or judicial proceeding alleging that the entity has failed to comply with these rules, chapter 19.09 RCW, or state or federal laws pertaining to taxation, revenue, charitable solicitation, or recordkeeping, whether such action has been instituted by a public agency or a private person or entity;

(f) A list of all states where the organization is registered for fund-raising, including any other names under which the organization is currently registered or has been registered in the past three years;

(g) The name, address, and telephone number of the officers or of persons accepting responsibility for the organization;

(h) The names of the three officers or employees receiving the greatest amount of compensation from the organization;

(i) The name and address of the person or entity with authority for the preparation of financial statements or the maintenance of financial information on behalf of the organization;

(j) The name, address, and telephone number of an individual with expenditure authority who can respond to questions regarding expenditures of funds, and the names and addresses of any charitable organizations who have given the commercial fund-raiser authority to expend funds or incur obligations on behalf of the organization;

(k) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305;

(l) A solicitation report of the fund-raising activities of the entity for the preceding fiscal or accounting year including, but not limited to:

(i) The types of fund-raising services conducted;

(ii) The name of each charitable organization to whom this entity has provided fund-raising services;

(iii) The total dollar value of the following:

(A) Contributions received, either by the commercial fund-raiser or the charities with which the commercial fund-raiser contracts, as a result of services provided by the commercial fund-raiser during the year shown above. (This is the total amount of money raised, regardless of who has possession of funds.)

(B) Funds either retained by, or paid to, the charities with whom the commercial fund-raiser contracts, after fees and any expenses have been subtracted. (This is the portion of money raised that the charities receive or keep after all fund-raising expenses have been deducted.)

(iv) The name, address, and telephone number of any other commercial fund-raiser retained in the conduct of providing fund-raising services;

(3) The commercial fund-raiser may provide additional information which the commercial fund-raiser believes would be of assistance in understanding other reported information, or to provide context for reported information.

(4) The commercial fund-raiser shall report actual figures and shall not use estimates when completing a solicitation report or a supplemental solicitation report.

(5) All commercial fund-raiser registrations shall be signed by an officer or owner of the commercial fund-raiser.

AMENDATORY SECTION (Amending WSR 94-01-004, filed 12/1/93, effective 1/1/94)

WAC 434-120-220 Change in status, notification. A commercial fund-raiser shall ~~((do the following))~~:

(1) Notify the ~~((corporations division))~~ charities program of a change in organization name, mailing address, principal officer, owner, ~~((or))~~ business structure, Washington representative ~~((within thirty days after the change))~~, fiscal year or any other information filed under RCW 19.09.079 or WAC 434-120-215.

(2) ~~((Notify the corporations division of a change in business structure within thirty days, register the restructured~~

~~or newly named entity as a new commercial fund-raiser and include evidence of separate bonding.~~

~~(3) Notify the corporations division of a change in business name within thirty days, register the new name, and include evidence of bonding in the new name. If the fund-raiser will use both the existing name and the new name, include evidence of separate bonding for each name and include a fee of ten dollars.)~~ The commercial fund-raiser shall submit changes using the form available from the charities program within thirty days after the change and include the ten dollar fee.

AMENDATORY SECTION (Amending WSR 96-10-021, filed 4/24/96, effective 5/25/96)

WAC 434-120-225 Annual ~~((reregistration))~~ renewal. (1) Each commercial fund-raiser shall ~~((reregister))~~ renew annually by no later than the fifteenth day of the fifth month after the end of its fiscal year.

(2) ~~((A fund-raiser that changes its fiscal year shall notify the secretary of state of the change, in writing, within thirty days of making the change.))~~ No change in a fund-raiser's fiscal year shall cause the due date of a renewal to be more than one year after the previous registration or renewal. For purposes of renewals that include financial information for a partial year, due to a change of fiscal year, threshold levels for financial statement requirements shall be determined on a prorated basis.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-250 Fees. All commercial fund-raisers shall pay an original registration fee at the time of filing and ~~((a yearly registration))~~ an annual renewal fee.

(1) The fee for original registration in this state is two hundred fifty dollars.

(2) The annual ~~((registration))~~ renewal fee is one hundred seventy-five dollars.

(3) The fee for filing changes in any information previously filed under RCW 19.09.079, and WAC 434-120-215 or for filing a contract is ten dollars.

(4) The late fee is fifty dollars for failing to renew registration by the due date. The commercial fund-raiser shall pay an additional late fee of one hundred dollars for each year that it was required to register under this act and failed to do so, including the current year. If the registration has lapsed for more than two years, the entity shall provide solicitation information for the previous two years and shall register as a new commercial fund-raiser under RCW 19.09.079, in addition to paying any late fees due under this section.

Any commercial fund-raiser failing to renew registration and conducting business may be subject to other penalties and remedies that may be imposed by law, including penalties for soliciting without being registered. These penalties are cumulative.

(5) The fee for expedited in-person service, and on-line filings, is twenty dollars for any and all transactions within one commercial fund-raiser file, in addition to regular fee for the transaction.

(6) The photocopy fee is ten dollars for copies of the annual registration form or letter.

~~((7) A commercial coventurer shall pay a registration fee of twenty dollars when it registers with the secretary or renews its registration.))~~

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-260 Surety bonds. ~~((+))~~ In compliance with RCW 19.09.190 a registering commercial fund-raiser, as principal, shall submit proof of execution of a surety bond with one or more sureties whose liability in the aggregate will equal at least fifteen thousand dollars. ~~(Except as provided in WAC 434-120-265,)~~ Commercial fund-raisers must provide proof of bonding if the commercial fund-raiser engages, or plans to engage, in one or more of the following practices:

~~((a))~~ (1) The fund-raiser directly or indirectly receives contributions from the public on behalf of any charitable organization; or

~~((b))~~ (2) The fund-raiser is compensated based upon funds raised or to be raised, number of solicitations made or to be made, or any similar method, even if the fund-raiser does not directly or indirectly receive the contributions; or

~~((c))~~ (3) The fund-raiser incurs or is authorized to incur expenses on behalf of the charitable organization; or

~~((d))~~ (4) Has not been registered with the secretary as a commercial fund-raiser for the preceding fiscal or accounting year shall execute a surety bond as principal with one or more sureties whose liability in the aggregate as such sureties will equal at least fifteen thousand dollars.

~~((2) A commercial fund-raiser is considered to solicit or receive contributions from the public directly if they are solicited or received by the fund-raiser or by any officer, employee, principal, or shareholder of the commercial fund-raiser, including immediate family members. Contributions are solicited or received indirectly if they are solicited or received by:~~

~~(a) Any organization owned or controlled by the commercial fund-raiser or owned or controlled by any officer, employee, principal, or shareholder of the commercial fund-raiser, including immediate family members; or~~

~~(b) Any person or organization, other than the charitable organization for which funds are solicited, with which the commercial fund-raiser has a contractual relationship governing the solicitation or receipt of contributions. Solicitations shall be deemed received by the fund-raiser if they are deposited into bank accounts wholly or partially owned or controlled by the commercial fund-raiser or other entity with which the commercial fund-raiser maintains a contractual relationship.~~

~~(3) If a commercial fund-raiser does business under more than one name, each name used by that entity must be registered and bonded separately.))~~

AMENDATORY SECTION (Amending WSR 94-01-004, filed 12/1/93, effective 1/1/94)

WAC 434-120-270 Impairment of surety bond. In the event that a final ~~((judgment))~~ judgment shall impair the lia-

bility of a surety bond and the full amount required is not in effect, the secretary shall suspend the registration of such commercial fund-raiser. The commercial fund-raiser may request reinstatement when it has restored the full amount of the required bond liability and satisfied all ~~((judgment))~~ judgment claims.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-310 Charitable trust registration—Form and requirements. (1) Trustees registering under chapter 11.110 RCW shall use the registration form available in the office of the secretary of state. The secretary's failure to affirmatively reject or return an incomplete registration or other filing that does not fully comply with these rules or chapter 11.110 RCW shall not excuse the failure to comply.

(2) An initial registration form is not complete, and will not be accepted for filing, unless it includes:

(a) The trustee's name;

(b) The trustee's mailing address, and physical address if different;

(c) The name of the trust, its Federal Employer Identification Number, if any, or other identifying information sufficient to distinguish the trust from other registered trusts;

(d) A brief description of the charitable purposes of the trust, which may, at the trustee's option, include the names and addresses of any charitable organizations benefited by the trust;

(e) The market value of all trust assets invested for income-producing purposes as of the date on which the trustee received possession or control of the trust corpus;

(f) A copy of the governing instrument creating the trust;

(g) A statement indicating whether the trust is exempt from federal income tax, and, if exempt, the section of the Internal Revenue Code under which the trust is exempt from federal income tax;

(h) A copy of the letter by which the Internal Revenue Service granted the trust tax exempt status if the Internal Revenue Service has granted the trust such status;

(i) The end date of its current fiscal or accounting year;

(j) A financial report of the trust for the preceding fiscal or accounting year, including, but not limited to:

(i) Beginning assets;

(ii) Total revenue;

(iii) Grants, contributions, and the amount of expenditures used directly for program services;

(iv) Compensation of officers, directors, trustees, etc.;

(v) Total expenses; and

(vi) Ending assets.

(k) A copy of the trust's federal informational tax return (Form 990, ~~((Form))~~ 990PF, 990T, or ~~((Form))~~ 990EZ) reflecting the fiscal or accounting year contained in this report;

(l) The name and telephone number of the preparer of the trust registration, if different from trustee.

(3) The renewal registration form required by this rule shall be the same as the form described in WAC 434-120-310 except that the information required by WAC 434-120-310 (2)(d), (e), (f), (g) and (h) is not required.

(4) The trust shall report actual figures, and shall not use estimates, when completing a financial report.

(5) All charitable trust registrations shall be signed by the trustee, or, if the trustee is a corporation, of the corporate officer or employee responsible for the trust.

(6) A copy of the governing instrument creating the trust shall not be deemed sufficient to meet the requirements of this section.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-355 Change in status, notification. A charitable trust shall notify the charities program in writing of a change in trust instrument, trustee, principal officer, tax status, fiscal year, or any other information filed under RCW 11.110.060 or WAC 434-120-310 within four months after the change. Organizations filing changes of information described in RCW 11.110.060 or WAC 434-120-310 shall pay a fee of ten dollars for each submittal of change.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-120-125	Record retention.
WAC 434-120-212	Registration by commercial coventurers.
WAC 434-120-265	Exemption from surety bond.

WSR 09-01-113

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed December 19, 2008, 8:04 a.m., effective December 19, 2008]

Effective Date of Rule: December 19, 2008.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 70.38.128 requires the department to have rules established immediately.

Purpose: Chapter 440, Laws of 2007 (SHB 2304) requires the department of health to adopt rules establishing criteria for the issuance of a certificate of need for the performance of elective coronary interventions at hospitals that do not otherwise provide on-site cardiac surgery. The proposed rules will help maintain quality of care, cost containment and overall health system viability.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-310-262.

Statutory Authority for Adoption: Chapter 440, Laws of 2007 (SHB 2304) codified as RCW 70.38.128.

Adopted under notice filed as WSR 08-17-076 on August 19, 2008.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-310-710, concurrent review cycle for application submission period, the letters of intent due date was changed from "the first working day through the last

working day of November" to "the first working day through the last working day of January." WAC 246-310-745(2), current capacity definition was reworded to be consistent with the need methodology calculation terminology and intent.

A final cost-benefit analysis is available by contacting John Hilger, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-2929, fax (360) 236-2901, e-mail john.hilger@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 12, Amended 0, Repealed 1.

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

Number of Sections Adopted on the Agency's Own Initiative: New 12, Amended 0, Repealed 1.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 12, Amended 0, Repealed 1.

Date Adopted: December 19, 2008.

Mary C. Selecky
Secretary

NEW SECTION

WAC 246-310-700 Adult elective percutaneous coronary interventions (PCI) without on-site cardiac surgery.

Purpose and applicability of chapter. Adult elective percutaneous coronary interventions are tertiary services as listed in WAC 246-310-020. To be granted a certificate of need, an adult elective PCI program must meet the standards in this section and WAC 246-310-715, 246-310-720, 246-310-725, 246-310-730, 246-310-735, 246-310-740, and 246-310-745 in addition to applicable review criteria in WAC 246-310-210, 246-310-220, 246-310-230, and 246-310-240. This chapter is adopted by the Washington state department of health to implement chapter 70.38 RCW and establish minimum requirements for obtaining a certificate of need and operating an elective PCI program.

NEW SECTION

WAC 246-310-705 PCI definitions. For the purposes of this chapter and chapter 70.38 RCW, the words and phrases below will have the following meanings unless the context clearly indicates otherwise:

(1) "Concurrent review" means the process by which applications competing to provide services in the same planning area are reviewed simultaneously by the department. The department compares the applications to one another and these rules.

(2) "Elective" means a PCI performed on a patient with cardiac function that has been stable in the days or weeks prior to the operation. Elective cases are usually scheduled at least one day prior to the surgical procedure.

(3) "Emergent" means a patient needs immediate PCI because, in the treating physician's best clinical judgment, delay would result in undue harm or risk to the patient.

(4) "Percutaneous coronary interventions (PCI)" means invasive but nonsurgical mechanical procedures and devices that are used by cardiologists for the revascularization of obstructed coronary arteries. These interventions include, but are not limited to:

- (a) Bare and drug-eluting stent implantation;
- (b) Percutaneous transluminal coronary angioplasty (PTCA);
- (c) Cutting balloon atherectomy;
- (d) Rotational atherectomy;
- (e) Directional atherectomy;
- (f) Excimer laser angioplasty;
- (g) Extractional thrombectomy.

(5) "PCI planning area" means an individual geographic area designated by the department for which adult elective PCI program need projections are calculated. For purposes of adult elective PCI projections, planning area and service area have the same meaning. The following table establishes PCI planning areas for Washington state:

Planning Areas: Planning areas that utilize zip codes will be administratively updated upon a change by the United States Post Office, and are available upon request.	
1.	Adams, Ferry, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Whitman, Asotin
2.	Benton, Columbia, Franklin, Garfield, Walla Walla
3.	Chelan, Douglas, Okanogan
4.	Kittitas, Yakima, Klickitat East (98620, 99356, 99322)
5.	Clark, Cowlitz, Skamania, Wahkiakum, Klickitat West (98650, 98619, 98672, 98602, 98628, 98635, 98617, 98613)
6.	Grays Harbor, Lewis, Mason, Pacific, Thurston
7.	Pierce East (98304, 98321, 98323, 98328, 98330, 98338, 98360, 98371, 98372, 98373, 98374, 98375, 98387, 98390, 98391, 98443, 98445, 98446, 98580)
8.	Pierce West (98303, 98327, 98329, 98332, 98333, 98335, 98349, 98351, 98354, 98388, 98394, 98402, 98403, 98404, 98405, 98406, 98407, 98408, 98409, 98416, 98418, 98421, 98422, 98424, 98430, 98433, 98438, 98439, 98444, 98447, 98465, 98466, 98467, 98498, 98499)
9.	King East (98001, 98002, 98003, 98004, 98005, 98006, 98007, 98008, 98010, 98011, 98014, 98019, 98022, 98023, 98024, 98027, 98028, 98029, 98030, 98031, 98032, 98033, 98034, 98038, 98039, 98042, 98045, 98047, 98051, 98052, 98053, 98055, 98056, 98057, 98058, 98059, 98065, 98072, 98074, 98075, 98077, 98092, 98224, 98288)

Planning Areas: Planning areas that utilize zip codes will be administratively updated upon a change by the United States Post Office, and are available upon request.	
10.	King West (98040, 98070, 98101, 98102, 98103, 98104, 98105, 98106, 98107, 98108, 98109, 98112, 98115, 98116, 98117, 98118, 98119, 98121, 98122, 98125, 98126, 98133, 98134, 98136, 98144, 98146, 98148, 98155, 98158, 98166, 98168, 98177, 98178, 98188, 98195, 98198, 98199)
11.	Snohomish
12.	Skagit, San Juan, Island
13.	Kitsap, Jefferson, Clallam
14.	Whatcom

NEW SECTION

WAC 246-310-710 Concurrent review. The department shall review new adult elective percutaneous coronary intervention (PCI) services using the concurrent review cycle according to the following table:

Concurrent Review Cycle:

Application Submission Period	Letters of Intent Due	First working day through last working day of January of each year.	
	Receipt of Initial Application	First working day through last working day of February of each year.	
	End of Screening Period	Last working day of March of each year.	
Department Action	Applicant Response	Last working day of April of each year.	
	Beginning of Review Preparation	May 1 through May 15	
Application Review Period	Public Comment Period (includes public hearing if requested)	60-Day Public Comment Period	Begins May 16 of each year or the first working day after May 16.
	Rebuttal Period	30-Day Rebuttal period	Applicant and affected party response to public comment.
	Ex parte Period	45-Day Ex parte period	Department evaluation and decision.

(1) If the department is unable to meet the deadline for making a decision on the application, it will notify applicants fifteen days prior to the scheduled decision date. In that event, the department will establish a new decision date.

(2) The department may not accept new applications for a planning area if there are any pending applications in that planning area filed under a previous concurrent review cycle, or applications submitted prior to the effective date of these rules that affect any of the new planning areas, unless the department has not made a decision on the pending applica-

tions within the review timelines of nine months for a concurrent review and six months for a regular review.

(3) If the department determines that an application does not compete with another application, it may convert the review of an application that was initially submitted under a concurrent review cycle to a regular review process.

NEW SECTION

WAC 246-310-715 General requirements. The applicant hospital must:

(1) Submit a detailed analysis of the impact that their new adult elective PCI services will have on the Cardiovascular Disease and Interventional Cardiology Fellowship Training programs at the University of Washington, and allow the university an opportunity to respond. New programs may not reduce current volumes at the University of Washington fellowship training program.

(2) Submit a detailed analysis of the projected volume of adult elective PCIs that it anticipates it will perform in years one, two and three after it begins operations. All new elective PCI programs must comply with the state of Washington annual PCI volume standards (three hundred) by the end of year three. The projected volumes must be sufficient to assure that all physicians working only at the applicant hospital will be able to meet volume standards of seventy-five PCIs per year. If an applicant hospital fails to meet annual volume standards, the department may conduct a review of certificate of need approval for the program under WAC 246-310-755.

(3) Submit a plan detailing how they will effectively recruit and staff the new program with qualified nurses, catheterization laboratory technicians, and interventional cardiologists without negatively affecting existing staffing at PCI programs in the same planning area.

(4) Maintain one catheterization lab used primarily for cardiology. The lab must be a fully equipped cardiac catheterization laboratory with all appropriate devices, optimal digital imaging systems, life sustaining apparatus, intra-aortic balloon pump assist device (IABP). The lab must be staffed by qualified, experienced nursing and technical staff with documented competencies in the treatment of acutely ill patients.

(5) Be prepared and staffed to perform emergent PCIs twenty-four hours per day, seven days per week in addition to the scheduled PCIs.

(6) If an existing CON approved heart surgery program relinquishes the CON for heart surgery, the facility must apply for an amended CON to continue elective PCI services. The applicant must demonstrate ability to meet the elective PCI standards in this chapter.

NEW SECTION

WAC 246-310-720 Hospital volume standards. (1) Hospitals with an elective PCI program must perform a minimum of three hundred adult PCIs per year by the end of the third year of operation and each year thereafter.

(2) The department shall only grant a certificate of need to new programs within the identified planning area if:

(a) The state need forecasting methodology projects unmet volumes sufficient to establish one or more programs within a planning area; and

(b) All existing PCI programs in that planning area are meeting or exceeding the minimum volume standard.

NEW SECTION

WAC 246-310-725 Physician volume standards. Physicians performing adult elective PCI procedures at the applying hospital must perform a minimum of seventy-five PCIs per year. Applicant hospitals must provide documentation that physicians performed seventy-five PCI procedures per year for the previous three years prior to the applicant's CON request.

NEW SECTION

WAC 246-310-730 Staffing requirements. The applicant hospital must:

(1) Employ a sufficient number of properly credentialed physicians so that both emergent and elective PCIs can be performed.

(2) Staff its catheterization laboratory with a qualified, trained team of technicians experienced in interventional lab procedures.

(a) Nursing staff should have coronary care unit experience and have demonstrated competency in operating PCI related technologies.

(b) Staff should be capable of endotracheal intubation and ventilator management both on-site and during transfer if necessary.

NEW SECTION

WAC 246-310-735 Partnering agreements. The applicant hospital must have a signed written agreement with a hospital providing on-site cardiac surgery. This agreement must include, at minimum, provisions for:

(1) Coordination between the nonsurgical hospital and surgical hospital's availability of surgical teams and operating rooms. The hospital with on-site surgical services is not required to maintain an available surgical suite twenty-four hours, seven days a week.

(2) Assurance the backup surgical hospital can provide cardiac surgery during all hours that elective PCIs are being performed at the applicant hospital.

(3) Transfer of all clinical data, including images and videos, with the patient to the backup surgical hospital.

(4) Communication by the physician(s) performing the elective PCI to the backup hospital cardiac surgeon(s) about the clinical reasons for urgent transfer and the patient's clinical condition.

(5) Acceptance of all referred patients by the backup surgical hospital.

(6) The applicant hospital's mode of emergency transport for patients requiring urgent transfer. The hospital must have a signed transportation agreement with a vendor who will expeditiously transport by air or land all patients who experience complications during elective PCIs that require transfer to a backup hospital with on-site cardiac surgery.

(7) Emergency transportation beginning within twenty minutes of the initial identification of a complication.

(8) Evidence that the emergency transport staff are certified. These staff must be advanced cardiac life support (ACLS) certified and have the skills, experience, and equipment to monitor and treat the patient en route and to manage an intra-aortic balloon pump (IABP).

(9) The hospital documenting the transportation time from the decision to transfer the patient with an elective PCI complication to arrival in the operating room of the backup hospital. Transportation time must be less than one hundred twenty minutes.

(10) At least two annual timed emergency transportation drills with outcomes reported to the hospital's quality assurance program.

(11) Patient signed informed consent for adult elective (and emergent) PCIs. Consent forms must explicitly communicate to the patients that the intervention is being performed without on-site surgery backup and address risks related to transfer, the risk of urgent surgery, and the established emergency transfer agreements.

(12) Conferences between representatives from the heart surgery program(s) and the elective coronary intervention program. These conferences must be held at least quarterly, in which a significant number of preoperative and post-operative cases are reviewed, including all transport cases.

(13) Addressing peak volume periods (such as joint agreements with other programs, the capacity to temporarily increase staffing, etc.).

NEW SECTION

WAC 246-310-740 Quality assurance. The applicant hospital must submit a written quality assurance/quality improvement plan specific to the elective PCI program as part of its application. At minimum, the plan must include:

(1) A process for ongoing review of the outcomes of adult elective PCIs. Outcomes must be benchmarked against state or national quality of care indicators for elective PCIs.

(2) A system for patient selection that results in outcomes that are equal to or better than the benchmark standards in the applicant's plan.

(3) A process for formalized case reviews with partnering surgical backup hospital(s) of preoperative and post-operative elective PCI cases, including all transferred cases.

(4) A description of the hospital's cardiac catheterization laboratory and elective PCI quality assurance reporting processes for information requested by the department or the department's designee. The department of health does not intend to require duplicative reporting of information.

NEW SECTION

WAC 246-310-745 Need forecasting methodology. For the purposes of the need forecasting method in this section, the following terms have the following specific meanings:

(1) "Base year" means the most recent calendar year for which December 31 data is available as of the first day of the application submission period from the department's CHARS reports or successor reports.

(2) "Current capacity" means the sum of all PCIs performed on people (aged fifteen years of age and older) by all CON approved adult elective PCI programs, or department grandfathered programs within the planning area. To determine the current capacity for those planning areas where a new program has operated less than three years, the department will measure the volume of that hospital as the greater of:

(a) The actual volume; or

(b) The minimum volume standard for an elective PCI program established in WAC 246-310-720.

(3) "Forecast year" means the fifth year after the base year.

(4) "Percutaneous coronary interventions" means cases as defined by diagnosis related groups (DRGs) as developed under the Centers for Medicare and Medicaid Services (CMS) contract that describe catheter-based interventions involving the coronary arteries and great arteries of the chest. The department will exclude all pediatric catheter-based therapeutic and diagnostic interventions performed on persons fourteen years of age and younger are excluded. The department will update the list of DRGs administratively to reflect future revisions made by CMS to the DRG to be considered in certificate of need definitions, analyses, and decisions. The DRGs for calendar year 2008 applications will be DRGs reported in 2007, which include DRGs 518, 555, 556, 557 and 558.

(5) "Use rate" or "PCI use rate," equals the number of PCIs performed on the residents of a planning area (aged fifteen years of age and older), per one thousand persons.

(6) "Grandfathered programs" means those hospitals operating a certificate of need approved interventional cardiac catheterization program or heart surgery program prior to the effective date of these rules, that continue to operate a heart surgery program. For hospitals with jointly operated programs, only the hospital where the program's procedures were approved to be performed may be grandfathered.

(7) The data sources for adult elective PCI case volumes include:

(a) The CHARS data from the department, office of hospital and patient data;

(b) The department's office of certificate of need survey data as compiled, by planning area, from hospital providers of PCIs to state residents (including patient origin information, i.e., patients' zip codes and a delineation of whether the PCI was performed on an inpatient or outpatient basis); and

(c) Clinical outcomes assessment program (COAP) data from the foundation for health care quality, as provided by the department.

(8) The data source for population estimates and forecasts is the office of financial management medium growth series population trend reports or if not available for the planning area, other population data published by well-recognized demographic firms.

(9) The data used for evaluating applications submitted during the concurrent review cycle must be the most recent year end data as reported by CHARS or the most recent survey data available through the department or COAP data for the appropriate application year. The forecasts for demand and supply will be for five years following the base year. The

base year is the latest year that full calendar year data is available from CHARS. In recognition that CHARS does not currently provide outpatient volume statistics but is patient origin-specific and COAP does provide outpatient PCI case volumes by hospitals but is not currently patient origin-specific, the department will make available PCI statistics from its hospital survey data, as necessary, to bridge the current outpatient patient origin-specific data shortfall with CHARS and COAP.

(10) Numeric methodology:

Step 1. Compute each planning area's PCI use rate calculated for persons fifteen years of age and older, including inpatient and outpatient PCI case counts.

(a) Take the total planning area's base year population residents fifteen years of age and older and divide by one thousand.

(b) Divide the total number of PCIs performed on the planning area residents over fifteen years of age by the result of Step 1 (a). This number represents the base year PCI use rate per thousand.

Step 2. Forecasting the demand for PCIs to be performed on the residents of the planning area.

(a) Take the planning area's use rate calculated in Step 1 (b) and multiply by the planning area's corresponding forecast year population of residents over fifteen years of age.

Step 3. Compute the planning area's current capacity.

(a) Identify all inpatient procedures at CON approved hospitals within the planning area using CHARS data;

(b) Identify all outpatient procedures at CON approved hospitals within the planning area using department survey data; or

(c) Calculate the difference between total PCI procedures by CON approved hospitals within the planning area reported to COAP and CHARS. The difference represents outpatient procedures.

(d) Sum the results of (a) and (b) or sum the results of (a) and (c). This total is the planning area's current capacity which is assumed to remain constant over the forecast period.

Step 4. Calculate the net need for additional adult elective PCI procedures by subtracting the calculated capacity in Step 3 from the forecasted demand in Step 2. If the net need for procedures is less than three hundred, the department will not approve a new program.

Step 5. If Step 4 is greater than three hundred, calculate the need for additional programs.

(a) Divide the number of projected procedures from Step 4 by three hundred.

(b) Round the results down to identify the number of needed programs. (For example: $575/300 = 1.916$ or 1 program)

NEW SECTION

WAC 246-310-750 Tiebreaker. If two or more applicant hospitals are competing to meet the same forecasted net need, the department shall consider which facility's location provides the most improvement in geographic access. Geographic access means the facility that is located the farthest in statute miles from an existing facility authorized to provide PCI procedures.

NEW SECTION

WAC 246-310-755 Ongoing compliance with standards. If the department issues a certificate of need (CON), it will be conditioned to require ongoing compliance with the CON standards. Failure to meet the standards may be grounds for revocation or suspension of a hospital's CON, or other appropriate licensing or certification actions.

(1) Hospitals granted a certificate of need must meet:

(a) The program procedure volume standards within three years from the date of initiating the program; and

(b) QA standards in WAC 246-310-740.

(2) The department may reevaluate these standards every three years.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-310-262

Nonemergent interventional cardiology standard.

WSR 09-01-114

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed December 19, 2008, 8:46 a.m., effective January 19, 2009]

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

Purpose: The proposed changes modify the existing rules to include sprinkler fitters in the process for obtaining either a certificate of competency or a trainee certificate. In addition, the changes also include the sprinkler fitters into the procedures for investigation of alleged violations as well as the appeals process and the suspension of certifications. Finally, these changes specify the required fees for the certification process.

Citation of Existing Rules Affected by this Order: Amending WAC 212-80-001, 212-80-005, 212-80-010, 212-80-015, 212-80-018, 212-80-020, 212-80-023, 212-80-028, 212-80-043, 212-80-058, 212-80-063, 212-80-068, 212-80-073, 212-80-078, 212-80-083, 212-80-088, 212-80-093, 212-80-098, 212-80-103, 212-80-113, 212-80-118, 212-80-123, 212-80-128, 212-80-140, 212-80-155, 212-80-195, 212-80-200, 212-80-205, 212-80-210, 212-80-215, 212-80-220, 212-80-225, 212-80-245, 212-80-250, 212-80-255, 212-80-260, and 212-80-265.

Statutory Authority for Adoption: RCW 18.270.900.

Adopted under notice filed as WSR 08-22-092 on November 5, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 37, Repealed 0.

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

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

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

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

Date Adopted: December 17, 2008.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-001 Purpose. The purpose of this regulation is to adopt rules for the licensing of fire protection sprinkler system contractors, the issuance of certificates of competency, trainee certificates, and for the issuance of civil fines and citations as defined in chapters 18.160 and 18.270 RCW.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-005 Applicability. This regulation applies to any and all persons or organizations performing as a fire protection sprinkler contractor and/or certificate of competency holder, with or without the required state licensing and/or certification as defined in chapters 18.160 and 18.270 RCW.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-010 Definitions. The following definitions shall apply to this regulation: "Authority having jurisdiction (AHJ)" means the organization, office, or individual responsible for approving layout drawings, equipment, an installation or a procedure. Usually the AHJ is the building and/or fire official of the city or county in which the job site is located. In certain cases, such as health care facilities, transient accommodations and day care facilities, the AHJ is the city or county building and/or fire official and the chief of the Washington state patrol, through the director of fire protection.

"Certificate" means a certificate of competency granted by the director of fire protection under chapter 18.270 RCW, and is valid within the state and all political subdivisions, and meets all of the requirements for license or certification that may be applied by the political subdivision.

"Citation" means written notification issued by the chief of the Washington state patrol, through the director of fire protection, pursuant to RCW 18.160.040 ~~((to issue))~~ or 18.270.020 of a civil penalty for a violation of any provision of chapters 18.160 or 18.270 RCW. A citation may include, but is not limited to, a description of the violation(s) and a notice of civil penalty assessment.

"Contractor" means any person, corporation, or other entity, licensed under chapter 18.160 RCW, which performs any work covered by the provisions of this chapter.

"Director" means the director of fire protection.

"Director of fire protection" means the state fire marshal and/or his or her authorized representative.

"Dry pipe sprinkler system" means a system employing automatic sprinklers attached to a piping system containing air or nitrogen under pressure, the release of which (as from the opening of a sprinkler) allows the water pressure to open a valve known as a dry pipe valve. The water then flows into the piping system and out to the open sprinkler(s).

"Fire protection sprinkler fitting" means installing, altering, and repairing sprinkler, standpipe, hose, or other hazard systems for fire protection purposes that are an assembly of piping or conduit beginning at the connection to the primary water supply within a building, sprinkler tank heaters, air lines and all tanks and pumps attached thereto.

"Fire protection sprinkler system" means an assembly of underground and/or overhead piping beginning at the connection to the primary water supply, whether public or private, that conveys water with or without other agents to dispersal openings or devices to extinguish, control, or contain fire or other products of combustion. The fire protection sprinkler system (with the exception of residential combination systems) starts at the point where the last nonfire water use is taken from the supply mains. This is the point just down stream of the last tap for domestic or process water, the last water control valve that is required by a city or other authority, or the point where the water can be considered nonflowing.

"Fire pump" means a listed pump supplying water at the flow and pressure required by water based fire protection systems.

"FOR DESIGN ONLY" means a certificate of competency holder only allowed to perform the design of a fire protection sprinkler system consistent with the level of certification he or she holds. In the case of a "State Level U certification," "FOR DESIGN ONLY" merely allows the individual to maintain their certification.

"Formal hearing" means a hearing before a hearings officer where laws, rules, and evidence are presented, considered, and a decision is rendered.

"Hazard" means a condition which could result in injury or death to a person and/or damage to property.

"Hearings request" means the written request for a formal hearing to contest a civil penalty.

"Hose connection" means a combination of equipment provided for connection of a hose to the standpipe system that includes a hose valve with a threaded outlet.

"Inspection" means a visual examination of a fire protection sprinkler system, or portion of the system, to verify that the system appears to be in operating condition, is free from physical damage, and complies with the applicable statutes and regulations adopted by the state.

"Instance" means the number of times a person has been cited for a violation of chapters 18.160, 18.270 RCW, or this chapter. These will be identified as 1st, 2nd, and 3rd instances.

"Journey-level sprinkler fitter" means any person who has been issued a certificate by the director of fire protection as provided by chapter 18.270 RCW.

"Maintenance" means work performed on a fire suppression sprinkler system to keep the equipment operable, or to make repairs.

"Network fire protection sprinkler system" means a type of multipurpose system utilizing a common piping system supplying domestic plumbing fixtures and fire sprinklers as defined by NFPA 13D.

"NFPA" means the National Fire Protection Association.

"NFPA 13D" means, in addition to the definition contained in chapter 18.160 RCW, the inclusion of minor accessory uses such as garages normally found in residential occupancies.

"NFPA 13R" means ~~((whatever))~~ the standard ~~((that is))~~ used by the National Fire Protection Association for the installation and design of fire suppression sprinkler systems in residential occupancies up to and including four stories in height.

"NFPA 13" means ~~((whatever))~~ the standard ~~((that is))~~ used by the National Fire Protection Association for the installation and design of fire suppression sprinkler systems in commercial or high occupancy facilities.

"NFPA 14" means the standard used by the National Fire Protection Association for the installation of standpipe and hose systems.

"NFPA 20" means ~~((whatever))~~ the standard ~~((that is))~~ used by the National Fire Protection Association for the selection and installation of pumps, both centrifugal and positive displacement, that supply liquid for a private fire protection system.

"NFPA 24" means ~~((whatever))~~ the standard ~~((that is))~~ used by the National Fire Protection Association for the installation of the dedicated underground fire service main of a water based fire protection system.

"NFPA 25" means ~~((whatever))~~ the standard ~~((that is))~~ used by the National Fire Protection Association for the inspection, testing, and maintenance of water based fire protection systems.

"NICET" means the National Institute for Certification in Engineering Technologies.

"NITC" means the National Inspection Testing Certification.

"Person" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of individuals and includes the state, state agencies, counties, municipal corporations, school districts, and other public corporations.

"Preaction system" means a sprinkler system employing automatic sprinklers attached to a piping system containing air, which may or may not be under pressure, with a supplemental detection system installed in the same areas as the sprinklers.

"Qualified" shall mean an individual who has demonstrated through education, training, examination, and/or national certifications the competency, skill, and ability necessary to perform any work covered and/or defined by this chapter and chapters 18.160 and 18.270 RCW to the satisfaction of a relevant jurisdiction. In matters of compliance with the licensing and certification requirements of this chapter and chapters 18.160 and 18.270 RCW, the relevant jurisdiction

shall be the chief of the Washington state patrol, through the director of fire protection.

"Residential-level sprinkler fitter" means anyone who has been issued a certificate by the director of fire protection limited to installation, maintenance, and repair of the fire protection sprinkler system of residential occupancies as defined by NFPA 13, NFPA 13D and NFPA 13R.

"Revoke" means the chief of the Washington state patrol, through the director of fire protection, shall rescind a company's license or an individual's certification (~~from them~~). Such action causes said company or individual to cease any and all work in the sprinkler field in Washington state until such time as the chief of the Washington state patrol, through the director of fire protection, is satisfied with the resolution of the issue which caused the license or certificate to be revoked.

"Standpipe" means the vertical portion of the system piping that delivers the water supply for hose connections, and fire sprinklers on combined systems, vertically from floor to floor. The term standpipe also refers to the horizontal portion of the system piping that delivers the water supply for two or more hose connections, and fire sprinklers on combined systems, on a single level as defined by NFPA 14.

"Standpipe system" means an arrangement of piping, valves, hose connections, and allied equipment installed in a building or structure, with the hose connections located in such a manner that water can be discharged in streams or spray patterns through attached hose and nozzles, for the purpose of extinguishing a fire, thereby protecting a building or structure and its contents in addition to protecting the occupants as defined by NFPA 14.

"State certified fire sprinkler system inspection and testing technician" (ITT) means a state certificate of competency holder who is qualified to inspect and/or test NFPA 13D, 13R, or 13, wet and dry pipe fire protection systems per the definition of fire protection sprinkler system in this chapter. However, testing of other fire protection systems such as pre-action, deluge, foam, or fire pump and maintenance of any type of system defined under this chapter or chapter 18.160 RCW shall be performed only by contractors who are also qualified and licensed to design and install that type of system or fire pump being tested or maintained.

"State fire marshal" means the director of fire protection or his/her authorized representative.

"State Level ((H)) 1 certification" means a certificate of competency holder who is qualified to prepare layout drawings, install, inspect, test, maintain, or service an NFPA 13D fire protection sprinkler system or any part of such a system.

"State Level ((H)) 1 licensing" means a sprinkler contracting company licensed by the chief of the Washington state patrol, through the director of fire protection, to contract and/or offer to bid on the design, installation, service, maintenance, and/or inspection of a NFPA 13D fire protection sprinkler system or any part of such a system.

"State Level ((H)) 2 certification" means a certificate of competency holder who is qualified to prepare layout drawings, install, inspect, test, maintain, or service an NFPA 13D and/or an NFPA 13R fire protection sprinkler system or any part of such a system.

"State Level ((H)) 2 licensing" means a sprinkler contracting company licensed by the chief of the Washington state patrol, through the director of fire protection, to contract and/or offer to bid on the design, installation, service, maintenance, and/or inspection of a NFPA 13D and/or a NFPA 13R fire protection sprinkler system or any part of such a system.

"State Level ((HH)) 3 certification" means a certificate of competency holder who is qualified to prepare layout drawings, install, inspect, maintain, or service an NFPA 13D, NFPA 13R, NFPA 13, or all other systems per the definition of fire protection sprinkler system in chapter 18.160 RCW.

"State Level ((HH)) 3 licensing" means a sprinkler contracting company licensed by the chief of the Washington state patrol, through the director of fire protection, to contract and/or offer to bid on the design, installation, service, maintenance, and/or inspection of a NFPA 13D, NFPA 13R, NFPA 13, or all other systems per the definition of a fire protection sprinkler system in chapter 18.160 RCW.

~~("State certified fire sprinkler system inspection and testing technician" ("ITTT") means a state certificate holder who is qualified to inspect and/or test NFPA 13D, 13R, or 13, wet and dry pipe fire protection systems per the definition of fire protection sprinkler system in this chapter. However, testing of other fire protection systems such as preaction, deluge, foam, or fire pump and maintenance of any type of system defined under this chapter or chapter 18.160 RCW shall be performed only by contractors who are also qualified and licensed to design and install that type of system or fire pump.))~~

"State level inspection and testing contractor licensing" means a sprinkler contracting company licensed by the chief of the Washington state patrol, through the director of fire protection, to contract and/or offer to bid on the inspection or testing of a wet or dry pipe NFPA 13((--))D, NFPA 13((--))R, NFPA 13, or other systems per the definition of a fire protection sprinkler system in chapter 18.160 RCW. However, the testing and maintenance of fire protection systems such as preaction, deluge, foam, or fire pumps, shall be performed only by contractors who are also qualified and licensed to design and install that type of system or fire pump being tested or maintained.

"State Level U certification" means a certificate of competency holder who is qualified to certify the installation of the underground portions of fire protection sprinkler systems in conformance with recognized standards adopted by the director of fire protection.

"State Level U licensing" means a sprinkler contracting company licensed by the chief of the Washington state patrol, through the director of fire protection, to contract and/or offer to bid on the installation of the underground portions of fire protection sprinkler systems in conformance with the recognized standards adopted by the chief of the Washington state patrol, through the director of fire protection.

"Suspend" means the chief of the Washington state patrol, through the director of fire protection, holds a license or certificate inactive until such time as the chief of the Washington state patrol, through the director of fire protection, feels confident that the company or individual is in com-

pliance with the requirements of this chapter and chapters 18.160 and 18.270 RCW.

"Testing" means a procedure used to determine the status of a system as intended by conducting periodic physical checks on water-based fire protection systems such as ~~((waterflow))~~ water flow tests, fire pump tests, alarm tests, and trip tests of dry pipe, deluge, or preaction valves. These tests follow up on the original acceptance test at intervals specified in the appropriate chapter of NFPA 25.

"Trainee" means a person who has been issued a training certificate by the chief of the Washington state patrol, through the director of fire protection, who is learning the fire protection sprinkler fitting trade under the supervision of a journey-level sprinkler fitter or residential sprinkler fitter working in his or her specialty.

"Type" means the classification of violation as minimal, moderate, and severe. These are identified as Types I, II, and III respectively.

"Violation" means any action, general or specific, inconsistent with the intent and letter of chapters 18.160 and 18.270 RCW and ~~((this chapter and))~~ shall be further defined as:

(a) "Minimal violation" means a Type I violation which poses a minor hazard or threat to life and property in the event of a fire.

(b) "Moderate violation" means a Type II violation which poses a significant hazard or threat to life or property in the event of a fire.

(c) "Severe violation" means a Type III violation which poses a substantial hazard or threat to life or property in the event of a fire.

"Wet pipe sprinkler system" means a sprinkler system employing automatic sprinklers attached to a piping system containing water and connected to a water supply so that water discharges immediately when any sprinkler is opened by heat from a fire.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-015 Compliance. All fire sprinkler system contractors, certificate of competency holders, ~~((and persons))~~ or trainees, designing, installing, inspecting, testing or maintaining((, or servicing)) fire protection sprinkler systems or any part of such a system shall comply with the provisions of this regulation.

EXCEPTIONS:

(1) Federal, state, and local government employees, or insurance inspectors when acting in their official capacities.

(2) A person or organization acting under court order.

(3) A person or organization that sells or supplies products or materials to a licensed fire protection sprinkler system contractor.

(4) A registered professional engineer acting solely in a professional capacity.

~~((A properly qualified and/or trained employee of a licensed fire protection sprinkler system contractor performing duties for the contractor. Said qualifications and/or training to be consistent with the level of work performed by the licensed fire protection sprinkler system contractor.))~~ A per-

son issued a certificate of competency by the Washington state department of labor and industries, under chapter 18.106 RCW, as a journeyman plumber installing a residential network fire protection sprinkler system connected to potable water who works for a contractor as defined herein.

(6) An owner/occupier of a single-family residence performing his or her own installation in that residence. It is the intent of this subsection that builders or contractors will not install their own sprinkler systems in single-family residences under their ownership which they plan to sell, lease, or rent.

(7) ~~((An))~~ A full-time employee, or owner of a facility ~~((or owner))~~ who is qualified to the satisfaction of the local authority having jurisdiction to perform inspection and testing of fire protection sprinkler systems in said facility.

(8) An employee of a licensed electrical contractor installing or testing only the electronic signaling devices of a fire sprinkler system.

(9) A person, licensed by the Washington state department of health, under chapter 246-292 WAC, as a certified backflow assembly tester, performing testing and maintenance of backflow assemblies.

(10) A person licensed by the Washington state department of health, under chapter 246-292 WAC, as a certified backflow assembly tester, and also licensed by the Washington state department of labor and industries, under chapter 18.106 RCW, as a backflow specialty plumber performing repairs of backflow assemblies in accordance with chapter 246-290 WAC.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-018 License and certification requirements. Only a company or individual licensed as a fire protection sprinkler systems contractor, who has at least one designer on staff certified by the chief of the Washington state patrol, through the director of fire protection, can bid, offer to bid, contract, or perform the designing, installation, inspection, testing, maintenance, and/or servicing of a fire protection sprinkler system.

EXCEPTIONS: A company or individual licensed as an inspection and testing contractor, whose staff performing the work of inspection and/or testing of a fire protection sprinkler system have all been certified by the chief of the Washington state patrol, through the director of fire protection, as described in this chapter, can bid, offer to bid, contract, or perform only the testing and inspection of a fire protection sprinkler system - excluding preaction, deluge, or foam systems or systems with fire pumps.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-020 Right of appeal. Any person who is aggrieved by the chief of the Washington state patrol, through the director of fire protection, suspending or revok-

ing the privilege of a licensed fire protection sprinkler system contractor or the certificate of a certificate of competency holder to engage in fire protection sprinkler system business, may appeal to the director within thirty days of the date of the order.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-023 Authority having jurisdiction. (1) Fire protection sprinkler systems shall meet the approval of the authority having jurisdiction. This includes plans, specifications, calculations, contractor's materials and test certificates, and final approval.

(2) In certain types of occupancies the authority having jurisdiction may be the chief of the Washington state patrol, through the director of fire protection, and the building and/or fire official of the city or county in which the installation is located. Generally these dual responsibilities occur in health care facilities, transient accommodations, and day care facilities.

(3) It is the responsibility of the certificate of competency holder to ascertain which agency or agencies have jurisdiction. If there is a question, the certificate of competency holder should contact the chief of the Washington state patrol, through the director of fire protection.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-028 License and certificate posting. Each license and certification issued under this regulation must be posted in a conspicuous place in the fire protection sprinkler system contractor's place of business. The wallet card issued to a designer or journey-level or residential sprinkler fitter certificate of competency holder, trainee, and/or an inspection and testing technician under this chapter will be maintained with the certified individual it was issued to and available for review at any time.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-043 Qualifications for preparation of layout drawings, installations, inspections, testing, or maintenance~~(, or servicing)~~. ~~((+))~~ Only licensed fire protection sprinkler system contractors shall execute contracts for the design, installation, inspection, testing, or maintenance~~((, or servicing))~~ of fire protection sprinkler systems or any part of such a system in the state of Washington.

~~((Exception:))~~ **EXCEPTIONS:**

(1) A company or individual licensed as an inspection and testing contractor, whose staff performing the work of inspection and testing of a fire protection sprinkler system have all been certified by the chief of the Washington state patrol, through the director of fire protection, as described in this chapter, can bid, offer to bid, contract, or perform only the testing and inspection of a fire protection sprinkler system - excluding preaction, deluge, or foam systems or systems with fire pumps.

(2) Only licensed contractors who have achieved at least State Level U licensure shall execute contracts for the installation, inspection, or maintenance (~~(and/or servicing)~~) of the underground portions of fire protection sprinkler systems in the state of Washington.

(3) Only licensed fire protection sprinkler contractors who have achieved at least State Level ((~~H~~)) 1 licensure shall execute contracts for the installation, inspection, testing, or maintenance (~~(and/or servicing)~~) of NFPA 13D fire protection sprinkler systems or any part of such a system in the state of Washington.

(4) Only licensed fire protection sprinkler contractors who have achieved at least State Level ((~~H~~)) 2 licensure shall execute contracts for the installation, inspection, testing, or maintenance (~~(and/or servicing)~~) of NFPA 13D or NFPA 13R fire protection sprinkler systems or any part of such a system in the state of Washington.

(5) Only licensed fire protection sprinkler contractors who have achieved at least State Level ((~~H~~)) 3 licensure shall execute contracts for the installation, inspection, testing, maintenance and/or servicing of NFPA 13D, NFPA 13R, NFPA 13, and all other systems per the definition of fire protection sprinkler system in chapter 18.160 RCW or any part of such a system in the state of Washington.

(6) Only those certificate of competency holders who have achieved State Level U certification shall supervise and/or certify the installation of underground supplies to fire protection sprinkler systems. To achieve State Level U certification, persons shall satisfactorily complete an examination administered by the chief of the Washington state patrol, through the director of fire protection.

(7) Only those certificate of competency holders who have achieved at least State Level ((~~H~~)) 1 certification shall supervise and/or certify the preparation of layout drawings, installation, inspection, testing, maintenance, (~~(servicing,)~~) or the installation of NFPA 13D fire protection sprinkler systems or any part thereof. To achieve State Level ((~~H~~)) 1 certification, persons shall hold a current NICET Level 2 classification or satisfactorily complete an examination administered by the chief of the Washington state patrol, through the director of fire protection.

(8) Only those certificate of competency holders who have achieved at least State Level ((~~H~~)) 2 certification shall supervise and/or certify the preparation of layout drawings, installation, inspection, testing, maintenance, (~~(servicing,)~~) or the installation of NFPA 13D and NFPA 13R fire protection sprinkler systems or any part thereof. To achieve State Level ((~~H~~)) 2 certification, persons shall hold a current NICET Level 2 classification.

(9) Only those certificate of competency holders who have achieved at least State Level ((~~H~~)) 3 certification shall supervise and/or certify the preparation of layout drawings, installation, inspection, testing, maintenance, (~~(servicing,)~~) or the installation of NFPA 13D, NFPA 13R, NFPA 13, and all other systems per the definition of fire protection sprinkler system in chapter 18.160 RCW or any part thereof. To achieve State Level ((~~H~~)) 3 certification, persons shall hold a current NICET Level 3 or 4.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-058 Fire protection sprinkler contractor license not transferable. A license issued under this regulation is not transferable.

EXCEPTIONS:

Should a currently licensed fire protection sprinkler contractor merge or form another company, that license can be reissued to the newly formed/incorporated company provided:

- (1) The principal officers of the licensed company remain the same;
- (2) Continues, takes over, or otherwise reestablishes the bond required by chapter 18.160 RCW for licensing;
- (3) Continues to perform fire protection sprinkler contractor work as defined by chapter 18.160 RCW;
- (4) Employs ((~~a~~)) certificate of competency holders of the appropriate level; and
- (5) Meets the criteria necessary for licensing as a fire protection sprinkler contracting company as defined by chapter 18.160 RCW.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-063 Contractor responsibilities, design certificate of competency holder employment. (1) A fire protection sprinkler system contractor shall have at least one full time design certificate of competency holder, consistent with the license level, employed to conduct business.

(2) If a design certificate of competency holder should leave the employment of the fire protection sprinkler system contractor, and the contractor has no other design certificate of competency holder on staff, the contractor shall have six months or until the expiration of the current license, whichever occurs last, to submit a new application. In order to be issued a new license, the contractor shall identify a new design certificate of competency holder who, at the time of application, shall be either an owner or full-time employee of that fire protection sprinkler business.

(3) If such application is not received by the chief of the Washington state patrol, through the director of fire protection and a new license issued within the allotted time, the chief of the Washington state patrol, through the director of fire protection, shall revoke the license of the fire protection sprinkler system contractor.

(4) The fire protection sprinkler system contractor may only complete the active phase of existing work in progress which has been approved by the authority having jurisdiction, and may not receive new approvals from the authority having jurisdiction without a design certificate holder's number on the documents. Installation can continue on approved design plans, however, the contractor's material and test certificate for the system must be stamped by a certificate of competency holder in the full-time employ of the installing contractor.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-068 License renewals. (1) All licensed fire protection sprinkler system contractors desiring to continue to be licensed shall secure from the chief of the Washington state patrol, through the director of fire protection, prior to January 1 of each year a renewal license upon payment of the fee as prescribed by the chief of the Washington state patrol, through the director of fire protection.

(2) Application for renewal shall be upon a form prescribed by the chief of the Washington state patrol, through the director of fire protection, and the license holder shall furnish the information required by the chief of the Washington state patrol, through the director of fire protection.

(3) Failure of any license holder to secure his or her renewal license within sixty days after the expiration date shall constitute sufficient cause for the chief of the Washington state patrol, through the director of fire protection, to suspend the license.

(4) The chief of the Washington state patrol, through the director of fire protection, may restore a license that has been suspended. In addition to other provisions of this regulation, any of the following will constitute cause for the chief of the Washington state patrol, through the director of fire protection, not to restore a license that has been suspended:

- (a) Nonreceipt of payment of all delinquent fees;
- (b) Nonreceipt of a late charge and/or application fee;
- (c) Failure to comply with the bonding requirements of chapter 18.160 RCW; and
- (d) Failure to obtain or show evidence of having a full time employee certified as a design certificate of competency holder of the appropriate level as defined by chapter 18.160 RCW.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-073 Prorated license fees. The initial license fee shall be prorated based upon the portion of the year such license is in effect. This is allowed only once in the history of the company.

EXCEPTIONS: Any contracting company who attempts to license as a fire sprinkler contracting company after performing work covered by this chapter and chapter 18.160 RCW shall be required to pay the full annual licensing fees, in addition to any penalties assessed by the chief of the Washington state patrol, through the director of fire protection, for unlicensed operation(s).

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-078 Contractor surety bonds. (1) The chief of the Washington state patrol, through the director of fire protection, shall not issue a license under this regulation unless:

(a) The fire protection sprinkler system contractor, to be licensed as a Level ((H)) 3 or Level "U" fire protection sprin-

kler system contractor, files with the chief of the Washington state patrol, through the director of fire protection, a surety bond executed by a surety company authorized to do business in the state of Washington, in the sum of ten thousand dollars, conditioned to compensate third-party losses caused by the acts of the principal or the principal's servant, officer, agent, or employee in conducting the business registered or licensed under this regulation; or

(b) The fire protection sprinkler system contractor, to be licensed for Level ((+) 1 and/or Level ((H)) 2 systems or a contractor to be licensed as an inspection and testing contractor, files with the chief of the Washington state patrol, through the director of fire protection, a surety bond executed by a surety company authorized to do business in the state of Washington, in the sum of six thousand dollars, conditioned to compensate third-party losses caused by the acts of the principal or the principal's servant, officer, agent, or employee in conducting the business registered or licensed under this regulation.

(2) Upon approval by the chief of the Washington state patrol, through the director of fire protection, property or cash may substitute for a surety bond provided the value matches the appropriate level of bonding required for the level of work to be performed. The value of property shall be determined by an appraiser selected by the chief of the Washington state patrol, through the director of fire protection. All appraisal fees shall be paid by the fire protection sprinkler system contractor.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-083 Stamps for NFPA 13D, 13R, and 13 systems. (1) Sprinkler system plans, calculations, and contractors' materials and test certificates submitted to the authority having jurisdiction shall be stamped pursuant to subsection (3) of this section.

(2) At least one set of approved plans and calculations, containing information as specified in subsection (3) of this section, shall be maintained on the job site while the work is being performed.

(3) Stamps shall be issued by the chief of the Washington state patrol, through the director of fire protection, and shall contain the name and certification number of the design certificate of competency holder, name and license number of the holder's employer, the expiration date of the current certificate, a place for the signature of the design certificate of competency holder and the date of the signature. On all plans the stamp shall be easily recognizable and visible.

(4) An original stamp and signature shall appear on each page of plans, on the cover sheet of hydraulic calculations and on all test certificates for fire protection sprinkler systems submitted to the authority having jurisdiction.

(5) Plans and calculations for "underground only" portions of fire protection sprinkler systems submitted to the authority having jurisdiction by a State Level U licensed fire protection sprinkler contractor shall be stamped by either a licensed professional engineer registered in the state of Washington or the appropriate level certificate of compe-

tency holder and the State Level U certificate of competency holder employed by the submitting contractor.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-088 Contractor's materials and test certificates. (1) The design certificate of competency holder shall complete the contractor's material and test certificate(s), affix his/her certificate of competency stamp, and forward the certificate(s) to the authority having jurisdiction.

(2) Contractor's material and test certificate forms shall be of such form as accepted or approved by the chief of the Washington state patrol, through the director of fire protection.

(3) The authority having jurisdiction shall require an approved flow test of heads as part of the approval of NFPA 13R and NFPA 13D fire protection sprinkler systems.

(4) The authority having jurisdiction and the building owner shall retain copies of the contractor's materials and test certificate for a minimum of five years.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-093 Certificate of competency certification for Level 1 design, Level U, Level 2, and Level 3. To become a certificate of competency holder under this regulation, an applicant must either:

(1) For State Level 1 design certification, have satisfactorily passed with a final score of eighty percent or better an examination administered by the chief of the Washington state patrol, through the director of fire protection, or show evidence of passing the National Institute for Certification in Engineering Technologies element requirements for Level 2 certification in fire protection system layout design.

(2) For State Level U certification, have satisfactorily passed with a final score of eighty percent or better an examination administered by the chief of the Washington state patrol, through the director of fire protection.

(3) Be a registered professional engineer acting solely in a professional capacity. Such engineer shall comply with all other requirements of this regulation including payment of fees, completion of the application process, and supplying the director of fire protection with proof that the applicant holds a current, valid state of Washington registration as a professional engineer. Upon completion of the above requirements, the engineer will be granted an equivalency certificate to that of State Level ((H)) 3 design certification; or

(4) Present a copy of a current certificate from the National Institute for Certification in Engineering Technologies showing that the applicant has achieved the classification. State Level 2 certification requires a minimum certification from the National Institute for Certification in Engineering Technologies of Level 2 in the field of fire protection automatic sprinkler system layout or better. State Level 3 certification requires either Engineering Technician, Level 3 or Senior Engineering Technician, Level 4 in the field of fire protection automatic sprinkler system layout.

(5) The chief of the Washington state patrol, through the director of fire protection, may accept equivalent proof of qualification in lieu of the examination requirements.

(6) Proof of competency to the satisfaction of the chief of the Washington state patrol, through the director of fire protection, is mandatory.

(7) Every applicant for a certificate of competency shall fulfill the requirements established by the chief of the Washington state patrol, through the director of fire protection, under chapters 18.160 and 18.270 RCW.

NEW SECTION

WAC 212-80-096 Certificate of competency certification for journey-level sprinkler fitter, residential sprinkler fitter, and trainees. (1) For journey-level sprinkler fitter certification, the applicant must provide evidence to the chief of the Washington state patrol, through the director of fire protection, on forms provided by the director, of at least eight thousand hours of trade related fire protection sprinkler fitting experience, pay an examination fee and satisfactorily pass an examination provided by the director.

(2) For residential sprinkler fitter certification, the applicant must provide evidence to the chief of the Washington state patrol, through the director of fire protection, on a form provided by the director, of at least four thousand hours of trade related fire protection sprinkler fitting experience, or residential sprinkler fitting, pay an examination fee and satisfactorily pass an examination provided by the director.

(3) For a training certificate the applicant shall provide evidence to the chief of the Washington state patrol, through the director of fire protection, on forms provided by the director, of trade related employment by a fire protection sprinkler contractor.

EXCEPTIONS:

(a) Provided the application for a journey level sprinkler fitter certificate of competency is made prior to ninety days after the adoption of this chapter, the director, in lieu of the examination requirements of the applicant for a certificate of competency, may accept as satisfactory evidence of competency and qualification an affidavit attesting that the applicant has completed at least eight thousand hours employment as a journey-level sprinkler fitter.

(b) Provided the application for a residential level sprinkler fitter certificate of competency is made prior to ninety days after the adoption of this chapter, the director, in lieu of the examination requirements of the applicant for a certificate of competency, may accept as satisfactory evidence of competency and qualification an affidavit attesting that the applicant has completed at least four thousand hours employment as a residential-level sprinkler fitter.

(4) Proof of competency to the satisfaction of the chief of the Washington state patrol, through the director of fire protection, is mandatory.

(5) Every applicant for a certificate of competency shall fulfill the requirements established by the chief of the Washington state patrol, through the director of fire protection, under chapters 18.160 and 18.270 RCW.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-098 Applications/fees for certificate of competency. (1) Every applicant for a certificate of competency shall apply to the chief of the Washington state patrol, through the director of fire protection, on application forms provided and pay the fees required.

(2) The chief of the Washington state patrol, through the director of fire protection, shall deny renewal of a certificate if the certificate is in revoked or suspended status.

(3) There are two separate fees, including the application fee and the certification fee. The application fee is only charged once when an individual makes the initial application for any of the certificates specified in this section.

(4) Prorated fees shall only be allowed for the initial certificate. Renewals or reinstatements shall not be prorated. The prorated amount shall be calculated using the number of months remaining in the certification cycle.

(5) Renewal timelines:

(a) Levels 1, 2 and 3 design, Level U installer, and Level ITT certificates shall be renewed annually.

(b) Journey-level fire sprinkler fitter, residential fire sprinkler fitter, or temporary fire sprinkler fitter certificates shall be renewed biannually.

(6) Certificate of competency fees for journey-level fire sprinkler fitter, residential fire sprinkler fitter, or temporary fire sprinkler fitter certificates shall be:

(a) Initial application (one time fee) \$100.00;

(b) Certification and renewal of certification \$100.00;

(c) Reinstatement of certificate (no proration permitted) \$100.00.

(7) Certificate fees are nonrefundable once the certificate has been issued.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-103 Temporary design certificate of competency. (1) The chief of the Washington state patrol, through the director of fire protection, may issue a temporary design certificate of competency to an applicant who, in his or her judgment, will satisfactorily perform as a certificate of competency holder under the provisions of this regulation.

(2) The temporary design certificate of competency shall remain in effect for a period of one year. If the temporary certificate of competency holder provides evidence to the chief of the Washington state patrol, through the director of fire protection, of testing with NICET in the previous year, the temporary certificate of competency may be renewed two times.

(3) In no case shall a person hold a temporary design certificate of competency for more than three years, either cumulative or consecutive.

(4) To convert from a temporary design certificate of competency to a regular design certificate of competency, a person shall:

(a) Within three years from the initial issuance of the temporary design certificate of competency, apply for a regular design certificate of competency; and

(b) Complete the requirements specified in this regulation and chapter 18.160 RCW.

(5) An individual having a temporary design certificate of competency shall not be exempt from taking an examination to acquire a regular design certificate of competency.

(6) Prior to the expiration of the temporary design certificate of competency at the end of the three-year period, the temporary design certificate of competency holder shall make application for a regular design certificate of competency. Upon expiration of the temporary certificate of competency at the end of the three-year period, if the holder has not met the requirements of subsection (4) of this section, the holder shall cease all activities associated with the holding of a design certificate of competency.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-113 Certificate of competency employment. (1) In no case shall a certificate of competency holder be employed full time by more than one fire protection sprinkler system contractor at the same time.

(2) If the certificate of competency holder should leave the employment of the fire protection sprinkler system contractor, he or she shall notify the chief of the Washington state patrol, through the director of fire protection, within thirty days of his or her last day of employment.

(3) Should any individual who meets the criteria to be a design certificate of competency holder as defined by this chapter and chapter 18.160 RCW wish to be certified to perform design work only, he or she may request to work as a "FOR DESIGN ONLY" certificate of competency holder. This certification can also be utilized to maintain state certification, as in the case of the State Level U certification.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-118 Certificate of competency renewals. (1) ((AH)) Level 1, 2, 3, U, or I.T. certificate of competency holders who desire to maintain a current certificate shall, prior to January 1 of each year, apply for renewal to the chief of the Washington state patrol, through the director of fire protection, on the appropriate form along with the required fee as prescribed by the chief of the Washington state patrol, through the director of fire protection.

(2) Journeyman fitter and residential fitter certificate of competency holders, and trainees who desire to maintain a current certificate shall, prior to January 1 of every other year, apply for renewal to the chief of the Washington state patrol, through the director of fire protection, on the appropriate form along with the required fee as prescribed by the chief of the Washington state patrol, through the director of fire protection. Applications for renewal shall not be made more than ninety days prior to the expiration date of the certificate.

(a) Trainees applying for a journeyman fitter certificate of competency shall provide an affidavit showing a minimum of eight thousand hours in fire protection sprinkler fitting experience on a form prescribed by the director of fire protection.

(b) Trainees applying for a residential fire sprinkler fitter certificate of competency shall provide an affidavit showing four thousand hours in fire protection sprinkler fitting experience in residential fitting on a form prescribed by the director of fire protection.

(3) Application for renewal forms shall be provided by the chief of the Washington state patrol, through the director of fire protection, upon request, and the certificate holder or trainee shall furnish the information required by the chief of the Washington state patrol, through the director of fire protection.

((3)) (4) The chief of the Washington state patrol, through the director of fire protection, may suspend the Level 1, 2, 3, or I.T. certificate of competency for failure to apply for a renewal certificate of competency within sixty days after the expiration date.

((4)) (5) The chief of the Washington state patrol, through the director of fire protection, may upon the receipt of payment of all delinquent fees and a late charge, restore a Level 1, 2, 3, U, or I.T. certificate of competency that had been suspended.

(6) Journeyman sprinkler fitter and residential sprinkler fitter certificate of competency holders, and trainees who desire to maintain a current certificate shall, prior to January 1 of every other year, apply for renewal to the chief of the Washington state patrol, through the director of fire protection, on the appropriate form along with the required fee as prescribed by the chief of the Washington state patrol, through the director of fire protection.

(7) Failure of a trainee, journeyman sprinkler fitter, or residential sprinkler fitter certificate of competency holder, to renew their certificate before its expiration date of December 31 of every other year, shall result in the applicant having to:

(a) File application with the chief of the Washington state patrol, through the director of fire protection, on a form provided by the director.

(b) Pay an examination fee to the chief of the Washington state patrol, through the director of fire protection.

(c) Successfully pass the written examination required by this chapter.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-123 Voluntary relinquishment of certificates of competency. (1) A certificate of competency holder, or trainee, may voluntarily relinquish his or her certificate of competency to the chief of the Washington state patrol, through the director of fire protection. This includes temporary design certificate of competencies that have not been in effect for more than three consecutive and/or accumulative years.

(2) The relinquishment is effective when the certificate is received by the chief of the Washington state patrol, through the director of fire protection.

(3) After relinquishing the certificate of competency, he or she shall not be known as a certificate of competency holder or trainee and shall desist from the practice thereof.

(4) Within two years from the time of relinquishment of the certificate of competency, he or she may again qualify for

a certificate of competency, with the approval of the chief of the Washington state patrol, through the director of fire protection, by the payment of the required fee.

(5) If two or more years have elapsed, he or she shall return to the status of a new applicant.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-128 Certificate of competency prorated fees. The initial certificate of competency or trainee fee shall be prorated based upon the portion of the year such certificate of competency is in effect, prior to renewal on January 1.

EXCEPTIONS: Any individual who attempts to certify with the chief of the Washington state patrol, through the director of fire protection, after performing work covered by ~~((this chapter and))~~ chapters 18.160 and 18.270 RCW shall be required to pay the full annual certification fees, in addition to any penalties assessed by the chief of the Washington state patrol, through the director of fire protection, for uncertified operation(s).

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-140 Inspection and testing license not transferable. A license issued under this regulation is not transferable.

EXCEPTIONS:

Should a currently licensed inspection and testing contractor merge or form another company, that license can be reissued to the newly formed/incorporated company provided:

(1) The principal officers of the licensed company remain the same;

(2) Continues, takes over, or otherwise reestablishes the bond required by chapter 18.160 RCW for licensing;

(3) Continues to perform inspection and testing contractor work as defined by chapter 212-80 WAC;

(4) Employs at least one full-time inspection and testing technician; and

(5) Meets the criteria necessary for licensing as an inspection and testing contracting company as defined by chapter 212-80 WAC.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-155 Sprinkler system inspection and testing contractor—Prorated fees. The initial license fee shall be prorated based upon the portion of the year such license is in effect. This is allowed only once in the history of the company.

EXCEPTIONS: Any sprinkler system inspection and testing contracting company who is required to be licensed as a sprinkler system inspection and testing contractor with the chief of the

Washington state patrol, through the director of fire protection, after performing work covered by this chapter and chapter 18.160 RCW shall be required to pay the full annual licensing fee, in addition to any penalties assessed by the chief of the Washington state patrol, through the director of fire protection, for unlicensed operation(s).

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-195 Inspection and testing technician—Prorated fees. The initial inspection and testing technician fee shall be prorated based upon the portion of the year such certification is in effect, prior to renewal on January 1.

EXCEPTIONS: Any individual who attempts to certify with the chief of the Washington state patrol, through the director of fire protection, as an inspection and testing technician after performing work covered by this chapter and chapter 18.160 RCW shall be required to pay the full annual certification fees, in addition to any penalties assessed by the chief of the Washington state patrol, through the director of fire protection, for uncertified operation(s).

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-200 Suspension or revocation of licenses. (1) The chief of the Washington state patrol, through the director of fire protection, may refuse to issue or renew or may suspend or revoke the privilege of a licensed fire protection sprinkler system contractor or the license of an inspection and testing contractor to engage in the fire protection sprinkler system business or may establish penalties as prescribed by Washington state law for any of the following reasons:

(a) Gross ~~((incompetency))~~ incompetence or gross negligence in the preparation of layout drawings, installation, repair, alteration, testing, maintenance, inspection, ~~((service))~~ or addition to fire protection sprinkler systems.

(b) Conviction of a felony.

(c) Fraudulent or dishonest practices while engaging in the fire protection sprinkler systems business.

(d) Use of false evidence or misrepresentation in an application for a license.

(e) Permitting his or her license to be used in connection with the installation of any system when such installation is not under his or her supervision, or in violation of this regulation.

(f) Knowingly violating any provisions of this regulation or chapter 18.160 RCW.

(2) The chief of the Washington state patrol, through the director of fire protection, shall revoke the license of a licensed fire protection sprinkler system contractor or an inspection and testing contractor who engages in the fire pro-

tection sprinkler system business while the license is suspended.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-205 Suspension or revocation of certificates. (1) The chief of the Washington state patrol, through the director of fire protection, may refuse to issue or renew or may suspend or revoke the privilege of a certificate of competency holder as defined in RCW 18.160.101(1) or ~~((of a state certified fire sprinkler system inspection and testing technician, as defined in WAC 212-80-010,))~~ chapter 18.270 RCW to engage in the fire protection sprinkler system business or may establish penalties as prescribed by Washington state law for any of the following reasons:

(a) Gross ~~((incompetency))~~ incompetence or gross negligence in the preparation of layout drawings, installation, repair, alteration, testing, maintenance, inspection, ~~((service))~~ or addition to fire protection sprinkler systems.

(b) Conviction of a felony.

(c) Fraudulent or dishonest practices while engaging in the fire protection sprinkler systems business.

(d) Use of false evidence or misrepresentation in an application for a certificate of competency.

(e) Permitting his or her certificate to be used in connection with the preparation of any layout drawings, installation, testing, maintenance, inspection, ~~((service))~~ or certification of any system when such activity is not under his or her supervision, or in violation of this regulation.

(f) Knowingly violating any provisions of this regulation or chapters 18.160 or 18.270 RCW.

(2) The chief of the Washington state patrol, through the director of fire protection, shall revoke the certificate of a certificate of competency holder, trainee, or a state certified fire sprinkler inspection and testing technician who engages in the fire protection sprinkler system business while the certificate of competency or trainee certificate is suspended.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-210 Imposing citations and civil penalties. The chief of the Washington state patrol, through the director of fire protection, may impose civil penalties and/or fines to any licensed company or certified individual who violates any provision of chapters 18.160, 18.270 RCW, or this chapter. Moreover, the chief of the Washington state patrol, through the director of fire protection, may impose the civil penalties and/or fines listed herein to any unlicensed company or uncertified individual who operates in the state of Washington as a licensed company and/or certified individual.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-215 Citations and penalties. (1) These rules establish the basis and process by which the citations and penalties will be determined and issued for violations of chapters 18.160, 18.270 RCW, and/or chapter 212-80 WAC.

(2) Each violation is classified and penalties assessed according to the violation type and instance as defined by this chapter.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-220 General rules of citations and penalties. (1) These rules establish civil penalty criteria for violation Types I, II, and III and the instances for each type of violation.

(2) These rules apply to persons who violate the intent, chapter, and requirements of chapters 18.160, 18.270 RCW, and/or chapter 212-80 WAC.

(3) Each separate instance of noncompliance with chapters 18.160 and 18.270 RCW and/or chapter 212-80 WAC shall be considered a separate violation.

(4) Each day the violation continues may be considered a separate violation.

(5) In addition to the issuance of citations and/or penalties, the chief of the Washington state patrol, through the director of fire protection, may also revoke, suspend, and/or deny the renewal of any license or certificate issued under chapters 18.160 and 18.270 RCW to person(s) and/or company(ies) who fails to pay any penalties assessed under these rules. Such action does not preclude the chief of the Washington state patrol, through the director of fire protection, from assessing further violations for unlicensed and/or uncertified operations.

(6) The penalty for each violation shall range from \$0.00 to \$5,000.00 per day per violation per occurrence.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-225 Violation types, instances, and penalty assessments. (1) Penalties shall be assessed according to the violation type.

(2) The violation types are as follows:

- (a) Minimal - Type I;
- (b) Moderate - Type II; and
- (c) Severe - Type III.

(3) The instances are as follows:

(a) 1st - The first time the individual, person, and/or company is in violation of chapters 18.160 or 18.270 RCW and/or chapter 212-80 WAC in any one calendar year, regardless of the number of individual violations or the duration of them;

(b) 2nd - The second time the individual, person, and/or company is in violation of chapters 18.160 or 18.270 RCW and/or chapter 212-80 WAC in any one calendar year, regardless of the number of individual violations or the duration of them; and

(c) 3rd - The third time the individual, person and/or company is in violation of chapters 18.160 or 18.270 RCW and/or chapter 212-80 WAC in any one calendar year, regardless of the number of individual violations or the duration of them.

(4) In the event of a fourth instance in any one calendar year, that company and/or individual will no longer be allowed to work in the sprinkler field in the state of Washing-

ton. This decision may be appealed, pursuant to RCW 74.20A.320.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-245 Penalty adjustments. (1) The assessment of adjustment of penalties for amounts other than those set by chapters 18.160 or 18.270 RCW shall be done only by the chief of the Washington state patrol, through the director of fire protection, through a hearings process either formally or informally.

(2) The assessment of penalties for not being in conformance with chapters 18.160 or 18.270 RCW and/or chapter 212-80 WAC may be made only after considering:

- (a) The gravity and magnitude of the violation.
- (b) The person's previous record.

(c) Such other considerations as the chief of the Washington state patrol, through the director of fire protection, may consider appropriate.

(3) During a formal hearing or informal conference, the chief of the Washington state patrol, through the director of fire protection, may modify or adjust the citation, cited violations, and/or penalties assessed in order to meet the requirements of these rules and to ensure uniformity and consistency in their application statewide.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-250 Payment of civil penalty. (1) The penalty shall be paid to the chief of the Washington state patrol, through the director of fire protection, within twenty-eight days after an order assessing a civil penalty becomes final by operation of law or on an appeal.

(2) The attorney general may bring an action in the name of the chief of the Washington state patrol, through the director of fire protection, in the superior court of Thurston County or of any county in which the violator may do business to collect any penalty imposed under chapter 18.160 or 18.270 RCW.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-255 Type I (minimal) violations. (1) Type I violations are subject to penalties ranging from a warning to two hundred dollars a day depending upon the instance and in accordance with chapter 212-80 WAC.

(2) Examples of Type I violations include, but are not limited to:

(a) Failing to inform the chief of the Washington state patrol, through the director of fire protection, of the loss of their primary certificate of competency holder, as required by RCW ((18.160.40)) 18.160.040.

(b) Failing to have the certificate of competency holder stamp plans, calculations, and/or test certificates.

(c) Allowing an employee to certify, install, inspect, test and/or maintain, ((and/or service)) water based fire sprinkler systems or equipment contrary to NFPA codes, standards, or

manufacturers' specifications without specific written permission from the local authority having jurisdiction.

(d) Working without a permit, or permission to do so, by the local authority having jurisdiction.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-260 Type II (moderate) violations. (1)

Type II violations are subject to penalties ranging from two hundred dollars to five hundred dollars a day depending upon instance and in accordance with chapter 212-80 WAC.

(2) Examples of Type II violations include, but are not limited to:

(a) Performing work on a sprinkler system where the employee's certificate of competency holder under RCW (~~(18.160.40)~~) 18.160.040 or chapter 18.270 RCW does not have a current or valid license.

(b) Working without the appropriate level of license or certificate of competency.

(c) Permitting his or her license to be used in connection with the preparation of any technical drawings that have not been prepared by him or her personally, or under their direct supervision.

(d) Working with an expired license or permit (more than ninety days).

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-265 Type III (serious) violations. (1)

Type III violations are subject to penalties ranging from five hundred dollars to five thousand dollars a day depending upon instance and in accordance with chapter 212-80 WAC.

(2) Examples of Type III violations include, but are not limited to:

(a) Demonstrating gross (~~(incompetency)~~) incompetence or gross negligence in the preparation of technical drawings, the installation, inspection, testing, maintenance, repair, alteration, (~~(service)~~) and/or addition to a fire sprinkler system.

(b) Allowing an employee to demonstrate gross (~~(incompetency)~~) incompetence or gross negligence in the installation, inspection, testing, maintenance, repair, alteration, (~~(service)~~) and/or addition to a fire sprinkler system.

(c) Charging a customer for fire sprinkler work not performed.

(d) Offering to contract for fire sprinkler work without a certificate of competency holder, as described in RCW 18.160.040.

(e) Allowing an employee to falsify any fire sprinkler tags, labels, or inspection reports.

(f) Working without a certified full-time certificate of competency holder on staff, or, in the case of an inspection and testing contractor, allowing any employee not certified by the chief of the Washington state patrol, through the director of fire protection, as an inspection and testing technician.

(g) Falsifying an application or document submitted to the chief of the Washington state patrol, through the director of fire protection, to obtain a sprinkler contractor license or certificate of competency.

(h) Committing three or more Level II offenses within a three year period either as a company, through an employee of the company, through an employee acting as a certificate of competency holder for the company, and/or any combination thereof.

(i) Permitting his or her license to be used in connection with the stamping of any test certificates for work performed by someone other than his or her full-time employees.

WSR 09-01-123

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed December 19, 2008, 2:06 p.m., effective January 19, 2009]

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

Purpose: Amend standards for oiled bird rehabilitation facilities.

Citation of Existing Rules Affected by this Order: Amending WAC 232-12-275.

Statutory Authority for Adoption: RCW 77.12.047.

Other Authority: RCW 90.56.110.

Adopted under notice filed as WSR 08-20-104 on September 30, 2008.

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

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

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

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

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

Date Adopted: December 12, 2008.

Susan Yeager

for Jerry Gutzwiler, Chair

Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 06-67, filed 4/11/06, effective 5/12/06)

WAC 232-12-275 Wildlife rehabilitation permits. (1)

For the purposes of this rule, the following definitions apply:

(a) "Bird" means any wild animal of the class Aves.

(b) "Dedicated workspace" means the minimum amount of floor space necessary to maintain access to oiled bird rehabilitation pens.

(c) "Drying resources" mean the floor space and pen requirements associated with the removal of water from the skin and feathers of a bird.

(d) "Imping" means a method of repairing broken feathers.

(e) "Indoor area" means the space within an oiled bird rehabilitation facility in which the air temperature and exchange of air can be controlled and maintained. Indoor areas may consist of space for: Intake, prewash holding, wash/rinse, drying, oiled bird rehabilitation pools, morgue/necropsy, bird food preparation, storage, freezers, isolation/intensive care unit, medical laboratory, laundry, electrical, and mechanical areas.

(f) "Intake space" means the minimum amount of floor space necessary to admit live or dead birds into an oiled bird rehabilitation facility.

(g) "Mesh size" means the measured distance between the centers of the two opposing vertices in the same mesh of a piece of netting when pulled taut.

(h) "Oil" means oil of any kind and any form, such as petroleum and nonpetroleum oils including, but not limited to, crude oil and refined petroleum products, animal fats and vegetable oil, other oils of animal or vegetable origin, and other nonpetroleum oils.

(i) "Oiled bird" means a bird that has come in contact with oil.

(j) "Oiled bird rehabilitation pen" means an enclosure used to hold birds during oiled bird rehabilitation.

(k) "Oiled bird rehabilitation pool" means a container filled with unheated fresh water used during the rehabilitation of oiled birds.

(l) "Oiled bird rehabilitation" is a specialized form of wildlife rehabilitation and means the process of caring for oiled birds during intake, prewash holding, washing and rinsing, drying; while in pools; by providing semi-static and static areas; and by maintaining air temperature and air exchange while the birds are in an oiled bird rehabilitation facility.

(m) "Oiled bird rehabilitation facility" is a type or portion of a wildlife rehabilitation facility and means the contiguous indoor and outdoor areas used for the rehabilitation of oiled birds.

(n) "Outdoor area" means an area within an oiled bird rehabilitation facility that does not fit the definition of an indoor area.

(o) "Orphan-imprinting" means to use wildlife for the purpose of feeding, socializing, and teaching appropriate behavior to young wildlife.

(p) "Prewash holding resources" mean the floor space and oiled bird rehabilitation pen requirements within an oiled bird rehabilitation facility necessary to hold birds after intake and prior to washing.

(q) "Principal veterinarian" means a licensed veterinarian who provides in writing their willingness to assist the rehabilitator in conducting wildlife rehabilitation activities.

(r) "Public display" means to place or locate wildlife so that they may be viewed by the public.

(s) "Semi-static areas" mean dedicated indoor spaces within an oiled bird rehabilitation facility where the required size of the space will vary relative to the number of birds to be rehabilitated. These include areas for bird food preparation, morgue/necropsy, storage, and freezers.

(t) "Static areas" mean dedicated indoor spaces within an oiled bird rehabilitation facility where the required size of the space does not vary regardless of the number of birds to be rehabilitated. These include areas for the isolation/intensive care unit, medical laboratory, laundry, electrical, and mechanical spaces.

(u) "Wash/rinse resources" mean the water, cleaning agent, and space requirements necessary to remove oil from the skin and feathers of a bird.

(v) "Wildlife rehabilitation" means the care and treatment of injured, diseased, oiled, or abandoned wildlife, including, but not limited to, capture, transporting, veterinary treatment, feeding, housing, exercise therapy, and any other treatment or training necessary for release back to the wild.

(w) "Wildlife rehabilitation facility" means the authorized sites as shown on the wildlife rehabilitation permit where the treatment and rehabilitation takes place.

(x) "Wildlife rehabilitator" means a person who conducts wildlife rehabilitation or someone who conducts wildlife rehabilitation under the supervision of a valid wildlife rehabilitation permit holder.

(y) "Wildlife rehabilitation permit" means a permit issued by the director, or director's designee, that authorizes a person, or someone under the supervision of a valid wildlife rehabilitation permit holder, to conduct wildlife rehabilitation.

(2) It shall be unlawful for any person to possess wildlife for the purpose of rehabilitation unless:

(a) They have a valid wildlife rehabilitation permit; or

(b) They are working under the supervision of a person who has a valid wildlife rehabilitation permit.

(3) A wildlife rehabilitation permit may be issued to a person to conduct or oversee wildlife rehabilitation and is valid so long as the information in the permit remains current, the permit holder continues to meet the conditions and requirements of the permit, and provisions of this rule are followed. Any change to the information on the permit must be reported in writing within ten working days or the permit may be invalidated.

(4) The director, or director's designee, may issue and condition a wildlife rehabilitation permit if the applicant complies with the following:

(a) The applicant is either a licensed veterinarian or can demonstrate six months of experience in wildlife rehabilitation, which must include three months during the spring or summer and has a principal veterinarian as a sponsor. The director, or director's designee, may consider education in wildlife rehabilitation as a substitute for experience.

(b) The applicant must successfully complete a wildlife rehabilitator's examination(s) as prescribed by the director, or director's designee.

(c) The wildlife rehabilitation facility is inspected by the department and meets the wildlife rehabilitation care and facility standards for wildlife in the *Washington State Wildlife Rehabilitation Facility and Care Standards* pamphlet. In order for the wildlife rehabilitation permit to allow for the rehabilitation of oiled birds, the facility also needs to meet the requirements in subsection (24) of this section. When facility requirements in subsection (24) of this section conflict with requirements in the *Wildlife Rehabilitation Facility and Care*

Standards pamphlet, subsection (24) of this section shall take precedence.

(5) The wildlife rehabilitation permit holder must maintain and upon request make available to the department, a wildlife rehabilitation daily ledger. The ledger must include the date the wildlife is received, the species and nature of the illness, the location where the wildlife was found, the date and disposition of the wildlife, the release location, and if any, tags and/or band numbers. It is unlawful for a wildlife rehabilitation permit holder to fail to enter required information in the wildlife rehabilitation ledger within twenty-four hours of the day wildlife is received and on the day of all subsequent activities as required in the ledger.

(6) The wildlife rehabilitation permit holder must submit to the department no later than January 31 of each year an annual report providing information as required by the director, or director's designee, and a copy of the daily ledger. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(7) All permits and records held pursuant to statutes and rules dealing with wildlife rehabilitation will be kept on file at the wildlife rehabilitation facility. The records will be retained for a period of five years.

(8) A copy of the valid wildlife rehabilitation permit must be in possession of any person possessing or transporting wildlife for the wildlife rehabilitation facility.

(9) The wildlife rehabilitation permit holder will notify the department within twenty-four hours of receiving a state or federal endangered or threatened species or an oiled bird; within seventy-two hours of receiving a state sensitive species or marked, tagged, or banded wildlife; and prior to release of threatened or endangered species or oiled birds. The release notification information relative to oiled birds shall include the number of birds being released, the species of birds being released, the proposed location of the release, and the proposed date/time of release.

(10) The wildlife rehabilitation permit holder will notify the department within twenty-four hours after the death of an oiled bird or a state or federal endangered or threatened species; or as soon as an endangered or threatened species is determined to be nonreleasable to the wild. Oiled birds or endangered or threatened species will not be disposed of or euthanized without prior department approval.

(11) Rehabilitated wildlife may be banded or otherwise identified by the department.

(12) The wildlife rehabilitation permit holder will notify the department, within five working days from the date of death, of any wildlife known to have died of the following diseases: Avian cholera, avian pox, duck viral enteritis, environmental contaminants, ornithosis, Newcastle's disease, rabies, canine distemper or tuberculosis (in species other than birds).

(13) Rehabilitated wildlife will be released as soon as possible into its proper habitat in the same area as recovered, except as provided by written authorization from the director or director's designee. Rehabilitated oiled birds shall only be released in the same area as recovered when the threat of becoming reoiled no longer exists. If the area that they were recovered in is not clean enough to allow for their release at

that location, department approval is required prior to releasing rehabilitated oiled birds in another location.

(14) It is unlawful to hold wildlife for longer than one hundred eighty days, except as provided by written authorization from the director, or director's designee.

(15) Dead wildlife, excluding oiled birds, will be disposed of through deposit at an approved Washington state university or college, a permitted research project or through burial, incineration, or a licensed rendering facility. The wildlife rehabilitation permit holder shall notify the department when in possession of dead oiled birds. Dead oiled birds shall not be disposed of without prior department approval.

(16) It is unlawful to publicly display wildlife while it is undergoing rehabilitation.

(17) It is unlawful to retain wildlife for the purpose of orphan imprinting or to retain feathers of protected or endangered wildlife for the purpose of "imping," except as provided by written authorization from the director, or director's designee.

(18) It is unlawful for wildlife being held for rehabilitation to be used for propagation.

(19) Wildlife being held for the purposes of rehabilitation must be kept separate from wildlife held under other licenses and domestic animals, except as provided by written authorization from the director, or director's designee.

(20) The wildlife rehabilitation permit holder may receive from the department and possess at the wildlife rehabilitation facility, dead wildlife for the purpose of feeding wildlife being rehabilitated.

(21) Fish and wildlife enforcement officers may inspect at reasonable times and in a reasonable manner the wildlife, permits, records, and wildlife rehabilitation facility of any wildlife rehabilitator.

(22) Any wildlife rehabilitation permit holder who fails to comply with any condition within the holder's permit or any provision of this rule is in violation of the permit and the permit may be revoked. Any wildlife rehabilitation permit holder found in violation of the permit conditions, with the exception of oiled bird facility requirements, may provide to the department a plan for corrective action, within ten days, to return to compliance. Any wildlife rehabilitation permit holder with an acceptable plan for corrective action to violations other than oiled bird facility requirements will be given a minimum of thirty days to correct a permit violation prior to revocation. Wildlife rehabilitation permit holders found in violation of oiled bird rehabilitation facility requirements shall correct these violations within twenty-four hours to avoid revocation of their authorization to rehabilitate oiled birds.

(23) All wildlife held by a wildlife rehabilitation permit holder remains the property of the state, is subject to control by the state and will not be offered for sale or sold.

(24) Oiled bird rehabilitation facility requirements~~((:))~~. The facility requirements listed in this subsection address oiled bird health and safety. The department of labor and industries and other government agencies may have additional requirements relating to human health and safety.

(a) Air temperature and air exchange requirements: This section refers to the air temperature and air exchange requirements within indoor areas.

(i) Air temperature: All indoor areas shall have the means to control air temperature and shall be adjustable and maintainable at any given air temperature between 65°F - 85°F. When the number of birds in an oiled bird rehabilitation facility at a given time exceeds fifty, the following shall also apply:

(A) Intake and prewash holding areas shall be air temperature controlled independently of other oiled bird rehabilitation facility areas but may be controlled together;

(B) Wash/rinse and drying areas shall be air temperature controlled independently of other oiled bird rehabilitation facility areas but may be controlled together; and

(C) The isolation/intensive care unit shall be air temperature controlled independently of other oiled bird rehabilitation facility areas.

(ii) Air exchange: All indoor areas shall have the means to exchange the air volume a minimum of ten times per hour with fresh air from outside.

The fresh air exchange rate for any given indoor area may be reduced by the use of an air recirculation system that employs a high efficiency particulate air (HEPA) filter and an activated carbon filter. The volume of air filtered by the recirculation system may replace an equal volume of air in the fresh air exchange requirement. No more than ninety percent of the fresh air exchange requirement shall be met by recirculation. The filters in the recirculation system shall be maintained in accordance with the manufacturer's recommendations. When the number of birds in an oiled bird rehabilitation facility at a given time exceeds fifty, the following shall also apply:

(A) Intake and prewash holding areas may be combined on the same air exchange system. Air exchange systems in the intake and prewash holding areas shall be independent of other oiled bird rehabilitation facility air exchange systems; and

(B) Wash/rinse and drying areas may be combined on the same air exchange system. Air exchange systems in the wash/rinse and drying areas shall be independent of other oiled bird rehabilitation facility air exchange systems; and

(C) The isolation/intensive care unit air exchange system shall be independent of other oiled bird rehabilitation facility areas; and

(D) The morgue/necropsy air exchange system shall be independent of other oiled bird rehabilitation facility areas.

(b) Intake space requirement: Intake shall occur in an indoor area. Forty square feet of contiguous floor space shall be provided for each group of sixty live or dead oiled birds, or portion of each group of sixty, that have been collected and are awaiting intake. The floor of the intake space shall be impermeable. Water shall not be allowed to accumulate on the floor.

(c) Prewash holding resource requirements: Prewash holding shall occur in an indoor area. Oiled bird rehabilitation pen space and the associated dedicated workspace shall be provided in the prewash holding area.

(i) Oiled bird rehabilitation pen requirements: Prewash oiled bird rehabilitation holding pens shall be no smaller than two feet in length by two feet in width; and a minimum of two feet high. Prewash oiled bird rehabilitation holding pens shall be constructed with knotless nylon net-bottoms with a

stretched mesh size of one-half inch and shall provide 1.6 square feet of pen space per bird. Oiled bird rehabilitation holding pens shall be constructed in a manner such that no point within the pen is greater than two feet from a pen wall. Oiled bird rehabilitation holding pens shall be elevated a minimum of twelve inches above the floor surface.

(ii) Space requirements: In addition to the space required for prewash oiled bird rehabilitation holding pens, an additional 3.2 square feet of dedicated workspace shall be provided in the prewash holding area for each bird held in the prewash holding area. The floor of the prewash holding area shall be impermeable. Water shall not be allowed to accumulate on the floor.

(d) Wash/rinse resource requirements: Wash/rinse shall occur in an indoor area. A bird shall be provided wash/rinse space and associated resources within twenty-four hours after intake.

(i) Water requirements: A minimum of three hundred gallons of fresh water with the following characteristics shall be made available within each wash/rinse space for each oiled bird being washed and rinsed:

(A) The water temperature shall be ~~((maintained))~~ adjustable and maintainable at any given temperature between ~~((404))~~ 102°F - ~~((106))~~ 108°F;

(B) The water hardness shall be maintained between ~~((30))~~ 34 mg - ~~((50))~~ 85 mg calcium carbonate/liter (2-~~((3))~~ 5 grain hardness);

(C) The water pressure shall be maintained between 40-60 p.s.i. ~~((at-a))~~;

(D) The water flow rate shall be not less than ~~((six))~~ two gallons per minute from the wash/rinse supply line measured with the wash/rinse nozzle in place.

(E) All water requirements listed above shall remain within the specified ranges at all times.

(ii) Cleaning agent requirements: Liquid dishwashing detergents are the only cleaning agents that shall be used to remove oil from birds. ~~((Other detergents, including, but not limited to, machine dishwasher soaps and detergents, hand soaps, powdered products, and antibacterial dishwashing detergents shall not be used.))~~

(iii) Space requirements: One hundred square feet of contiguous floor space shall be provided for each group of sixteen live oiled birds, or portion of each group of sixteen, that are ready to be washed and rinsed. The floor of the wash/rinse area shall be impermeable. Water shall not be allowed to accumulate on the floor.

(e) Drying resource requirements: Drying shall occur in an indoor area. Oiled bird rehabilitation pen space and the associated dedicated workspace shall be provided in the drying area. Drying shall be accomplished by warming the air in the drying pen ~~((to))~~. The drying temperature shall be adjustable and maintainable at any given temperature between 90°F - ~~((95))~~ 106°F.

(i) Oiled bird rehabilitation drying pen requirements: Oiled bird rehabilitation drying pens shall be no smaller than three feet in length by two feet in width; and a minimum of two feet high. Oiled bird rehabilitation drying pens shall be constructed with knotless nylon net-bottoms with a stretched mesh size of one-half inch and shall provide 2.7 square feet of pen space per bird. Each oiled bird rehabilitation pen shall be

constructed in a manner such that no point within the pen is greater than two feet from a pen wall. Oiled bird rehabilitation drying pens shall be elevated a minimum of twelve inches above the floor surface. If prewash oiled bird rehabilitation holding pens meet the criteria for use as oiled bird rehabilitation drying pens and are used in the drying process, they must be cleaned of oil residue prior to use.

(ii) Space requirements: In addition to the space required for oiled bird rehabilitation drying pens, an additional 3.2 square feet of dedicated workspace shall be provided in the drying area for each bird held in the drying area. The floor of the drying area shall be impermeable. Water shall not be allowed to accumulate on the floor.

(f) Oiled bird rehabilitation pool resource requirements: Oiled bird rehabilitation pools shall be filled with unheated fresh water. Oiled bird rehabilitation pool space shall be provided immediately after a bird has been dried, and shall be provided until the bird is released.

(i) Oiled bird rehabilitation pool requirements: ~~((Oiled bird rehabilitation pool water shall be a minimum of four feet deep.))~~ Each bird shall be afforded a minimum of 7.5 square feet of water surface space (e.g., a twelve-foot diameter oiled bird rehabilitation pool shall house not more than fifteen birds). Each oiled bird rehabilitation pool shall be of dimensions such that no point within the pool is greater than eight feet from a side of the pool. In addition, each oiled bird rehabilitation pool shall have a breathable cover to prevent birds from escaping. Each oiled bird rehabilitation pool shall be constantly supplied with water sufficient to maintain a depth of ~~((four))~~ three feet and an exchange rate of not less than four and one-quarter times per day. Water exiting the oiled bird rehabilitation pool shall come from the surface of the pool so that floating debris and oil are removed. Water from oiled bird rehabilitation pools may be reused within a facility if made oil free.

(ii) Space requirements: Oiled bird rehabilitation pools shall be within the oiled bird rehabilitation facility. Oiled bird rehabilitation pools shall be no closer than four feet from another structure.

(g) Semi-static areas:

((+)) Space requirements: Semi-static areas shall be indoor areas. The floors in semi-static areas shall be impermeable. Water shall not be allowed to accumulate on the floor. When the total number of birds in an oiled bird rehabilitation facility, on a given day, is less than fifty, there are no minimum space requirements for semi-static areas. When the total number of birds in an oiled bird rehabilitation facility, on a given day, is between fifty and one thousand, each semi-static area listed in Table 1 shall be allocated the associated space. When the total number of birds in an oiled bird rehabilitation facility, on a given day, is between one thousand one and two thousand, each semi-static area listed in Table 1 shall be allocated two times the associated space, and, when the total number of birds in the oiled bird rehabilitation facility, on a given day, is between two thousand one and three thousand, each semi-static area listed in Table 1 shall be allocated three times the associated space, etc. Space for the semi-static areas listed in Table 1 shall be accommodated within an oiled bird rehabilitation facility with the exception of the morgue/necropsy.

Table 1:

Semi-static area space requirements by activity type.

Area	Space
Morgue/necropsy	250 sq. ft.
Bird food preparation	300 sq. ft.
Storage	100 sq. ft.
Freezers	100 sq. ft.

(h) Static areas:

((+)) Space requirements: Static areas shall be indoor areas. The floors in static areas shall be impermeable. Water shall not be allowed to accumulate on the floor. When the total number of birds in an oiled bird rehabilitation facility, on a given day, is less than fifty, there are no minimum space requirements for static areas. When the number of birds in an oiled bird rehabilitation facility, on a given day, exceeds fifty, each static area listed in Table 2 shall be allocated the associated space. All of the space associated with the areas listed in Table 2 shall be accommodated within an oiled bird rehabilitation facility with the exception of the laundry.

Table 2:

Static area space requirements by activity type.

Area	Space
Isolation/intensive care unit	200 sq. ft.
Medical laboratory	200 sq. ft.
Laundry	200 sq. ft.
Electrical	100 sq. ft.
Mechanical	250 sq. ft.

**WSR 09-01-125
PERMANENT RULES
DEPARTMENT OF ECOLOGY**

[Order 08-10—Filed December 19, 2008, 2:28 p.m., effective January 19, 2009]

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

Purpose: The purpose of the rule proposal is to amend chapter 173-160 WAC, Minimum standards for construction and maintenance of wells. Ecology is making technical and typographical corrections to the current rule and adding new provisions that require certification of certain drilling materials to protect ground water quality. Ecology convened the technical advisory group who assisted in making these amendments.

Citation of Existing Rules Affected by this Order: Amending chapter 173-160 WAC.

Statutory Authority for Adoption: Chapter 18.104 RCW.

Adopted under notice filed as WSR 08-20-105 on September 30, 2008.

Changes Other than Editing from Proposed to Adopted Version: There are four editing changes as follows:

WAC 173-160-010(c) was deleted since it is redundant with WAC 173-160-010(4) of that same section.

In WAC 173-160-450(3) "space" was replaced with "seal" after the word "annular" since the word "space" is incorrectly used in this context.

In WAC 173-160-450 (4)(a)(i) the term "divided by" was removed from the bentonite sealant formula to make the formula consistent with the same formula used in other provisions of the rule.

In WAC 173-160-460 (1)(a)(iii) "neat" was added in front of "cement grout" to make the terminology consistent with the same terminology used in other provisions of the rule.

A final cost-benefit analysis is available by contacting Bill Lum, Department of Ecology, P.O. Box 47600, Olympia, WA 98504, phone (360) 407-6648, fax (360) 407-7162, e-mail blum461@ecy.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 6, Amended 25, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 25, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 25, Repealed 0.

Date Adopted: December 19, 2008.

Jay J. Manning
Director

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-010 What is the purpose of this regulation? (1) These regulations are adopted under chapter 18.104 RCW, to establish minimum standards for the construction and decommissioning of all wells in the state of Washington.

(2) The following are excluded from these regulations:

(a) Any excavation that is not intended to locate, divert, artificially recharge, observe, monitor, dewater, or withdraw ground water except resource protection wells, ground source heat pump borings, grounding wells, and geotechnical soil borings.

(b) Any excavation for the purpose of obtaining or prospecting for oil, natural gas, minerals, products of mining, quarrying, inserting media to repressure oil or natural gas bearing formations, storing petroleum, natural gas, or other products, as provided in chapter 78.52 RCW.

(c) ~~(Injection wells regulated in chapter 173-218 WAC. Exception: Injection wells used to withdraw ground water and remediation wells that are used to inject any substance to remediate, clean up, or control potential or actual contami-~~

~~nation may be regulated by chapters 173-218 and 173-160 WAC.~~

~~(d))~~ Infiltration or exfiltration galleries, trenches, ponds, pits, and sumps, except where the department determines that the intended use of the excavation meets a definition in RCW 18.104.020.

~~((e))~~ (d) Grounding wells and grounding rods that are installed to a depth of twenty-five feet or less.

(3) Under chapter 90.48 RCW, those excavations excluded in subsection (2)(a) through (d) of this section shall be constructed, maintained, and decommissioned to ensure protection of the ground water resource and to prevent the contamination and waste of that resource.

(4) The following wells are regulated under this chapter and may be regulated under chapter 173-218 WAC: Injection wells used to dispose of water which has been withdrawn for heating or cooling purposes and remediation wells that are used to inject any substance to remediate, clean up, or control potential or actual contamination.

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-111 What are the definitions of specific words as used in this chapter? (1) "Abandoned well" means a well that is unmaintained or is in such disrepair that it is unusable or is a risk to public health and welfare.

(2) "Access port" is a 1/2- to 2-inch tapped hole or tube equipped with a screw cap, which provides access to the inner casing, for measurement of the depth to water surface. An access port also means a removable cap.

(3) "Annular space" is the space between the surface or outer casing and the inner casing, or the space between the wall of the drilled hole and the casing.

(4) "Aquifer" is a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

(5) "Artesian well" is a well tapping an aquifer bounded above and below by confining or impermeable rock or soil layers, or rock or soil layers of distinctly lower permeability than the aquifer itself. The water will rise in the well above the point of initial penetration (above the bottom of the confining or impermeable layer overlying the aquifer). This term includes both flowing and nonflowing wells.

(6) "Artificial gravel pack" is a mixture of gravel or sand placed in the annular space around the liner, perforated pipe, or well screen. A gravel pack is used to reduce the movement of finer material into the well and provide lateral support to the screen in unstable formations.

(7) "Artificial recharge" is the addition of water to an aquifer by activities of man, such as irrigation or induced infiltration from streams, or injection through wells, trenches, pits, and ponds.

(8) "Bentonite" is a mixture of swelling clay minerals, predominantly sodium montmorillonite.

(9) "Building drain" means that part of the lowest piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer beginning two feet outside the building wall.

(10) "Building sewer" means that part of the horizontal piping of a drainage system which extends from the end of the building drain and which receives the discharge of the building drain and conveys it to a public sewer, private sewer, individual sewage disposal system, or other point of disposal.

(11) "Capped well" is a well that is not in use and has a watertight seal or cap installed on top of the casing.

(12) "Casing" is a pipe, generally made of metal or plastic, which is installed in the bore hole as part of the drilling process to maintain the opening. Casing may be utilized in either consolidated or unconsolidated formations and must meet the requirements of WAC 173-160-201.

(13) "Confining layer" or "confining formation" means a layer of low hydraulic conductivity material that significantly limits vertical movement of ground water.

(14) "Consolidated formation" means any geologic formation in which the earth materials have become firm and cohesive through natural rock forming processes. Such rocks commonly found in Washington include basalt, granite, sandstone, shale, conglomerate, and limestone. ~~((An uncased bore hole will normally remain open in these formations.~~

~~((14))~~ (15) "Constructing a well" or "construct a well" means:

- (a) Boring, digging, drilling, or excavating a well;
- (b) Installing casing, sheeting, lining, or well screens, in a well;
- (c) Drilling a geotechnical soil boring; ~~((e))~~
- (d) Installing an environmental investigation well; or
- (e) Alteration of an existing well.

~~("Constructing a well" or "construct a well" includes the alteration of an existing well.~~

~~((15))~~ (16) "Contamination" has the meaning provided in RCW 90.48.020.

~~((16))~~ (17) "Curbing" is a liner or pipe made of concrete, precast tile or steel installed in dug wells to provide an annular space between the well bore and the liner or pipe for sealing.

~~((17))~~ (18) "Decommissioning" means to fill or plug a well so that it will not produce water, serve as a channel for movement of water or pollution, or allow the entry of pollutants into the well or aquifer(s).

~~((18))~~ (19) "Department" means the department of ecology.

~~((19))~~ (20) "Design pumping rate" means the maximum pumping rate as determined by the well driller, without exceeding the department's policy on sand and turbidity.

~~((20))~~ (21) "Dewatering well" means a cased or lined excavation or boring that is intended to withdraw or divert ground water for the purpose of facilitating construction, stabilizing a land slide, or protecting an aquifer.

~~((21))~~ (22) "Director" means director of the department of ecology.

~~((22))~~ (23) "Disinfection" or "disinfecting" is the use of chlorine, or other disinfecting agent or process approved by the department, in sufficient concentration and contact time adequate to inactivate coliform or other indicator organisms.

~~((23))~~ (24) "Domestic water supply" is any water supply which serves a family residence(s).

~~((24))~~ (25) "Draw down" is the measured difference between the static ground water level and the ground water level induced by pumping.

~~((25))~~ (26) "Drilled well" is a well in which the hole is usually excavated by mechanical means such as rotary, cable tool, or auger drilling equipment.

~~((26))~~ (27) "Drilling log" means a water or resource protection well report.

~~((27))~~ (28) "Driven well" is a well constructed by joining a "drive point" to a length of pipe, then driving the assembly into the ground.

~~((28))~~ (29) "Dug well" is a well generally excavated with hand tools or by mechanical methods. The side walls may be supported by material other than standard weight steel casing.

~~((29))~~ (30) "Filter pack" means clean, well rounded, smooth, uniform, sand or gravel, which is placed in the annulus of the well between the bore hole wall and the liner, perforated pipe, or well screen to prevent formation material from entering the well.

~~((30))~~ (31) "Formation" means an assemblage of earth materials grouped together into a unit that is convenient for description or mapping.

~~((31))~~ (32) "Ground source heat pump boring" means a vertical boring constructed for the purpose of installing a closed loop heat exchange system for a ground source heat pump.

~~((32))~~ (33) "Ground water" means and includes ground waters as defined in RCW 90.44.035.

~~((33))~~ (34) "Grounding well" means a grounding electrode installed in the earth by the use of drilling equipment to prevent buildup of voltages that may result in undue hazards to persons or equipment. Examples are anode and cathode protection wells.

~~((34))~~ (35) "Grout" is a fluid mixture of cement, bentonite, and water used to seal the annular space around or between well casings, or to decommission wells.

~~((35))~~ (36) "Impermeable" is a descriptive term for earth materials which have a texture or structure that does not permit fluids to perceptibly move into or through its pores or interstices.

~~((36))~~ (37) "Liner" means a pipe inserted into a larger casing, or bore hole, after the drilling process has occurred, as a means of maintaining the structural integrity of the well. Liners may only be used in consolidated formations and must meet the requirements of WAC 173-160-201.

~~((37))~~ (38) "Maximum pumping rate" means the maximum pumping rate, as determined by the well driller, without exceeding the department's policy on sand and turbidity.

~~((38))~~ (39) "Operator" means a person who:

- (a) Is employed by a well contractor;
- (b) Is licensed under this chapter; or
- (c) Who controls, supervises, or oversees the construction of a well or who operates well construction equipment.

~~((39))~~ (40) "Owner" or "well owner" means the person, firm, partnership, copartnership, corporation, association, other entity, or any combination of these, who owns the property on which the well is or will be constructed or has the right to the well by means of an easement, covenant, or other

enforceable legal instrument for the purpose of benefiting from the well.

~~((40))~~ (41) "NSF/ANSI" means the National Sanitation Foundation/American National Standards Institute.

(42) "Permeability" is a measure of the ease of which liquids or gas move through a porous material.

(a) For water, this is usually expressed in units of centimeters per second or feet per day. Hydraulic conductivity is a term for water permeability.

(b) Soils and synthetic liners with a water permeability of $1 \times 10^{(-7)}$ cm/sec or less may be considered impermeable.

~~((41))~~ (43) "Pollution" has the meaning provided in RCW 90.48.020.

~~((42))~~ (44) "Pressure grouting" is a method of forcing grout into specific portions of a well for sealing purposes.

~~((43))~~ "PTFE" means polytetrafluoroethylene casing materials such as teflon. The use of the term teflon is not an endorsement for any specific PTFE product.

~~((44))~~ (45) "Public water supply" is any water supply intended or used for human consumption or other domestic uses, including source, treatment, storage, transmission and distribution facilities where water is furnished to any community, collection or number of individuals, available to the public for human consumption or domestic use, excluding water supplies serving one single-family residence and a system with four or fewer connections, all of which serve residences on the same farm.

~~((45))~~ (46) "PVC" means polyvinyl chloride, a type of thermoplastic casing or liner.

~~((46))~~ (47) "Static water level" is the vertical distance from the surface of the ground to the water level in a well when the water level is not affected by withdrawal of ground water.

~~((47))~~ (48) "Temporary surface casing" is a length of casing (at least four inches larger in diameter than the nominal size of the permanent casing) which is temporarily installed during well construction to maintain an annular space for later placement of the surface seal as described in WAC ~~((173-160-275, 173-160-285, 173-160-305, and 173-160-315))~~ 173-160-231. The temporary surface casing shall be removed before well completion.

~~((48))~~ (49) "Test well" is a well (either cased or uncased), constructed to determine the quantity of water available for beneficial uses, identifying underlying rock formations (lithology), and to locate optimum zones to be screened or perforated. If a test well is constructed with the intent to withdraw water for beneficial use, it must be constructed in accordance with the minimum standards for water supply wells, otherwise they shall be constructed in accordance with the minimum standards for resource protection wells. A water right permit, preliminary permit, or temporary permit shall be obtained prior to constructing a test well unless the anticipated use of water is exempt as provided in RCW 90.44.050. A "test well" is a type of "water well."

~~((49))~~ (50) "Tremie tube" is a small diameter pipe used to place grout, filter pack material, or other well construction materials in a well.

~~((50))~~ (51) "Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

~~((51))~~ (52) "Unconsolidated formation" means any naturally occurring, loosely cemented, or poorly consolidated earth material including such materials as uncompacted gravel, sand, silt and clay.

Alluvium, soil, and overburden are terms frequently used to describe such formations.

~~((52))~~ (53) "Water well" means any excavation that is constructed when the intended use of the well is for the location, diversion, artificial recharge, observation, monitoring, dewatering or withdrawal of ground water. Water wells include ground source heat pump borings and grounding wells.

~~((53))~~ (54) "Water well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing water wells.

~~((54))~~ (55) "Water well report" means a document that describes how a water well, ground source heat pump, or grounding well was constructed or decommissioned and identifies components per the requirements of WAC 173-160-141.

~~((55))~~ (56) "Well alteration(s)" include(s): Deepening, hydrofracturing or other operations intended to increase well yields, or change the characteristics of the well. Well alteration does not include general maintenance, cleaning, sanitation, and pump replacement.

~~((56))~~ (57) "Well completion" means that construction has progressed to a point at which the drilling equipment has been removed from the site, or a point at which the well can be put to its intended use.

~~((57))~~ (58) "Well contractor" means a resource protection well contractor and water well contractor licensed and bonded under chapter 18.27 RCW.

~~((58))~~ (59) "Well driller(s)" or "driller(s)" is synonymous with "operator(s)."

~~((59))~~ (60) "Well" means water wells, resources protection wells, dewatering wells, and geotechnical soil borings. Well does not mean an excavation made for the purpose of obtaining or prospecting for oil or natural gas, geothermal resources, minerals, or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products.

~~((60))~~ (61) "Well screen" means a device, usually made of plastic or metal that is capable of preventing unconsolidated or poorly consolidated geologic material from entering the well. The size of the material which is prevented from entering the well is predetermined and controlled by the screen opening or slot size of the screen. A well screen may include a riser pipe.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-121 What should I know about drilling wells that require water right permits? (1) Unless a ground water withdrawal is exempt from the permit require-

ments under RCW 90.44.050, a well cannot be drilled without the well owner first obtaining a water right permit from the department authorizing the use of water from the well.

(2) The licensed operator must have a copy of the water right permit or certificate on site at all times.

(3) Every well that requires a permit shall be constructed to meet the provisions of that permit. Provisions may include:

- (a) Limitations on zones of completion.
- (b) Special sealing requirements.
- (c) Special casing and liner requirements.
- (d) Other specific construction and testing details.

(4) As provided in WAC 173-548-050, no water well may be constructed for any purpose in subbasins closed in the Methow water resources regulation:

(a) Including those exempted from permitting under RCW 90.44.050;

(b) Unless written approval has been obtained from the department prior to beginning well construction.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-131 What should the well owner know about water metering? The department may require water users to measure the quantity of water withdrawn from wells, to record water use, and/or to report the water use information to the department. Until the department develops specific metering and reporting requirements, these requirements may be provided for in individual water right permits or as otherwise ordered by the department for specific wells and ground water use.

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-141 What are the requirements regarding water well reports? (1) Anyone who constructs or decommissions a well is required to submit a complete report on the construction (~~(-alteration-)~~) or decommissioning of the well to the water resources program within thirty days after completion of a well, or after the drilling equipment has left the site. The report must be an accurate summation of the data collected in the field taken from field notes written as the well was constructed or decommissioned. Field notes must be available at all times during construction or decommissioning for review by state and local inspectors and kept until the well report is submitted. Submission of a well report to consulting firms does not meet the well contractor's obligation (~~(of)~~) under this section.

(a) This applies to all water wells.

(b) The water well report must be made on a form provided by the department, or a reasonable facsimile of the form, as approved by the department.

(2) Where applicable the water well report must include, at least, the following information:

(a) Owner name; operator/trainee name; operator/trainee license number; contractor registration number, drilling company name;

(b) Tax parcel number;

(c) Well location address;

(d) Location of the well to at least 1/4, 1/4 section or smallest legal subdivision;

(e) Unique well identification tag number;

(f) Construction or decommissioning date;

(g) Start notification number;

(h) Intended use of well;

(i) The well depth, diameter, and general specifications of each well;

(j) Total depth of casing;

(k) Well head elevation;

(l) Drilling method;

(m) Seal material, seal location and type of placement used;

(n) Filter pack location; filter pack material used;

(o) The thickness and character of each bed, stratum or formation penetrated by each well, including identification of each water bearing zone;

(p) Casing gauge, diameter, stickup, type of material, and length, also of each screened interval or perforated zone in the casing;

(q) The tested capacity of each well in gallons per minute, and the test duration and draw down of the water level at the end of the capacity test;

(r) Recovery data;

(s) For each nonflowing well, the depth to the static water level, as measured below the land surface;

(t) For each flowing well, the shut-in pressure measured above the land surface, or in pounds per square inch at the land surface; and

(u) Water right permit or certificate number for all wells that are not exempt under RCW 90.44.050; and

(v) Such additional factual information as may be required by the department.

(3) The well report must (~~(show)~~) include one of the following:

(a) The license number and signature of the person who constructed or decommissioned the well.

(b) The license number and signature of the trainee and the licensed operator under chapter 18.104 RCW.

(c) The license number and signature of the exempted individual as defined under RCW 18.104.180(3).

(d) The signature of the individual exempted under RCW 18.104.180(1). ((If this is an unlicensed person, exempted under RCW 18.104.180(2), the report shall show the license number and signature of the licensed operator who witnessed the drilling. Water well reports for wells constructed by trainees shall have the signature and license number of the trainee and the licensed operator.))

(4) If a well report is missing, a new report may be generated. This report shall contain all physical components of the well and report all available information in accordance with this section. The report shall be signed by the individual collecting the physical information of the well. Submittal of this report does not relieve the person who constructed the well of their obligation to submit a complete well report under subsection (1) of this section.

(5) This rule shall allow an individual to submit electronic reports in accordance with department procedures. The use of a digital signature in the electronic report will be

authorized as a substitute for an original signature under subsection (3) of this section.

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-151 Does the department require prior notice and fees for well constructing, reconstructing, or decommissioning a water well? (1) Yes. The property owner, owner's agent, or water well operator shall notify the department of their intent to begin well construction(~~(; reconstruction alteration,)~~) or decommissioning procedures at least seventy-two hours before starting work.

(2) The notice of intent is submitted on forms provided by the department and must contain the following:

- (a) Well owner name;
- (b) Well location; street address; county name, 1/4, 1/4 section, township, and range, and tax parcel number;
- (c) Proposed use; (if the intended withdrawal requires a water right, the permit or certificate shall be attached to the notice of intent);
- (d) Approximate start and completion dates;
- (e) Contractor registration number;
- (f) Operator/trainee name and license number; and
- (g) Drilling company name.

(3) In an emergency, a public health emergency, or in exceptional instances, the department may allow verbal notification to the appropriate regional office, with a notice of intent and payment of fee submitted within twenty-four hours. An emergency situation may consist of a failing well, or water quality issues which could result in a public health or safety concern.

(4) The notice must be accompanied by the following fees which apply to all newly constructed or altered wells:

(a) The fee for one water well, other than a dewatering well, with a top casing diameter of less than twelve inches is two hundred dollars. This fee does not apply to a ground source heat pump boring or a grounding well.

(b) The fee for one water well, other than a dewatering well, with a top casing diameter of twelve inches or greater is three hundred dollars.

(c) The fee for a ground source heat pump boring or a grounding well is forty dollars for construction of up to four ground source heat pump borings or grounding wells per project and ten dollars for each additional ground source heat pump boring or grounding well constructed on a project with more than four wells.

(d) The combined fee for construction and decommissioning of a dewatering well system shall be forty dollars for each two hundred horizontal lineal feet, or portion of horizontal lineal feet, of the dewatering well system.

(e) The fee to decommission a water well is fifty dollars.

(f) The fee to decommission a ground source heat pump boring or a grounding well is twenty dollars.

(5) If drilling results in an unusable well (~~((dry hole), there is))~~:

(a) A notice of intent and fee for decommissioning will apply for each unusable well.

(b) No additional notice of intent or fee to construct a water well for (~~(a second attempt))~~ each subsequent unusable well is required, provided:

~~((a))~~ (i) A subsequent attempt at constructing a new well is made immediately; and

~~((b))~~ (ii) The unusable well(s) is properly decommissioned before drilling equipment leaves the well site; and

~~((c))~~ (iii) The driller follows all requirements under WAC 173-160-040(2); and

(iv) The department is notified of all decommissionings; and

~~((d))~~ (v) A well report describing the decommissioning process is submitted to the department in accordance with this chapter.

(6) A new notice of intent and fee shall be required on all follow-up construction after the drilling equipment has left the drill site.

(7) A refund shall be made on any well that has not been constructed provided, a written request on an approved form is made by the person who paid the fee and is submitted to the department within six months from the date the notice and fee were received by the department.

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-171 What are the requirements for the location of the well site and access to the well? (1) The proposed water well shall be located (~~(on high ground that))~~ where it is not subject to ponding and is not in the floodway, except as provided in chapter 86.16 RCW.

(2) It shall be protected from a one hundred-year flood and from any surface or subsurface drainage capable of impairing the quality of the ground water supply.

(3) All wells shall not be located within certain minimum distances of known or potential sources of contamination.

(a) Some examples of sources or potential sources of contamination include:

(i) Septic systems, including proposed and reserve sites under a valid septic design: Provided, that the design has been approved for installation by a health authority;

(ii) Manure, sewage, and industrial lagoons;

(iii) Landfills;

(iv) Hazardous waste sites;

(v) Sea/salt water intrusion areas;

(vi) Chemical and petroleum storage areas;

(vii) Pipelines used to convey materials with contamination potential;

(viii) Livestock barns and livestock feed lots.

(b) Minimum set-back distances for water wells other than for public water supply are:

(i) Five feet from any existing building structure or building projection. Water wells shall not be located in garages, barns, storage buildings or dwellings. When locating a nonpublic water well adjacent to a building, the well location shall be measured from the building sewer and closest building projection.

(ii) Fifty feet from a septic tank, septic holding tank, septic containment vessel, septic pump chamber, and septic distribution box.

(iii) Fifty feet from building sewers, public sewers, collection and nonperforated sewer distribution lines except building drains.

(iv) One hundred feet from the edge of a drainfield, proposed drainfield which has been approved by a health authority, and reserve drainfield areas.

(v) One hundred feet from all other sources or potential sources of contamination except for solid waste landfills.

(vi) One thousand feet from the boundary of a permitted or previously permitted (under chapter 173-304, 173-306, 173-351, or 173-350 WAC) solid waste landfill as defined by the permit; or one thousand feet from the property boundary of other solid waste landfills. Except, a variance may be granted if documentation is provided that demonstrates the construction and operation of the well adjacent to the landfill will not further degrade the environment and will not cause a public health risk.

(c) All public water supply well((s)) locations shall be ~~((located))~~ approved by the department of health or the local health ~~((authority))~~ jurisdiction or other department of health designee.

(i) Before construction begins, final site approval must be obtained from the department of health~~((:))~~ or the local health ~~((authority))~~ jurisdiction.

(ii) The requirements of the state board of health regulation regarding public water supplies shall apply.

(iii) This regulation includes requirements for zones of protection, location of the well, accessibility features, and certain construction requirements.

(4) In siting a well, the driller shall consider:

(a) All local and state water well construction regulations, policies, and ordinances;

(b) Permeability of the soil or rock;

(c) Adjacent land uses;

(d) Local ground water conditions; and

(e) End use of the well.

(5) Before construction, the water well operator should strongly emphasize to the well owner, the importance of retaining good accessibility to the well to permit future inspection, maintenance, supplementary construction, and decommissioning.

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-191 What are the design and construction requirements for completing wells? (1) You may complete wells with screens, perforated liners or pipe, or open bottom completion. The well driller or designer shall advise the owner or the owner's representative of the most appropriate method of completion.

(2) All well components must be of sufficient strength to withstand the ~~((normal))~~ typical forces to which they are subjected during and after construction.

(3) Water wells must be completed in a manner which prevents the production of untreatable amounts of sand, silt, or turbid water which would render the well unusable.

(4) Open bottom completion is appropriate where the withdrawn waters are essentially free of sand, silt and turbidity.

(5) Perforated pipe completion is suitable for a coarse-grained, permeable aquifer where the withdrawn waters are free of sand, silt or turbidity.

(6) Perforations above the static water level are not permitted.

(7) In place perforations with Star, Mills knife, or similar type perforators are acceptable.

(8) Perforated pipe liners, either saw cut, torch cut, mill slotted, or punched are acceptable.

(9) The use of perforated casing for working casing as the hole is being drilled is prohibited, except in those cases where the contractor can, through personal experience in the particular area of drilling, attest to the sufficiency of the pre-perforated casing in all respects for the specific well being constructed.

(10) Pipe liners may be of steel, plastic or other suitable corrosion resistant material.

(11) All liners must be of sufficient strength to withstand ~~((normal))~~ typical forces exerted upon the liner material during installation and operation.

(12) Liners may be used only in consolidated formations.

(13) The installation of a liner without a gravel pack is prohibited when conditions exist that will result in excessively turbid water.

(14) Well screens and well points must be constructed of compatible corrosion resistant material.

(a) A neoprene, or grout seal shall be fitted to the top of the well screen assembly, if necessary.

(b) The bottom of the well screen shall be plugged or capped.

(c) The use of lead packers is prohibited.

(15) The alignment of the bore hole, permanent casing, or liner shall be sufficiently plumb and straight to allow the installation of screens, liners, pumps, and pump columns without binding or having adverse affects on the operation of the installed pumping equipment.

(a) Alignment of the well casing or bore hole shall not deviate from an alignment that would allow a twenty foot test section of pipe to be inserted to the bottom of the well without binding.

(b) The diameter of the test section of pipe shall be per Table 1 in WAC 173-160-201.

(c) For testing alignment in casing reductions, each section shall be tested separately.

(16) For wells completed in an unconsolidated formation in which the bore hole extends beyond the completed casing or screen depth, the driller must backfill that portion of the bore hole that extends more than ten feet beyond the casing or screen. The backfill shall consist of either bentonite or chlorinated sand or pea gravel. If any portion of the bore hole extension penetrates a clay layer which is greater than six feet in thickness, that portion of the bore hole shall be sealed with bentonite. A notice of intent to decommission a water well is not required for this work.

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-201 What are the casing and liner requirements? (1) Proper casing must be installed in all water supply wells.

(2) The casing shall withstand (~~normal~~) typical forces which act upon it during and after installation. It shall be resistant to the corrosive effects of the surrounding formations, earth, and water and shall be impervious to any contaminants encountered.

(3) All plastic casing or liner pipe used in potable water supply wells must be manufactured to conform to National Sanitation Foundation (NSF) Standard 14-84, or the most recent revision.

(4) Unless prior approval is obtained from the department, well casings and liner pipes must be made of either steel or plastic.

(5) Liner pipe must be of sufficient strength to withstand breakage or collapse when the well is pumped and meet ASTM potable water standards.

(6) When installed, liner pipe shall extend or telescope at least two feet into the lower end of the well casing. If more than one string of liner pipe is installed, each string shall extend or telescope at least eight feet into the adjacent larger diameter liner pipe.

(7) Liner pipe may not be permanently fixed to a well casing below land surface.

(8) Minimum specifications for steel casing and steel liner pipe for water wells are shown in Table 1.

~~((9) Minimum specifications for plastic casing and plastic liner pipe for water wells are shown in Table 2.~~

~~(10) Steel casing larger than twenty inches shall have a minimum wall thickness of 0.375 inches.)~~

TABLE 1
Minimum Specifications for Steel Casing and Steel Liner Pipe

NOMINAL SIZE (inches)	OUTSIDE DIAMETER (inches)	WALL THICKNESS (inches)	WEIGHT PER FOOT (pounds)	TEST SECTION OUTSIDE DIAMETER (inches)
1.25	1.660	0.140	2.27	0.500
1.5	1.900	0.145	2.72	0.750
2.0	2.375	0.154	3.65	1.000
2.5	2.875	0.203	5.79	1.500
3.0	3.500	0.216	7.58	2.000
3.5	4.000	0.226	9.11	2.500
4.0	4.500	0.237	10.79	3.000
5.0	5.563	0.258	14.62	3.500
6.0	6.625	0.250	17.02	4.000
8.0	8.625	0.250	22.36	6.000
10	10.750	0.250	28.04	8.000
12	12.750	0.250	33.38	10.000
14	14.000	0.312	45.61	11.000
16	16.000	0.375	57.52	14.000
18	18.000	0.375	70.59	16.000
20	20.000	0.375	78.60	18.000

NOMINAL SIZE (inches)	OUTSIDE DIAMETER (inches)	WALL THICKNESS (inches)	WEIGHT PER FOOT (pounds)	TEST SECTION OUTSIDE DIAMETER (inches)
24	24.000	0.375	94.62	20.000
30	30.000	0.375	118.65	24.000

(9) Steel casing larger than thirty inches shall have a minimum wall thickness of 0.375 inches.

(10) Minimum specifications for plastic casing and plastic liner pipe for water wells are shown in Table 2.

TABLE 2
Minimum Specifications for Plastic Casing and Plastic Liner Pipe

NOMINAL CASING DIAMETER (inches)	MINIMUM THICKNESS (inches)	SDR
2.0	0.133	21
2.5	0.137	21
3.0	0.167	21
3.5	0.190	21
4.0	0.214	21
4.5	0.236	21
5.0	0.265	21
6.0	0.316	21
8.0	0.410	21
10	0.511	21
12	0.606	21

~~((STEEL CASING AND STEEL LINER))~~

(11) Steel casing and steel liner: All steel casing and steel liner must be new or, in like new condition, and be structurally sound.

(a) Casing or liner that has been exposed to a contaminant shall not be used in well construction unless the contamination can be entirely removed.

(b) When casing or liner lengths are joined together, they must be connected by watertight weld or screw coupled joints.

(i) Welded joints must be at least as thick as the wall thickness of the well casing and be fully penetrating.

(ii) All steel well casing or liner shall meet or exceed the minimum American Society for Testing and Materials (ASTM) A-53 A or B specification for steel pipe.

~~((PLASTIC CASING AND PLASTIC LINER))~~

(12) Plastic casing and plastic liner: Plastic, fiberglass, PVC, SR, ABS, CPVC or other type of nonmetallic well casing or liner must be manufactured and installed to conform with ANSI/ASTM F 480-81, or the most recent revision.

(a) SDR is calculated by dividing the outside diameter of the pipe by the wall thickness.

(b) SDR 21 is the minimum requirement (Class 200); higher pressure rated pipe may be used.

(c) All plastic casing must be installed only in an oversized drill hole without driving. The oversized hole must be a diameter of at least ~~((4))~~ four inches larger than the outside

diameter of the plastic casing or coupling hubs, whichever is larger. Plastic casing and liner must be of sufficient strength to withstand breakage or collapse when installed and while the well is pumped. Plastic casing and liner must meet ASTM potable water standards.

(d) All plastic casing or liner must be new or, in like new condition and clearly marked by the manufacturer showing nominal size, class, type of plastic material, SDR, ASTM designation, and have a (~~National Sanitation Foundation~~) NSF(®) seal of approval for use in potable water supplies.

(e) Casing or liner that has been exposed to a contaminant shall not be used in well construction unless the contaminant is entirely removed.

(f) Plastic casing or liner joints must be watertight.

(i) Either "bell" type, threaded joints, or coupling hubs are approved.

(ii) Hub couplings must be of materials meeting the specifications for plastic casings as stipulated in subsection (2) of this section.

(iii) If joints are secured with solvent cement, it must be done in accordance with manufacturer's directions.

~~((CONCRETE CURBING))~~

(13) Concrete curbing: The concrete used to make curbing must consist of clean, hard and durable aggregate with not less than five sacks (ninety-four pounds per sack) of portland cement per cubic yard of concrete.

(a) The maximum diameter of aggregate particles may not exceed 1 1/2 inches, but in any case may not exceed 1/5 the minimum width of the casing thickness.

(b) The ratio of coarse aggregate to fine aggregate (passing No. 4 U.S. Standard Sieve) must be approximately 1 1/2 to 1 by volume, but in any case, may not exceed 2 to 1 nor be less than 1 to 2.

(14) The curbing shall be at least six inches thick and free of voids. The walls shall be poured in one continuous operation.

(15) When concrete tile is used to line a well, the combined total wall thickness and seal shall be a minimum of six inches.

NEW SECTION

WAC 173-160-214 What are the limitations for use of drilling materials? (1) At no time shall a product contain materials that:

- (a) Are toxic or polluting;
- (b) Develop odor or color changes in the water; or
- (c) Serve as a microbial nutrient.

(2) Organic materials which foster or promote undesired organic growth or have the potential to degrade water quality shall not be employed in the construction of a water supply well. This includes, but is not limited to, brans, hulls, grains, starches, and proteins, unless NSF/ANSI approved.

NEW SECTION

WAC 173-160-216 What are the standards for use of polymers and additives? (1) All polymers and additives used in any well shall be certified by NSF/ANSI approval

standards for use in potable water supply wells, or equivalent standards as approved by the department. The product shall be clearly labeled as meeting these standards.

(2) Polymers and additives must be designed and manufactured to meet industry standards to be nondegrading and must not act as a medium which will promote growth of microorganisms.

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-221 What are the standards for sealing materials? (1) Bentonite sealant:

(a) Bentonite used to prepare slurries for sealing(;) or decommissioning shall be specifically designed for this purpose. ~~((At no time shall grout slurry contain materials that are toxic, polluting, develop odor or color changes, or serve as a micro-bacterial nutrient.))~~ All bentonite slurries shall be prepared and installed according to the manufacturer's instructions. ~~((All additives must be certified by a recognized certification authority such as NSF.))~~ Active solids content (bentonite) shall be twenty percent by weight or greater in all bentonite slurries. The active solids shall be checked by using the following formula:

~~(($\frac{\text{Weight of bentonite (lbs.)}}{\text{Weight of bentonite (lbs.)} + (\text{gallons of water} \times 8.33 \text{ lbs./gal})} \times 100 = \% \text{ solids}$))~~

~~((Example: $\frac{105 \text{ lbs. of bentonite}}{105 \text{ lbs. bentonite} + (50 \text{ gallons of water} \times 8.33 \text{ lbs./gal})} \times 100 = 20\% \text{ solids}$))~~

$$\frac{\text{Weight of bentonite (lbs.)}}{\text{Weight of bentonite (lbs.)} + (\text{gallons of water} \times 8.33 \frac{\text{lbs.}}{\text{gal.}})} \times 100 = \% \text{ solids}$$

Example:

$$\frac{50 \text{ lbs. of bentonite}}{50 \text{ lbs. of bentonite} + (24 \text{ gallons of water} \times 8.33 \frac{\text{lbs.}}{\text{gal.}})} \times 100 = 20\% \text{ solids}$$

(b) Unhydrated bentonite((—)) including pelletized, granulated, powder, or chip bentonite may be used in the construction of seals or in decommissioning of wells. The bentonite material shall be specifically designed for sealing or decommissioning and be within the industry tolerances for dry western sodium bentonite. ~~((Polymer additives must be designed and manufactured to meet industry standards to be nondegrading and must not act as a medium which will promote growth of micro-organisms. All unhydrated bentonite used for sealing or decommissioning must be free of organic polymers.))~~ Placement of bentonite shall conform to the manufacturer's specifications and result in a seal free of voids or bridges.

(c) All bentonite used in any well shall be certified by NSF/ANSI approval standards for use in potable water supply wells, or equivalent standards as approved by the department. The product shall be clearly labeled as meeting these standards.

(2) Cement sealants:

(a) Neat cement consists of either portland cement types I, II, III, or high-alumina cement mixed with not more than six gallons of potable water per sack of cement (ninety-four pounds per sack).

(b) Neat cement grout consists of neat cement with up to five percent bentonite clay added, by dry weight of the bentonite. Bentonite is added to improve flow qualities and compensate for shrinkage.

(c) Concrete sealants consist of clean, hard and durable aggregate with not less than five sacks (ninety-four pounds per sack) of portland cement per cubic yard of concrete sealant and water.

(i) The maximum diameter of aggregate particles may not exceed 1 1/2 inches, but in any case may not exceed 1/5 the minimum width of the casing thickness.

(ii) The ratio of coarse aggregate to fine aggregate (passing No. 4 U.S. Standard Sieve) must be approximately 1 1/2 to 1 by volume, but in any case, may not exceed 2 to 1 nor be less than 1 to 2.

(iii) The quantity of water used for each batch of cement sealant shall not exceed manufacturer's recommendation.

(d) Expanding agents, such as aluminum powder, may be used at a rate not exceeding 0.075 ounce (1 level teaspoon)

per sack (ninety-four pounds per sack) of dry cement. The powder may not contain polishing agents. High-alumina cement and portland cement of any type must not be mixed together.

(e) Controlled density fill (CDF) or fly ash shall not be used in any well construction or decommissioning.

(f) All cement sealants shall be mechanically mixed prior to placing in the well or bore hole.

(3) Sealing methods:

(a) When neat cement or neat cement grout is used in sealing, it shall be placed seventy-two hours before additional drilling takes place, unless special additives are mixed with the neat cement or neat cement grout that cause it to set in a shorter period of time.

(b) All hydrated sealing materials shall be placed by ~~((tremmying))~~ tremmying the mixture from the bottom of the annular space to the surface in one continuous operation.

(4) This section may not preclude the use of new sealant materials which have been approved by the technical advisory group.

(5) Sealing materials shall be impervious to any contaminants encountered.

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-231 What are the standards for surface seals? (1) All water wells constructed shall have a surface seal which seals the annular space between the bore hole and the permanent surface casing.

(a) The seal shall be constructed to prevent surface contaminants from reaching the ground water.

(b) The surface seal must have a minimum diameter of four inches larger than the nominal size of the surface casing, to include the outside diameter of the bell, in bell and hub couplings.

(c) The surface seal must extend from land surface to a minimum depth of eighteen feet. Except, when the minimum surface seal requirements for driven, jetted, dewatering and some dug wells are less than eighteen feet. See the appropriate section for these wells for a detailed description of their sealing requirements.

(2) Sealing material must be placed in an open annular space that is a minimum of four inches greater in diameter than the nominal size of the permanent casing. The annular space must be kept at least one-half full of sealing material whenever the production casing is advanced.

(3) The completed surface seal must fully surround the permanent casing, must be evenly distributed, free of voids, and extend to undisturbed or recomacted soil.

(4) After the permanent casing has been set in final position, the annular space shall be filled to land surface with bentonite or neat cement grout or neat cement. Leaving voids for future installation of equipment such as a pitless adapter is prohibited.

(5) A temporary surface casing with a minimum length of eighteen feet and a minimum nominal diameter of four inches greater than the permanent casing shall be used in all unconsolidated formations such as in gravels, sands, or other unstable conditions when the use of drilling fluid or other means of keeping the bore hole open are not employed. Except driven and jetted wells shall utilize a temporary surface casing with a minimum length of six feet and a minimum nominal diameter of four inches greater than the permanent casing shall be used in all unconsolidated formations such as in gravels, sands, or other unstable conditions when the use of drilling fluid or other means of keeping the bore hole open are not employed.

(6) Whenever reconstruction involves permanent surface casing movement; or the existing surface seal is damaged; or a surface seal never existed; the driller shall repair, replace, or install a minimum of eighteen feet of surface seal around the permanent casing.

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-241 What are the requirements for formation sealing? (1) Unconsolidated formation sealing - Without significant clay beds or other confining formations - Drilled wells that penetrate an aquifer overlain by unconsolidated formations such as sand and gravel without significant clay beds (at least six feet thick) or other confining formations shall be sealed in accordance with the surface sealing requirements of WAC 173-160-231. See Figure 1.

(2) Unconsolidated formation sealing - With significant clay beds or other significant confining formations - Drilled wells that penetrate an aquifer overlain by clay or other confining formations that are at least six feet thick, shall be sealed to prevent movement of water or contamination in the annular space between the permanent casing and the clay or other confining formation(s). One of the following methods shall be used to seal the annular space:

(a) A drill hole at least four inches greater in diameter than the nominal size of the permanent well casing shall extend from the land surface into the clay bed or other confining formation located directly above the aquifer to be developed. The annular space shall be filled with bentonite (slurry or unhydrated), neat cement grout, or neat cement to form a watertight seal between the permanent casing and all significant confining formations encountered during drilling. If bentonite slurry, neat cement grout, or neat cement is used to

seal the annular space it must be placed by either pumping or (~~tremying~~) tremying the seal material from the lowest clay bed or other confining formation of significance encountered, to land surface. The drill hole shall be kept open through the use of a temporary casing or any other drilling method that stabilizes the bore hole wall. See Figure 1.

(b) An upper drill hole at least four inches greater in diameter than the nominal size of the permanent well casing shall extend to a minimum of eighteen feet from land surface. A temporary casing or other means of maintaining an open bore hole shall be utilized. All temporary casing will have an outside diameter of a minimum of four inches larger than the permanent casing (for example, a ten-inch temporary casing for a six-inch permanent casing). The upper drill hole shall always contain a minimum of nine feet of sealant throughout the advancement of the permanent casing. Except, if the temporary casing is removed or not utilized, the upper drill hole shall be kept full of sealant. See Figure 1.

(3) Consolidated formations - In drilled wells that penetrate an aquifer, either within or overlain by a consolidated formation, sealing of the casing shall conform with one of the following procedures.

(a) Procedure one - An upper drill hole at least four inches greater in diameter than the nominal size of the permanent well casing shall extend from land surface into a sound, unfractured, consolidated formation. An unperforated permanent casing shall be installed to extend to this same depth, and the lower part of the casing shall be driven into the consolidated formation and sealed in a manner that establishes a watertight seal between the formation and the casing. The remainder of the annular space to land surface shall be filled with neat cement grout, neat cement, or bentonite.

(i) If the consolidated formation is encountered at a depth less than eighteen feet from land surface, the upper drill hole and permanent casing shall extend to a minimum of eighteen feet from land surface. See Figure 2.

(ii) If neat cement grout, neat cement, or bentonite slurry is placed by pumping to seal the entire annulus from the bottom up to land surface, the upper drill hole may be a minimum of two inches larger than the outside diameter of the permanent casing.

(b) Procedure two - An upper drill hole at least four inches greater in diameter than the nominal size of the permanent casing extends from land surface to a depth of at least eighteen feet. An unperforated permanent casing shall be driven into the consolidated formation and sealed in a manner that establishes a watertight seal between the formation and the casing. Throughout the driving of the well casing to the consolidated formation, the annular space between the upper drill hole and the permanent casing shall be kept at least one-half full with unhydrated bentonite, or bentonite slurry. The remainder of the annular space to land surface shall be filled with cement grout, neat cement, or bentonite. See Figure 2.

(c) If temporary surface casing is used in either procedure (a) or (b) of this subsection, the casing must be a minimum of eighteen feet long and at least four inches larger in diameter than the permanent casing. If a consolidated formation is encountered within the first eighteen feet, the temporary casing may terminate at the interface of the consolidated formation. Withdrawal of the temporary casing must take

place simultaneously with proper sealing of the annular space to land surface.

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-261 How do I seal dug wells? The surface seal of all dug wells shall be constructed to effectively seal the annular space between the undisturbed native material of the upper well hole and the well curbing, which may consist of ((~~concrete~~)concrete tile, steel pipe or liner(~~tile~~)). The seal depth shall be at least eighteen feet from land surface or to within three feet of the bottom in dug wells that are less than twenty-one feet in depth. Dug wells may be sealed with cement, neat cement, bentonite, or neat cement grout. A cap shall be placed on all dug wells. Except during maintenance, the cap shall remain in place. The cap shall prevent entry of pollutants, insects, and mammals into the well. See Figure 3.

AMENDATORY SECTION (Amending Order 97-08, filed 3/23/98, effective 4/23/98)

WAC 173-160-281 What are the construction standards for artificial gravel-packed wells? Wells must be constructed in accordance with sealing standards under this chapter. In gravel-packed wells, the gravel mixture shall be placed around the screen so that bridging or size separation does not occur. The gravel pack must be clean, and chemically stable. All gravel and water used must be disinfected with at least fifty parts per million ((~~ppm~~)) chlorine for a contact time of at least thirty minutes. Rinse water containing chlorine is a pollutant. Chlorine in the rinse water must be allowed to dissipate and the water must be discharged in a safe manner consistent with the intent of the Water Pollution Control Act, chapter 90.48 RCW. ((See Figure 5-))

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-291 What are the standards for the upper terminal of water wells? (1) The watertight casing or curbing of any well shall extend at least six inches above the ground surface. Pit completion is prohibited.

(2) Where the site is subject to flooding, the top of the casing must be at least two feet above the estimated water level of a one hundred-year frequency flood.

(3) All drilled wells shall be capped to prevent contamination of the aquifer. The cap shall be designed for that purpose and consist of metal or plastic material that is mechanically secured or welded to the casing. All wells shall be equipped with an access port that allows for the measurement of the depth to water surface, or with a pressure gage that indicates the shut-in pressure of a flowing artesian well. See Figure 6. The access ports and pressure gages or other openings in the cover are sealed or capped to prevent entrance of surface water or foreign material into the well.

(4) Any vent opening, observation ports or air-line equipment shall extend from the upper end of the well by watertight piping to a point at least six inches above land surface. The terminals of these facilities shall be shielded or sealed to prevent entrance of foreign matter or pollutants.

(5) A pitless adapter, or similar device is permitted on water wells if it is made with fittings approved by the department of health. The use and installation of pitless adapters must meet manufacturer's standards. The connection must be above static water level except for adapters specifically designed for installation below static water level.

(6) Any person who removes any part of a surface seal to install a pitless adapter shall be responsible to have the seal repaired by a licensed or otherwise qualified person so that the seal is brought up to land surface.

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-311 What are the well tagging requirements? (1) It shall be the operator's responsibility to place a well identification tag with a unique identification number on every well that they construct, alter, or reconstruct within thirty days of completion of the well. The original unique identification number shall be used on all subsequent work and documentation.

(a) The alpha-numeric number shall be recorded on the drilling report in the space provided.

(b) The operator shall remove the well identification tag on all wells they decommission and shall attach the tag to the decommissioning well report.

(2) It shall be the well owner's responsibility to place a well identification tag with a unique identification number on every well they own, unless the well has been previously tagged.

(a) Upon request, the department shall furnish the well owner with a well tag and tagging instructions.

(b) The well owner shall tag their well(s) and submit a completed tagging report to the department.

(3) The well tag shall be permanently attached to the outer well casing or other prominent well feature and be visible above land surface.

(4) All well identification tags shall be supplied by the department.

(5) It is unlawful for a person to tamper with or remove a well identification tag except during well alteration.

AMENDATORY SECTION (Amending Order 06-16, filed 2/22/07, effective 3/25/07)

WAC 173-160-381 What are the standards for decommissioning a well? Any well which is unusable, abandoned, or whose use has been permanently discontinued, or which is in such disrepair that its continued use is impractical or is an environmental, safety or public health hazard shall be decommissioned. The decommissioning procedure (as prescribed by these regulations) must be recorded and reported as required by the department.

(1) Cased wells. Remove all liners, debris, accumulated sediments, and obstructions from the well casing, except well screens and packers. All cased water wells, including driven and jetted wells shall be decommissioned in one of the following ways:

(a) Perforate the casing from the bottom to within five feet of the land surface and pressure seal the casing.

(i) Perforations shall be at least four equidistant cuts per row, and one row per foot. The perforations must be sufficient enough to allow neat cement grout or neat cement, or bentonite slurry to migrate outside the casing and effectively prevent the movement of water.

(ii) Apply enough pressure to force the sealing material through the perforations, filling any voids on the outside of the casing.

(iii) The casing shall be filled completely with neat cement grout, neat cement, or bentonite slurry. The screen and up to five feet of riser pipe may be filled with unhydrated bentonite. The remainder of the riser pipe must be removed.

(iv) The casing may be cut off at a maximum of five feet below land surface (~~(--A steel cap shall be welded on the casing)~~); or

(b) Withdraw the casing and fill the bore hole with concrete, neat cement grout, neat cement, unhydrated bentonite, or bentonite slurry as the casing is being withdrawn.

(2) Uncased wells - Remove all liners, debris, accumulated sediments, and obstructions. Seal uncased wells with concrete, neat cement grout, neat cement, or bentonite.

(3) Dug wells -

(a) The following criteria are required for the decommissioning of all dug wells:

(i) Remove all debris, accumulated sediments, and obstructions that impede decommissioning or that may contaminate the aquifer from within the dug well.

(ii) Dug wells may have a maximum of three feet of soil cover from top of sealing material to land surface.

(iii) Dug wells shall be sealed with either unhydrated bentonite, neat cement, neat cement grout, or concrete. The use of controlled density fill (CDF), bentonite slurry, or fly ash is prohibited.

(iv) Dug wells that are not cast-in-place must have a minimum of three feet of sealing material in contact with native soil below land surface. (~~(Bentonite slurry shall not be used to decommission dug wells.)~~)

(b) Dug wells (~~(that are dry at any time during the year and that are less than twenty feet in depth shall be sealed from the bottom to within three feet of land surface.~~)

(e) ~~Dug wells that have a) less than twenty feet deep.~~

(i) Dry wells (dry at any time during the year). Decommission by placing unhydrated bentonite, neat cement, neat cement grout or concrete from the bottom to within three feet of land surface.

(ii) Static water level ((~~of~~) ten feet or less from land surface ((or less and a depth of less than twenty feet may be decommissioned)). Decommission by ((installing)) placing clean chlorinated sand or pea gravel to a maximum depth of ten feet below land surface. The remainder of the well shall be filled with ((either)) unhydrated bentonite, neat cement, neat cement grout, or concrete to within three feet of land surface.

(~~(d) Dug wells that have a) (iii) Static water level ((over)) of greater than ten feet ((and a depth of less than twenty feet from land surface may be decommissioned)) from land surface. Decommission by ((installing)) placing clean chlorinated sand or pea gravel to the static level. The remainder of the well shall be filled with ((either)) unhy-~~

drated bentonite, neat cement, neat cement grout, or ~~((cement)) concrete to within three feet of land surface.~~

(~~((e)) (c) Dug wells ((with static levels)) twenty feet or ((less)) greater in depth.~~

(i) Static water level twenty feet or less from the land surface ((and that are greater than twenty feet deep may be decommissioned)). Decommission by placing chlorinated sand or pea gravel to twenty feet below land surface. The remainder of the well ((, to a maximum of three feet below land surface,)) shall be filled with unhydrated bentonite, neat cement, neat cement grout, or concrete to within three feet of land surface.

(~~((f) Dug wells with)) (ii) Static water level ((s below)) greater than twenty feet from land surface ((;)). These wells may be decommissioned by placing chlorinated sand or pea gravel to the static level and then placing alternating layers of sealing material and chlorinated sand or pea gravel to within twenty feet of land surface. The alternating layers of sand or pea gravel must be a maximum of five feet thick. The minimum thickness of the sealing ((material)) layers must be five feet. The remainder of the ((dug)) well shall be filled with unhydrated bentonite, neat cement, neat cement grout, or concrete to ((a maximum of)) within three feet ((below)) of land surface.~~

(4) Flowing artesian wells that are not leaking on the outside of the casing shall be decommissioned by pressure grouting with neat cement or weighted high solids bentonite slurry from the bottom of the well bore to land surface. If the well is leaking on the outside of the casing or if leaking develops while the decommissioning method above is employed, then the casing must be perforated and pressure grouted to replace all confining layers and to stop leakage.

(5) Placement of sealing material.

(a) Sealing material placed below the ((static)) water level shall be piped directly to the point of application or placed by means of a dump bailer or pumped through a tremie tube. As the sealing material is placed, the existing well tile may be encapsulated into the seal material. If concrete, neat cement grout, bentonite, bentonite slurry, or neat cement is used to seal below the static water level in the well, the material shall be placed from the bottom up by methods that avoid segregation or dilution of the material. When used to place concrete, neat cement, neat cement grout, or bentonite slurry the discharge end of the tremie tube shall be submerged in the sealing material to avoid breaking the seal while filling the annular space.

(b) All authorized sealing material placed above the static water level or into the dewatered portion of the well may be hand poured above the static water level, provided the material does not dilute or segregate, and result in a seal free of voids.

(c) When decommissioning wells that were originally constructed without casing, unhydrated bentonite chips or pellets may be hand placed, provided it forms a continuous seal.

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-410 What are the specific definitions for words in this chapter? This section specifically defines words associated with resource protection wells and geotechnical soil borings. To find the definitions of other words, see WAC 173-160-111.

(1) "Confining layer" or "confining formation" means a layer of low hydraulic conductivity material that significantly limits vertical movement of ground water.

(2) "Environmental investigation well" means a cased hole intended or used to extract a sample or samples of ground water, vapor, or soil from an underground formation and which is decommissioned immediately after the sample or samples are obtained. An environmental investigation well is typically installed using direct push technology or auger boring and uses the probe, stem, auger, or rod as casing. An environmental investigation well is not a geotechnical soil boring.

~~((2))~~ (3) "Geotechnical soil boring" or "boring" means ~~((an uncased))~~ a well drilled for the purpose of obtaining soil samples or information to ascertain structural properties of the subsurface.

~~((3))~~ (4) "Ground source heat pump boring" means a vertical boring constructed for the purpose of installing a closed loop heat exchange system for a ground source heat pump.

~~((4))~~ (5) "Grounding well" means a grounding electrode installed in the earth by the use of drilling equipment to prevent buildup of voltages that may result in undue hazards to persons or equipment. Examples are anode and cathode protection wells.

~~((5))~~ (6) "Instrumentation well" means a well in which pneumatic or electric geotechnical or hydrological instrumentation is permanently or periodically installed to measure or monitor subsurface strength and movement. Instrumentation well includes bore hole extensometers, slope indicators, pneumatic or electric pore pressure transducers, and load cells.

~~((6))~~ (7) "Monitoring well" means a well designed to obtain a representative ground water sample or designed to measure the water level elevations in either clean or contaminated water or soil.

~~((7))~~ (8) "Nested well" means the installation of more than one cased resource protection well in one bore hole. This does not preclude casing reductions or installation of vibrating wire piezometers.

~~((8))~~ (9) "Observation well" means a well designed to measure the depth to the water or water level elevation in either clean or contaminated water or soil.

~~((9))~~ (10) "Piezometer" means a well designed to measure water level elevation at a specific depth beneath the water table.

~~((10))~~ (11) "PTFE" means polytetrafluoroethylene casing materials such as teflon. The use of the term teflon is not an endorsement for any specific PTFE product.

(12) "Remediation well" means a well intended or used to withdraw ground water or inject water, air (for air sparging), or other solutions into the subsurface for the purpose of

remediating, cleaning up, or controlling potential or actual ground water contamination.

~~((11))~~ (13) "Resource protection well" means a cased boring intended or used to collect subsurface information or to determine the existence or migration of pollutants within an underground formation. Resource protection wells include monitoring wells, observation wells, piezometers, spill response wells, remediation wells, environmental investigation wells, vapor extraction wells, ground source heat pump boring, grounding wells, and instrumentation wells.

~~((12))~~ (14) "Resource protection well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing resource protection wells or geotechnical soil borings.

~~((13))~~ (15) "Resource protection report" or "geotechnical soil boring report" means a document that describes how a resource protection well or geotechnical soil boring was constructed or decommissioned and identifies its components per the requirements of WAC 173-160-420.

~~((14))~~ (16) "Spill response well" means a well used to capture or recover any spilled or leaked fluid which has the potential to, or has contaminated the ground water.

~~((15))~~ (17) "Structural properties" means subsurface engineering properties or geotechnical information used for the purpose of designing structures such as bridges, buildings, highways, pipelines, or for assessing slope stability samples.

~~((16))~~ (18) "Vapor extraction well" means a well used to withdraw gases or vapors from soil, rock, landfill, backfill or ground water for the purpose of investigating or remediating soil or ground water contamination or managing gases or vapors.

~~((17))~~ (19) "Vibrating wire piezometer" is a down hole instrument that measures water pore pressure and converts it to an electronic signal.

(20) "Well driller" or "driller" means a resource protection well contractor or operator and a water well contractor or operator.

~~((18))~~ (21) "Well" means water wells, resources protection wells, instrumentation wells, dewatering wells, and geotechnical soil borings. Well does not mean an excavation made for the purpose of obtaining or prospecting for oil or natural gas, geothermal resources, minerals, or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products.

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-420 What are the general construction requirements for resource protection wells? (1) No resource protection well or soil boring excavation may be used to withdraw or inject water for domestic, industrial, municipal, commercial, or agricultural purposes.

(2) No resource protection well or soil boring excavation may interconnect aquifers.

(3) Nested resource protection wells are prohibited.

(4) Cuttings, development water, and other investigation derived waste from resource protection well construction or geotechnical soil borings shall be managed in a manner consistent with the intent and purposes of the Water Pollution Control Act, chapter 90.48 RCW, the Hazardous Waste Management Act, chapter 70.105 RCW, and implementing regulations.

(5) Well tagging:

(a) It shall be the driller's responsibility to place a well identification tag with a unique identification number on every resource protection well that they construct or alter within thirty days of completion of the well. Uncased geotechnical soil borings and environmental investigation wells are exempt from the tagging requirements of this chapter.

(i) The alpha-numeric number shall be recorded on the drilling report in the space provided.

(ii) The driller shall remove the well identification tag on all resource protection wells they decommission and shall attach the tag to the decommissioning well report.

(b) It shall be the well owner's responsibility to place a well identification tag with a unique identification number on every resource protection well they own and which was completed prior to the effective date of this regulation.

(i) Upon request, the department shall furnish the well owner with a well tag and tagging instructions.

(ii) The well owner shall tag their well(s) and submit a completed tagging report to the department.

(c) The well tag shall be permanently attached to:

(i) The (outer) well casing and be visible above land surface for all wells which have been completed above land surface. ((For wells completed below land surface, the well tag shall be attached to))

(ii) The well casing or to any permanent and protected portion of the vault for wells completed below land surface.

(iii) A prominent system component visible above land surface for ground source heat pump borings.

(d) All well identification tags shall be supplied by the department.

(e) It is unlawful for a person to tamper with or remove a well identification tag except during well alteration.

(6) All resource protection wells will be sealed in accordance with WAC 173-160-450 regardless of the method of installation. Except, resource protection wells that are properly decommissioned prior to the removal of any drilling equipment from the well location are exempted from the surface sealing requirements of this chapter. Provided the decommissioning process includes the removal of any conduit, tubing, probe, or other items inserted into the ground.

(7) All geotechnical soil borings shall be decommissioned under the terms of this chapter.

(8) Except as provided in RCW 18.104.180, all construction, alteration, reconstruction, and decommissioning of resource protection wells and geotechnical soil borings shall be done by an individual licensed under the provisions of chapter 173-162 WAC.

(9) A notice of intent to construct or decommission a resource protection well and a geotechnical soil boring shall be filed with the department a minimum of seventy-two hours prior to initiating construction or decommissioning of the well(s) or boring(s). A fee must accompany each notice of

intent to construct or decommission a resource protection well.

(a) The fee for a resource protection well, except for an environmental investigation well, a ground source heat pump boring, or a grounding well, is forty dollars for each well.

(b) The fee for an environmental investigation well in which ground water is sampled or measured is forty dollars for the construction of up to four environmental investigation wells per project, and ten dollars for each additional environmental investigation well constructed on a project with more than four wells. There is no fee for soil or vapor sampling purposes.

(c) The fee for a ground source heat pump boring or a grounding well is forty dollars for construction of up to four ground source heat pump borings or grounding wells per project and ten dollars for each additional ground source heat pump boring or grounding well constructed on a project with more than four wells.

(d) The fee to decommission a resource protection well, except for an environmental investigation well, is twenty dollars per well. There is no fee to decommission an environmental investigation well or a geotechnical soil boring.

(e) The fee to decommission a ground source heat pump boring or a grounding well is twenty dollars per well.

(f) Under some circumstances, it may be necessary to construct more resource protection wells or geotechnical soil borings than originally anticipated. When additional resource protection wells are constructed on a site for which a notice of intent and fee were submitted, a second notice and fee shall be submitted within twenty-four hours after all wells have been completed or as soon as the final number of wells to be constructed is determined, whichever is sooner. When additional geotechnical soil borings are needed, the borings may be completed. A follow-up notice of intent shall be submitted to the department within twenty-four hours after all borings are constructed. Notification to construct multiple wells or geotechnical soil borings within the same quarter/quarter section, township, and range may be submitted on one notice form.

(10) Resource protection well ~~((and geotechnical soil boring drilling))~~ reports.

(a) ((Every well contractor)) Anyone who constructs or decommissions a well is required to submit a complete well report on the construction((-alteration,)) or decommissioning of all resource protection wells and geotechnical soil borings ((they construct)). Reports must be submitted to the water resources program within thirty days after completion of construction((-alteration,)) or decommissioning. Submission of a well report to consulting firms does not meet the ((well contractor's obligation)) requirement of this section. The report must be an accurate summation of data collected in the field taken from field notes written as the well was constructed or decommissioned. Field notes must be available at all times during construction or decommissioning for review by state and local inspectors and kept until the well report is submitted.

~~(b) ((This applies to all resource protection wells and geotechnical soil borings.~~

~~(e)) The resource protection well ((and geotechnical soil boring)) report must be made on a form provided by the~~

department, or a reasonable facsimile of the form, as approved by the department.

~~((e))~~ (c) Where applicable the report shall include the following information:

- (i) Owner's name; operator/trainee name; operator/trainee license number; contractor registration number, drilling company name;
- (ii) Tax parcel number;
- (iii) Well location address;
- (iv) Location of the well to at least 1/4, 1/4 section or smallest legal subdivision;
- (v) Unique well identification tag number;
- (vi) Construction date;
- (vii) Start notification number;
- (viii) Intended use of well;
- (ix) The well depth, diameter, and general specifications of each well;
- (x) Total depth of casing;
- (xi) Well head elevation;
- (xii) Drilling method;
- (xiii) Seal material, seal location and type of placement used;
- (xiv) Filter pack location; filter pack material used;
- (xv) The thickness and character of each bed, stratum or formation penetrated by each well including identification of each water bearing zone;
- (xvi) Casing gauge, diameter, stickup, type of material, and length, also of each screened interval or perforated zone in the casing;
- (xvii) The depth to the static water level, as measured below the land surface; and
- (xviii) Such additional factual information as may be required by the department.

~~((e))~~ (d) The well report must ~~((show the license number and signature of the person who constructed the well. If this is an unlicensed person, exempted under RCW 18.104.180(2), the report shall show the license number and signature of the licensed individual who witnessed the drilling. Resource protection well reports for wells constructed by trainees shall have the signature and license number of the trainee and licensed operator))~~ include one of the following:

- (i) The license number and signature of the person who constructed or decommissioned the well;
- (ii) The license number and signature of the trainee and the licensed operator under chapter 18.104 RCW; or
- (iii) The license number and signature of an exempted individual as defined under RCW 18.104.180(3).

(e) This rule shall allow an individual to submit electronic reports in accordance with department procedures. The use of a digital signature in the electronic reports will be authorized as a substitute for an original signature under (d) of this subsection.

What are the surface protection requirements?

(11) All resource protection wells shall be capped and protected using one of the following methods:

- (a) If the well is cased with metal and completed above the ground surface, you must attach a watertight cap with a lock to the top of the casing.
- (b) If the well is not cased with metal and completed above the land surface, you must install a protective metal

casing over and around the well. The protective casing shall extend at least six inches above the top of the well casing and be cemented at least two feet into the ground. A cap with lock shall be attached to the top of the protective casing.

(12) You shall protect the well(s) completed above ground from damage by:

(a) Cementing three metal posts, at least three inches in diameter, in a triangular array around the casing and at least two feet from it. Each post shall extend at least three feet above and below the land surface.

(b) A reinforced concrete pad may be installed to protect against and prevent frost heave. If installed, the concrete pad shall extend to a depth equal to anticipated frost depth. When a concrete pad is used, the well seal may be part of the concrete pad.

(13) If the well is completed below land surface, a watertight cap with a lock shall be attached to the top of the well casing. A metal monument or equivalent shall be installed over and around the well. The monument shall serve as a protective cover and be installed level with the land surface and be equipped with a waterproof seal to prevent the inflow of any water or contaminants. Drains will be provided, when feasible, to keep water out of the well and below the well cap. The cover must be designed to withstand the maximum expected loading.

(14) The protective measures may be waived or modified upon written approval from the department (a variance).

(15) If the well is damaged, the well protection measures and casing shall be repaired to meet the requirements of this chapter. If the well is damaged beyond repair, it shall be decommissioned in accordance with WAC 173-160-460.

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-430 What are the minimum casing standards? (1) The casing may not ~~((effect))~~ affect or interfere with the chemical, physical, radiological, or biological constituents of interest. The casing shall be resistant to the corrosive effects of the surrounding formations, earth, and water and shall be impervious to any contaminants encountered.

(2) The casing shall ~~((also))~~ withstand ~~((normal))~~ typical forces which act upon it during and after installation. All resource protection well casing shall conform to ASTM Standards, or at least 304 or 316 stainless steel, PTFE, or Schedule 40 PVC casing.

NEW SECTION

WAC 173-160-442 What are the limitations for use of drilling materials? (1) At no time shall a product contain materials that:

- (a) Are toxic or polluting;
 - (b) Develop odor or color changes in the water; or
 - (c) Serve as a microbial nutrient.
- (2) Organic materials which foster or promote undesired organic growth or have the potential to degrade water quality shall not be employed in the construction of a resource protection well. This includes, but is not limited to, brans, hulls, grains, starches, and proteins, unless NSF/ANSI approved.

NEW SECTION

WAC 173-160-444 What are the standards for use of polymers and additives? (1) All polymers and additives used in any well shall be certified by NSF/ANSI approval standards for use in potable water supply wells, or equivalent standards as approved by the department. The product shall be clearly labeled as meeting these standards.

(2) Polymers and additives must be designed and manufactured to meet industry standards to be nondegrading and must not act as a medium which will promote growth of microorganisms.

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-450 What are the well sealing requirements? (1) All resource protection wells constructed shall have a continuous seal, which seals the annular space between the bore hole and the permanent casing. The seal shall be constructed to prevent interconnection of separate aquifers penetrated by the well, and shall provide casing stability. Except for environmental investigation wells, the seal shall have a minimum diameter of four inches larger than the nominal size of the permanent casing, and shall extend from land surface to the top of the filter pack. The filter pack shall be no less than one foot or greater than five feet above the screen interval. See Figure 7. Wells that are installed using direct push technology will follow the sealing guidelines of WAC 173-160-451.

(2) After the permanent casing has been set in final position, the filter pack (optional) and sealing material shall be

placed in the open bore hole annular space that must be a minimum of four inches greater in diameter than the nominal size of the permanent casing. After installing the filter pack (optional) a layer of bentonite shall be placed on top of the filter pack to maintain separation between the seal material and the screened interval. Insure that placement will not disturb the filter pack. The remaining annular space shall be filled to land surface in a continuous operation with bentonite, neat cement, or neat cement grout. If ~~((a)) neat cement((/)), neat cement grout or~~ bentonite slurry is used as the sealant, it shall be installed with a tremie tube and pumped from the top of the bentonite plug (above the filter pack) to land surface. Use only potable water to hydrate the mixture.

(3) The completed annular ~~((space))~~ seal shall fully surround the permanent casing, be evenly distributed, free of voids, and extend from the permanent casing to undisturbed or recompacted soil.

(4) All sealing materials used shall conform to one of the following minimum requirements:

(a) **Bentonite sealants:**

(i) Bentonite used to prepare slurries for sealing~~((;))~~ or decommissioning shall be specifically designed for this purpose. ~~((At no time shall grout slurry contain materials that are toxic, polluting, develop odor or color changes, or serve as a micro-bacterial nutrient.))~~ All bentonite slurries shall be prepared and installed according to the manufacturer's instructions. ~~((All additives must be certified by a recognized certification authority such as NSF.))~~ Active solids content (bentonite) shall be twenty percent by weight or greater in all bentonite slurries. The active solids shall be checked by using the following formula:

$$\frac{\text{Weight of bentonite (lbs.)}}{\text{Weight of bentonite (lbs.)} + (\text{gallons of water} \times 8.33 \frac{\text{lbs.}}{\text{gal.}})} \times 100 = \% \text{ solids}$$

Example:

$$\frac{50 \text{ lbs. of bentonite}}{50 \text{ lbs. of bentonite} + (24 \text{ gallons of water} \times 8.33 \frac{\text{lbs.}}{\text{gal.}})} \times 100 = 20\% \text{ solids}$$

(ii) Unhydrated bentonite—pelletized, granulated, powder, or chip bentonite may be used in the construction of seals or in decommissioning of ~~((resource protection))~~ wells. The bentonite material shall be specifically designed for sealing or decommissioning and be within the industry tolerances for dry western sodium bentonite. ~~((Polymer additives must be designed and manufactured to meet industry standards to be nondegrading and must not act as a medium which will support or promote the growth of micro-organisms. All unhydrated bentonite used for sealing or decommissioning must be free of organic polymers.))~~ Placement of bentonite shall

conform to the manufacturer's specifications and result in a seal free of voids or bridges.

(iii) All bentonite used in any well shall be certified by NSF/ANSI approval standards for use in potable water supply wells, or equivalent standards as approved by the department. The product shall be clearly labeled as meeting these standards.

(b) **Cement sealants:**

(i) Neat cement consists of either portland cement types I, II, III, or high-alumina cement mixed with not more than

six gallons of potable water per sack of cement (ninety-four pounds per sack).

(ii) Neat cement grout consists of neat cement with up to five percent bentonite clay added, by dry weight of the bentonite. Bentonite is to be added to improve flow qualities and compensate for shrinkage.

(iii) ~~((Concrete sealants consist of clean, hard and durable aggregate with not less than five sacks (ninety-four pounds per sack) of portland cement per cubic yard of concrete sealant and water.~~

~~(A) The maximum diameter of aggregate particles may not exceed 1 1/2 inches, but in any case may not exceed 1/5 the minimum width of the casing thickness.~~

~~(B) The ratio of coarse aggregate to fine aggregate (passing No. 4 U.S. Standard Sieve) must be approximately 1 1/2 to 1 by volume, but in any case, may not exceed 2 to 1 nor be less than 1 to 2.~~

~~(iv))~~ Expanding agents, such as aluminum powder, may be used at a rate not exceeding 0.075 ounce (1 level teaspoon) per sack (ninety-four pounds per sack) of dry cement. The powder may not contain polishing agents. High-alumina cement and portland cement of any type must not be mixed together.

(5) This section may not preclude the use of new sealant materials which have been approved by the technical advisory group.

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-453 What are the minimum standards for construction of ground source heat pump borings? (1) General requirements.

(a) Applicability of minimum standards. The minimum standards set forth herein apply to all ground source heat pump borings as defined in WAC 173-160-111(~~constructed by a licensed operator~~).

(b) Prohibition against other uses. Ground source heat pump borings cannot be used for any purpose other than heat exchange. After completion, ground source heat pump borings shall not be converted to any other type of well except by written approval by the department. The operator shall ensure that the ground source heat pump boring is constructed according to this chapter.

(2) Location of ground source heat pump borings.

(a) A ground source heat pump boring shall not be located within one hundred feet from any water supply well.

(b) The setback from public water supply wells for ground source heat pump borings must comply with applicable department of health sanitary control zone regulations for the public water supply wells. Where the sanitary control zone is greater than one hundred feet the setback should reflect the expanded distance.

(c) Variances to the standard setback for water supply wells can be obtained when:

(i) The approved sanitary control zone for the public supply well is less than one hundred feet. Notification and concurrence is required from the department of health to insure that the new setback is consistent with the approved public water supply well sanitary control zone. Variances for public

supply wells will be issued by the local or state health authority.

(ii) The water supply well is not a public water supply well and the reduced set back is adequate to protect against encroachment on the well and can provide adequate protection against potential contamination. The reduced set back shall be no ~~((more))~~ less than seventy-five feet.

(d) No variance shall be approved for a setback less than the approved sanitary control zone for a water supply well, unless it can be demonstrated that the water supply well is hydrogeologically protected from any potential threat posed by the closed-loop heat system.

(3) Construction standards for ground source heat pump borings. Site specific conditions shall be assessed to determine the best method and materials to be used for sealing the well annulus to protect the ground water.

(a) Casing material. If permanent casing is needed in a ground source heat pump boring, it must meet standards set out in WAC 173-160-201 for steel and for plastic.

(b) In a closed-loop ground source heat pump boring, the material used to make up the heat exchange loop that is placed into the ground must be able to withstand the ~~((normal))~~ typical forces which act upon it during and after construction. It shall be resistant to the corrosive effects of the surrounding formations, earth, water, and heat exchange fluids within the pipe.

(c) Pressure testing. Pressure testing will be done in accordance with manufacturer recommended specifications. The closed-loop assembly pipe within the bore hole shall not leak or cause contamination to the ground water.

(d) All fluids used in the construction and testing of ground source heat pump borings will be handled and utilized in a manner that does not contaminate the ground water or surface water(~~s of the state~~).

(e) Bore hole size. The hole size for ground source heat pump borings must be of sufficient size to allow placement of the heat exchange loop and(~~tremie pipe, but in no case shall the bore hole diameter be less than six inches when one inch loop pipe is installed. When a loop pipe greater than one inch is utilized, the size of the bore hole will be determined by~~ ecology) tremie tube to the bottom of the hole.

(f) No more than one heat exchange loop can be placed in one bore hole.

(g) Grouting of an uncased bore hole. Grouting (sealing) the bore hole of a ground source heat pump boring must be completed immediately after the heat exchange loop is installed to avoid cave in of the uncased hole. The near surface area where the ground source heat pump borings will be connected to a manifold to connect it to the closed-loop system may be filled with earth materials.

(i) Sealing must be done with an active solids content bentonite grout slurry (minimum twenty percent active solids by weight) per WAC 173-160-221. Use of controlled density fill (CDF) and fly ash is prohibited.

(ii) Sealing material placed in the bore hole shall be uncontaminated; drilling fluids must be purged from the bore hole during the installation of the sealing material. Neither cuttings from the drilling process nor drilling fluid shall be used as bore hole sealing material.

(iii) ~~((Slurry))~~ Mixes of bentonite ~~((grout))~~ slurry shall be installed by pumping through a tremie ~~((pipe))~~ tube in a continuous operation using a positive displacement method. Polymer additives designed to retard swelling are acceptable for use with the bentonite ~~((grout))~~ slurry per WAC ~~((173-160-221-1)(a))~~ 173-160-450. The tremie ~~((pipe))~~ tube will extend to the full depth of the bore hole before pumping begins. Minimum slurry volume used must be equal to or exceed the calculated annulus volume of the bore hole. Grouting material shall surround all pipes remaining in the bore hole to land surface.

~~((g))~~ (h) Grouting of a permanently cased bore hole ~~((Grouting of cased bore holes))~~ shall be sealed in accordance with this chapter. Exception: When the casing is perforated from bottom to land surface and is pressure grouted in accordance with WAC 173-160-381 (1)(a).

~~((h))~~ (i) Unsuccessful installation of a ground source heat pump boring. If grouting is not successful, the department must preapprove an alternate completion of the ground source heat pump boring. If an alternate completion is not approved, the well must be properly decommissioned.

~~((i))~~ (j) An open-loop system must meet the construction standards of a water well. If the withdrawal of ground water exceeds the exemption requirements of RCW 90.44-050, a water right permit is required.

~~((j))~~ (k) It shall be the responsibility of the driller to properly construct the bore hole, pressure test the loop pipe, install the loop pipe, and grout the bore hole.

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-456 What are the minimum standards for construction of grounding wells? (1) ~~((General requirements-))~~ Grounding wells (cathodic protection wells or anode wells) ~~((These wells))~~ must be constructed in accordance with the provisions of Part One—General Requirements for Water Well Construction, chapter 173-160 WAC.

(2) Grounding wells shall be designed by an engineer, licensed in Washington state, trained in the design of corrosion protection wells.

(3) The internal materials used and size of element installed shall meet all industry standards for cathodic protection and anode wells.

(4) Grounding wells shall not pollute the waters of the state.

(5) If constructed within one hundred feet of a potential source of contamination, sealing is required to a minimum depth of fifty feet or the first significant confining layer, whichever is deeper, in accordance with WAC 173-160-241.

(6) Where the well construction regulations cannot be met, a variance may be requested.

(7) Grounding wells twenty-five feet in depth or less are exempt from all notice, licensing, fees, and reporting requirements of these regulations, however, commingling of aquifers is still prohibited.

(8) Driven grounding rods installed to a depth of twenty-five feet or less are exempt from all notice, licensing, fees, and reporting requirements of these regulations.

NEW SECTION

WAC 173-160-457 How are vibrating wire piezometers constructed? (1) The bore hole containing the vibrating wire piezometers shall have a minimum diameter at least four inches larger than the diameter of the instrument.

(2) When sealing with a grout or slurry, the bore hole shall be grouted from the bottom up via a tremie tube. The tremie tube may be left within the bore hole provided: It meets casing standards, is filled completely with grout and the annular requirements of this section are met.

(3) UngROUTED tubing, piping, liner, or casings shall not be left in the bore hole upon completion.

(4) Individual transducers may be sand packed provided that the sand pack is not more than five feet in thickness.

(5) Sealing between sand packed transducers shall be designed and constructed to prohibit flow between monitored zones. At no time shall a vibrating wire piezometer bore hole connect aquifers.

NEW SECTION

WAC 173-160-458 What sealing materials are allowed for sealing vibrating wire piezometers? (1) Vibrating wire piezometers shall be sealed using materials as allowed in WAC 173-160-450; or sealing materials as designed and recommended by the manufacturer provided that the material, when placed, provides a permeability of 1×10^{-7} cm/sec or less. The licensed driller or engineer shall provide documentation from the manufacturer demonstrating that the sealing material meets the permeability requirements of this section.

(2) The use of bentonite products intended for use as drilling fluids, low solids content bentonite mixtures, fly ash, and hydrated lime are prohibited as additives or sealants.

AMENDATORY SECTION (Amending Order 06-08, filed 11/21/06, effective 12/22/06)

WAC 173-160-460 What is the decommissioning process for resource protection wells? (1) For resource protection wells and ~~((geotech))~~ geotechnical soil borings that were not constructed in accordance with these regulations, or for which a drilling report required under this section is missing, ~~((shall be decommissioned))~~ remove all debris, accumulated sediment, equipment and obstructions from the well casing, except well screens and packers, and decommission in one of the following ways:

(a) Perforate the casing from the bottom to land surface and pressure grout the casing.

(i) Perforations shall be at least four equidistant cuts per row, and one row per foot. Each cut shall be at least one and one-half inches long.

(ii) Apply enough pressure to force the sealing material through the perforations, filling any voids on the outside of the casing.

(iii) The remainder of the casing shall be filled with neat cement grout, neat cement, or bentonite slurry; or

(b) Withdraw the casing and fill the bore hole with neat cement grout, neat cement, bentonite or bentonite slurry as the casing is being withdrawn.

(2) For resource protection wells and geotechnical soil borings that were constructed in accordance with these regulations, remove all debris, accumulated sediment, equipment and obstructions from the well casing, except well screens and packers and then decommission in one of the following ways:

(a) Wells with an inside casing diameter equal to or greater than one inch and constructed in accordance with these regulations as verified through a field examination and review of the drilling report shall be decommissioned by filling the casing from bottom to land surface with bentonite, bentonite slurry, neat cement grout, or neat cement.

(b) Wells with an inside casing diameter less than one inch shall be decommissioned by pressure grouting the entire casing length with bentonite slurry, neat cement grout, or neat cement.

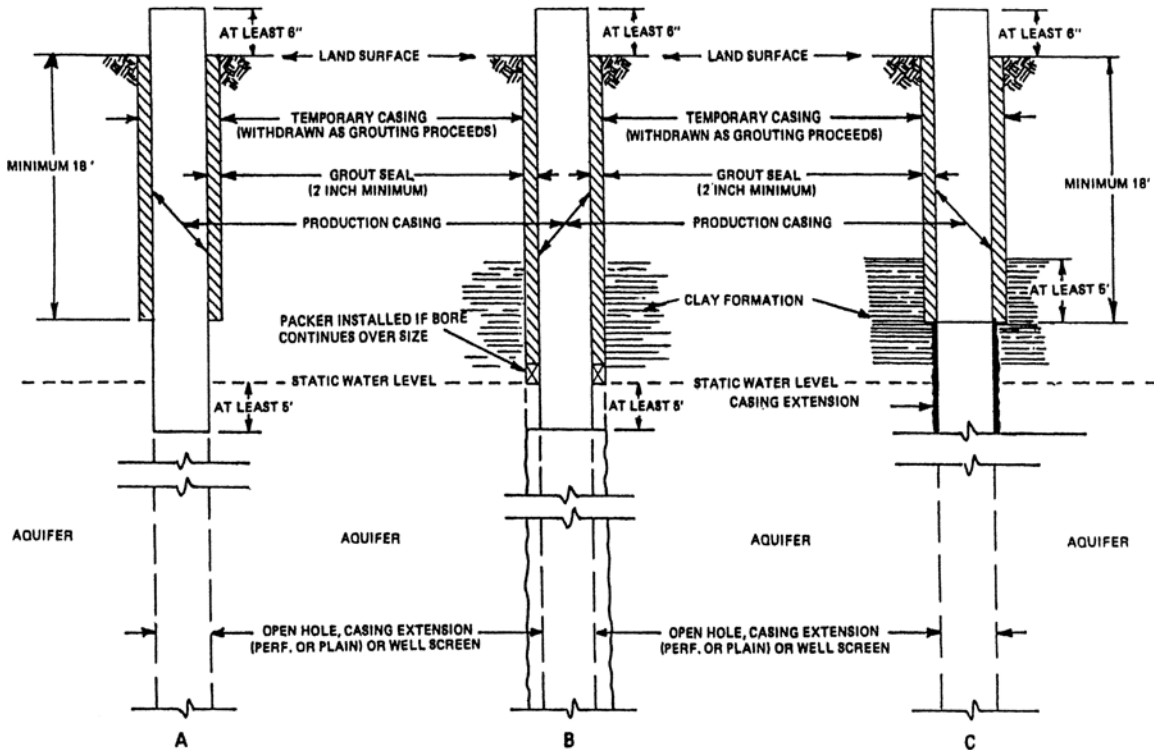
(c) Vibrating wire piezometers installed to meet or exceed the sealing requirements of WAC 173-160-450, 173-160-457, and 173-160-458 are exempt from the decommissioning procedures and decommissioning reporting requirements provided here.

(d) Direct push wells shall be decommissioned in accordance with this section.

(e) Geotechnical soil borings, or boring, shall be decommissioned by sealing from bottom to land surface with bentonite, bentonite slurry, neat cement grout, or neat cement. Sealing material placed below the static water level shall be piped directly to the point of application or placed by means of a dump bailer or pumped through a tremie tube. If bentonite slurry, neat cement grout, or neat cement is used to seal below the static water level in the well, the material shall be placed from the bottom up by methods that avoid segregation or dilution of the material. When used to place bentonite slurry, neat cement or neat cement grout, the discharge end of the tremie tube shall be submerged in the bentonite slurry, neat cement or neat cement grout to avoid breaking the seal while filling the annular space. Provided the material does not dilute or segregate and the resulting seal is free of voids, sealing material may be hand poured above the static water level.

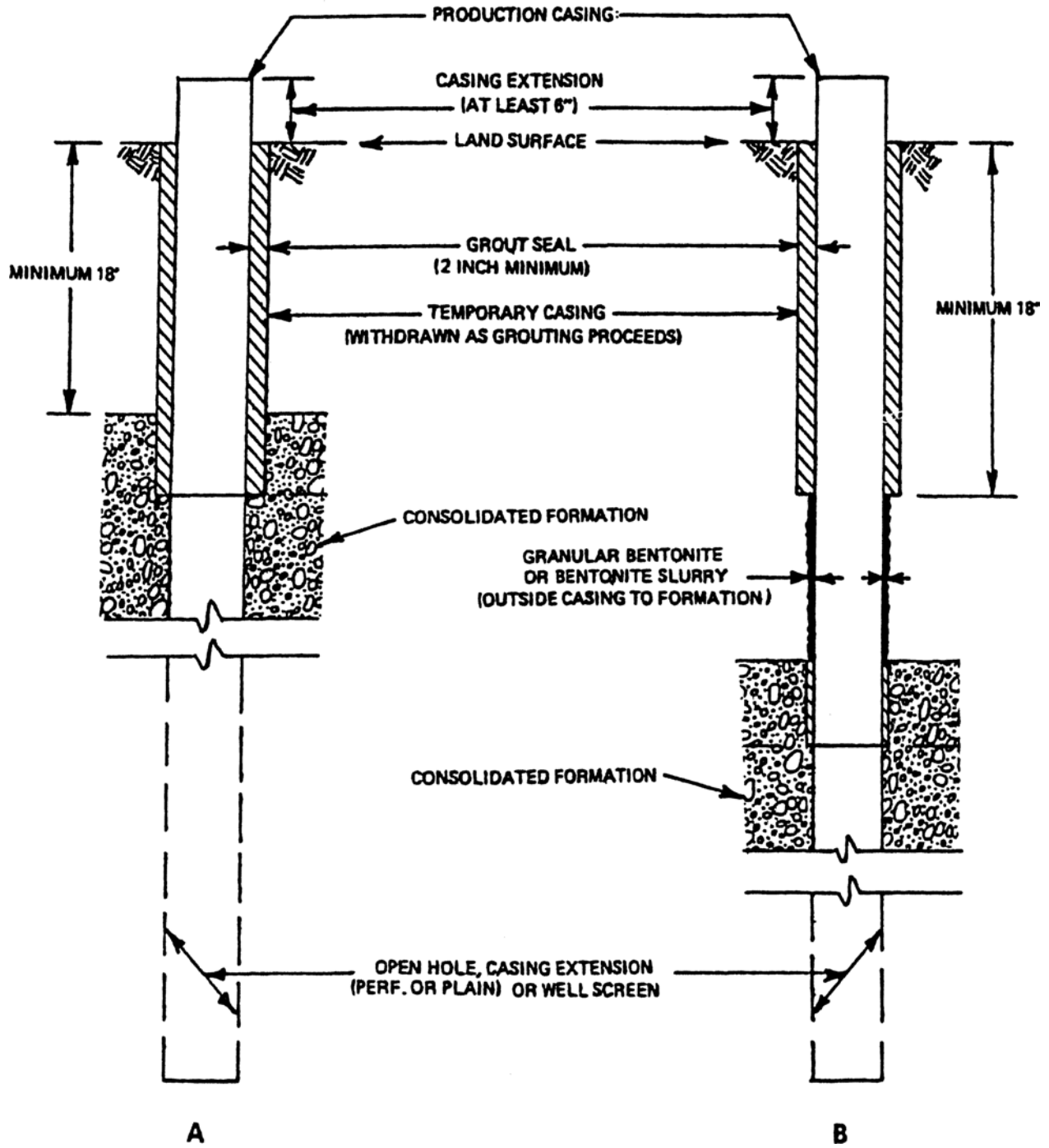
AMENDATORY SECTION (Amending Order 98-17, filed 9/2/98, effective 10/3/98)

WAC 173-160-990 Well construction illustrations.



NOT TO SCALE

Figure 1. SEALING OF UNCONSOLIDATED FORMATIONS



NOT TO SCALE

Figure 2. SEALING OF CONSOLIDATED FORMATIONS

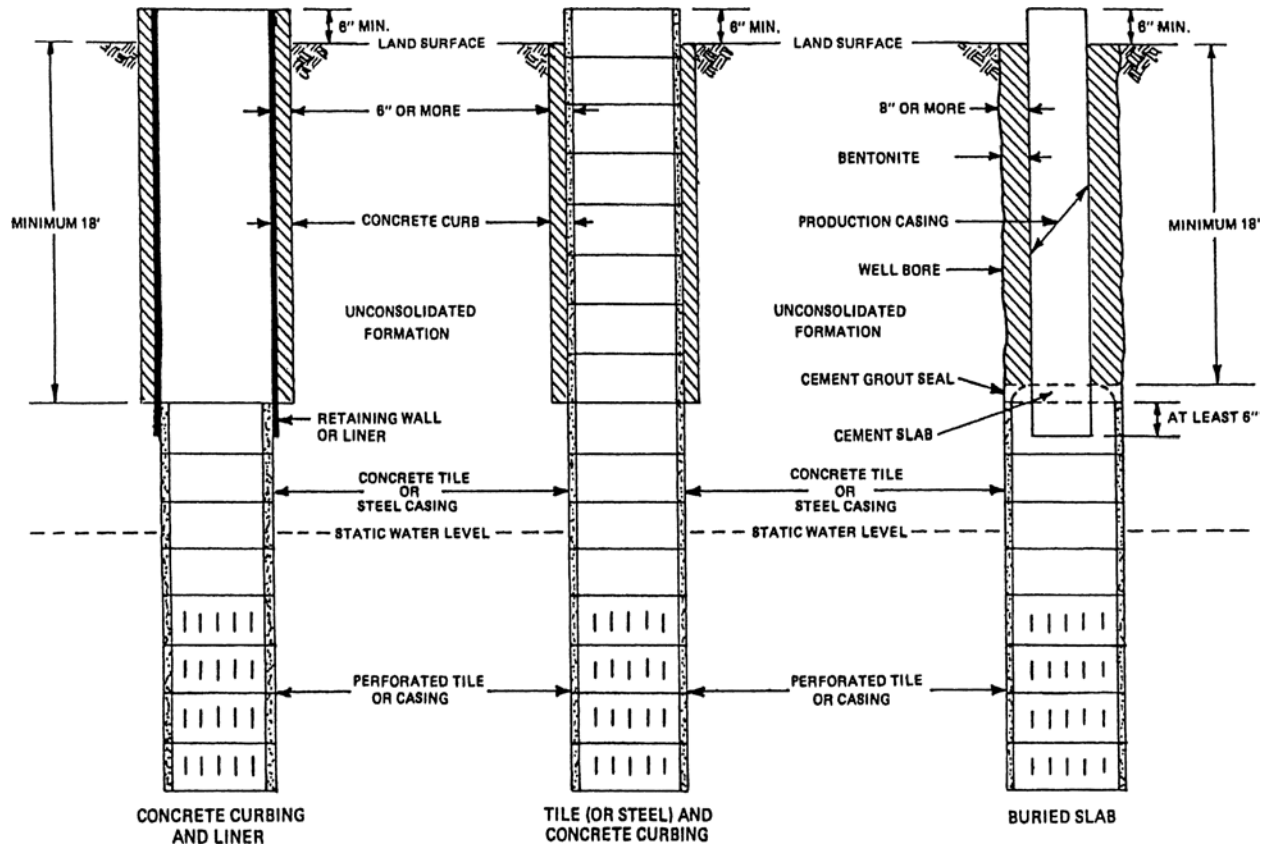
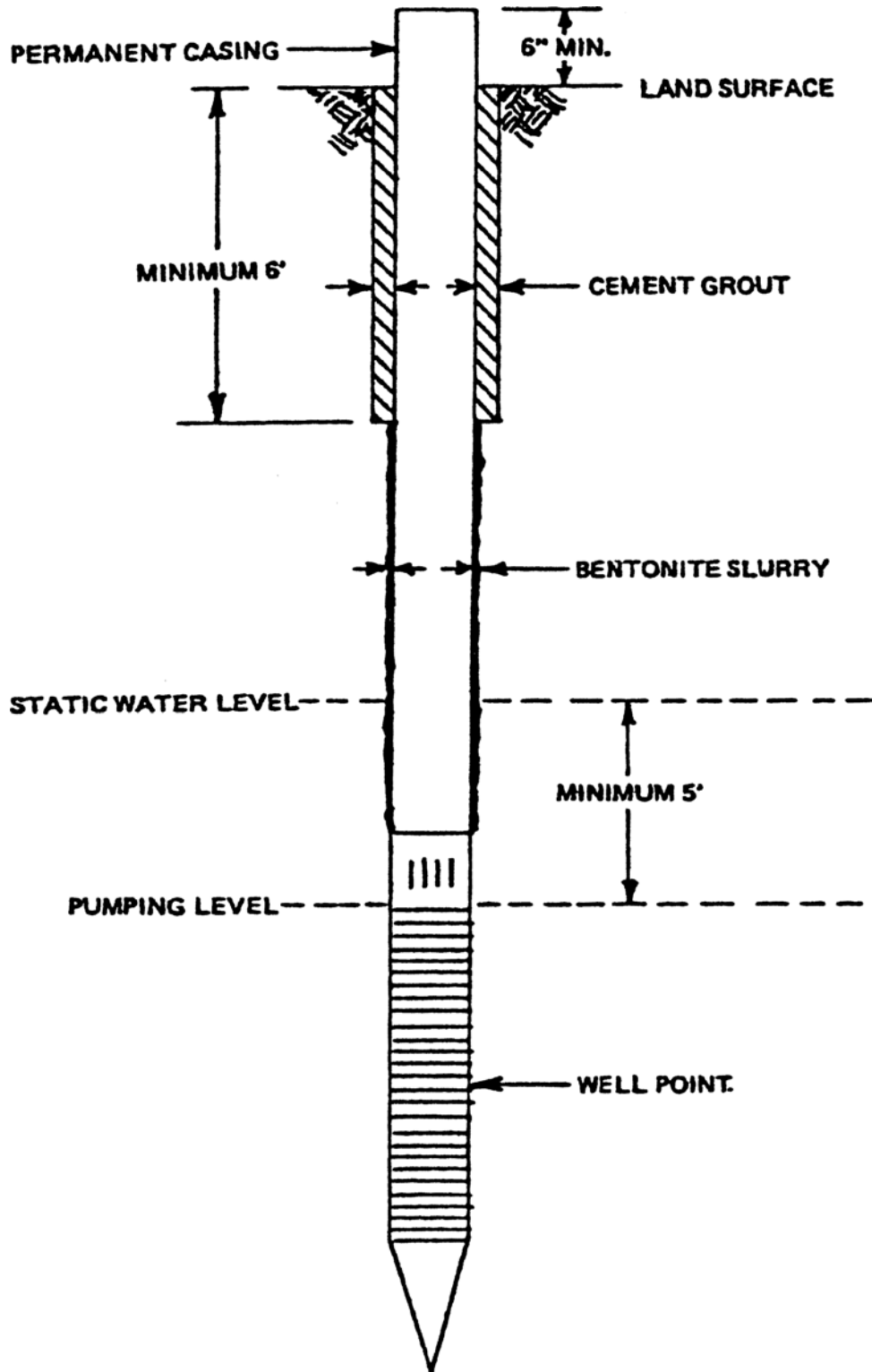


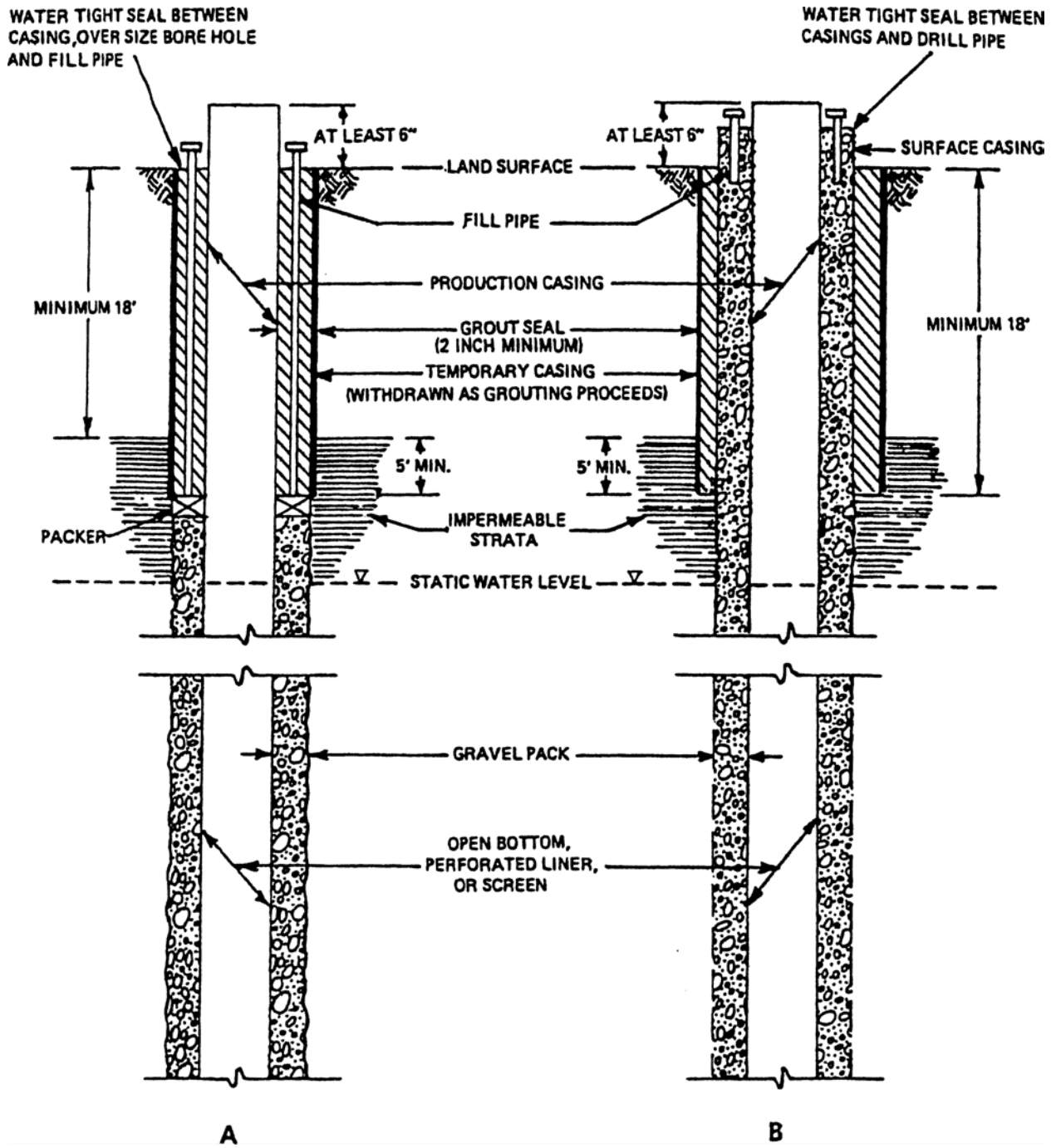
Figure 3. SEALING OF DUG WELLS



NOT TO SCALE

Figure 4. SEALING OF DRIVEN AND JETTED WELLS

~~((STRICKEN GRAPHIC~~



~~STRICKEN GRAPHIC))~~

~~((NOT TO SCALE~~

~~A WELL CONSTRUCTED WITH TEMPORARY SURFACE CASING.~~

~~B WELL CONSTRUCTED WITH PERMANENT SURFACE CASING.~~

~~Figure 5. SEALING OF GRAVEL PACKED WELLS))~~

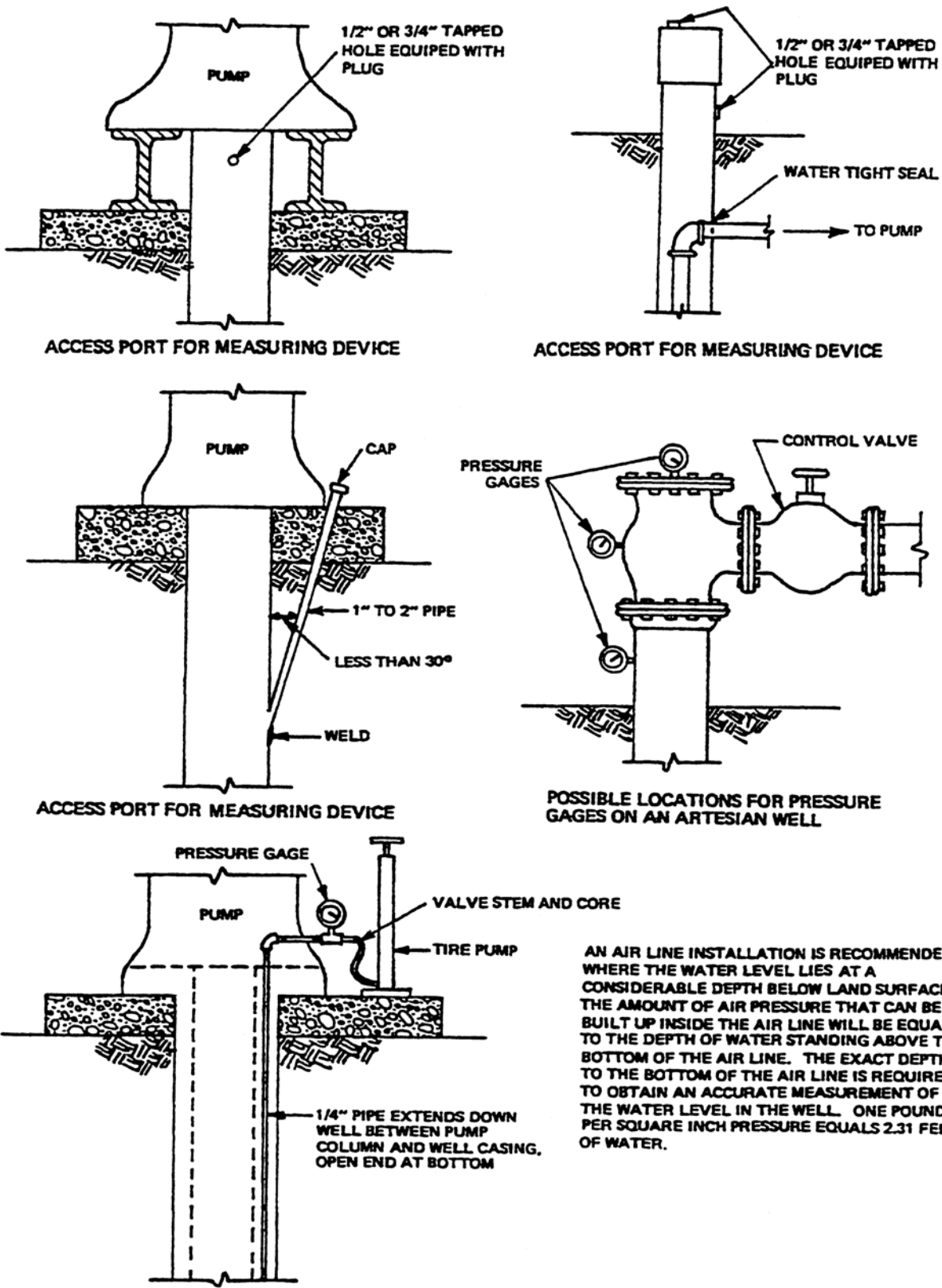
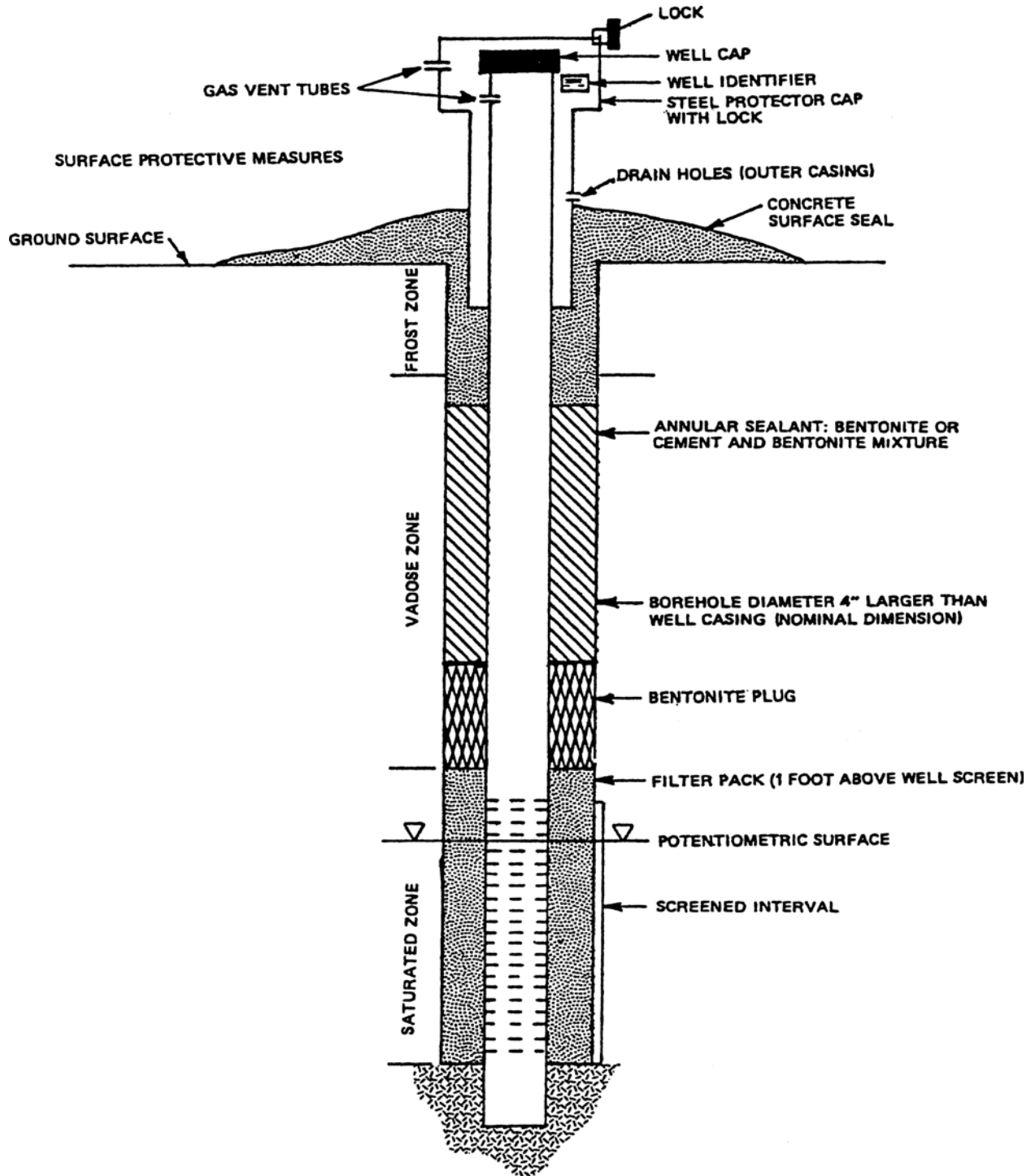


Figure ((6-)) 5. SUGGESTED METHODS FOR INSTALLING PRESSURE GAGES AND AIR LINES FOR MEASURING WATER LEVELS IN WELLS



NOT TO SCALE

Figure ((7)) 6. GENERAL RESOURCE PROTECTION WELL—CROSS SECTION.

WSR 09-01-126
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 08-02—Filed December 19, 2008, 2:55 p.m., effective January 19, 2009]

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

Purpose: In accordance with the Watershed Planning Act, chapter 90.82 RCW, this water management rule adopts the recommendations of the local watershed management plan (2006). The rules also help the Washington state department of ecology meet statutory obligations to manage waters for public use and for the protection of instream flows. This adoption sets instream flows, closes subbasins to future withdrawals, designates regional supply areas for future water supply, establishes reservations of water for future use, and specifies conditions of use for access to the reserves. The new rule will cause portions of water reserved under chapter 173-592 WAC to be transferred to the management scheme in chapter 173-527 WAC.

Citation of Existing Rules Affected by this Order: Repealing chapter 173-592 WAC.

Statutory Authority for Adoption: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW.

Adopted under notice filed as WSR 08-15-167 on July 23, 2008.

Changes Other than Editing from Proposed to Adopted Version: There are a number of changes from the proposed rule published with the CR-102 and the rule adopted and published with the CR-103. The changes were made in response to comments, as well as upon ecology's initiative. All changes made are for rule clarity to more precisely identify the rule requirements. The changes made do not change the substance or the intent of the rule as proposed.

WAC 173-527-010 Authority and purpose. In subsection (4), typographical error that referenced "Salmon-Washougal" was changed to "Lewis."

WAC 173-527-020 Definitions. The definition of "municipal water supplier" was omitted and replaced with a definition for "community water supplier." The change was made in order to remain consistent with the recent statutory repeal of the definition of "municipal water supplier" under RCW 90.03.015. The definition of "community water supplier" is consistent with the original intent of the rule; which is to have the timely and reasonable requirement, under WAC 173-527-110(6), apply to all suppliers servicing fifteen or more residential service.

In the definition of "regional supply area," the typographical error referencing "WAC 173-528-070" was changed to "WAC 173-527-090."

In the definition of "reservation," it was further clarified that such allocations are "one time" and "finite." This clarification is consistent with original rule intent and was also made in response to comments.

WAC 173-527-030 Map. No changes were made.

WAC 173-527-040 Compliance and enforcement. No rule language changes were made.

WAC 173-527-050 Stream management control points. Language was added to Table I. The stream management point name, Kalama River was modified to indicate the specific USGS gage that will be used. The stream management point name, Rock Creek was modified to specify that the point is located 1/2 mile south of Dole.

WAC 173-527-060 Instream flows. Under subsection (2), additional language further clarified that instream flows are protected from instream flows and "functions." The word "consumptive" in subsection (2) was unnecessary and deleted. Both of these changes were made in response to comments from Washington state department of fish and wildlife.

Under subsection (3)(a), the word "commenced" was replaced with "put to beneficial use," making this provision more specific and more consistent with rule intent. The words "or change authorization" were added to the end of subsection (3)(a) for better accuracy and consistency with chapter 90.03 RCW. These changes were also made in response to comments.

Under subsection (4), the final sentence was rewritten for better clarity and in response to comments. The new language makes clear when and under what circumstance the combined flows of management points apply.

Table II was reorganized by naming the management control point in more logical sequence, starting at downstream locations and moving upstream.

WAC 173-527-070 Surface and ground water closed to further consumptive appropriations. No rule language changes were made.

WAC 173-527-080 Future water rights—Generally. For better consistency with terminology used in the rule the term "permit-exempt ground water withdrawal" was changed to "permit-exempt withdrawal." The new term is defined under WAC 173-527-020.

Under subsection (2), language was changed for better readability.

Under subsection (4), additional detail was added to the description of "mitigation plan." The additional language is intended to provide the reader with more upfront information about the types of information needed by the agencies for approval of a mitigation plan. The new text points out that in order to be successful; an applicant should provide a monitoring and reporting plan. The new language also provides upfront information that describes the consequence of ineffective mitigation. These changes were made in response to comments.

WAC 173-527-090 Regional supply areas for future ground water withdrawals. Under subsection (1), sentences were restructured for improved grammar. For more clarity and consistency with other subsections in WAC 173-527-090, the word "potentially" was added to the statement about water availability. Clarifying language added according to comments.

Under subsection (3), language was added to clarify that the department of fish and wildlife will be consulted in the establishment of future water supply areas for future ground water withdrawals. This change made in response to com-

ments and also further reflects the relationship between ecology and fish and wildlife under existing authorities in RCW 90.03.247 and other water resource statutes. Change made according to comments.

Under subsection (4), the word "creek" was replaced with "streams." Change made according to comments.

WAC 173-527-100 Future appropriations for interruptible use. No rule language changes were made.

WAC 173-527-110 Reservation of surface and ground water for future uses. Under subsection (1), the following language was added, "The reservations are a one time, finite resource. When and if water is fully appropriated from the reservation, all remaining waters in closed areas are hereby appropriated for instream flow use." This language was added in response to comments and in order to further clarify the original rule intent of making reservation allocations a discrete and finite allocation of water. After the reservations are used up, closures to future appropriation are intended to apply. New reservations are not meant to be established in the future, nor any other type of allowance for any additional stream impacts that were not anticipated at the time of this rule-making.

Under subsection (2)(a)(i), the word "municipal" was replaced with "existing" for further consistency with RCW 90.03.015, and according to comments.

Under subsection (2)(a), new provision (iv) was added to include considerations for conservation techniques, such as reuse of waste water. This provision was added in response to comments and is consistent with the adopted watershed management plan (2006) that requires conservation techniques to be considered in the alternatives analysis. New provision (iv) was added to cross-reference changes made under subsection (2)(d), see below.

Under subsection (2)(d), language describing the "impact analysis" was modified to better reflect current agency water right permitting practices. The newly prescribe language better reflects the needs of permit writers in ecology's regional office. It also better meets the original intent of the rule. The chapter 90.82 RCW watershed planning unit approved the modification prior to its adoption. The modification to this section was made in response to comments received.

Under subsection (5)(a), the citation to the section in the rule with detail on mitigation plans, WAC 173-527-080(4), was inserted where "mitigation plan" is referenced. Change made for better clarity and in response to comments.

Under subsection (6), the words "permit-exempt ground water uses" were replaced with "permit-exempt withdrawals." This change was made for better consistency with terminology used in other provisions of the rule. The term "permit-exempt withdrawals" is defined under WAC 173-527-020.

Under subsection (6)(a), the citation to chapter 246-290 WAC was added to provide current department of health regulations in regard to "timely and reasonable" connections to municipalities. This citation was added in response to the department of health's comment. The term "municipal" was replaced with "community" for consistency with the defini-

tion changes made under WAC 173-527-020 (see description above).

In Table V, typographical errors were corrected.

WAC 173-527-120 Priority dates of reservation and repeal of chapter 173-592 WAC. No rule language changes made.

WAC 173-527-130 Accounting for use under the reservation. Under subsection (3), the words "maximum daily use," describing standard debit amounts for permit-exempt ground water use, was deleted. The provision now reads, "the standard amount will be adjusted periodically to reflect actual use during low flow conditions." The change was made in order to provide more accurate information and make consistent with the method used to establish the original standard deduction of 240 gallons per day (gpd). The new language is consistent with original plan intent and is made in keeping with the original assumptions used in accounting for use under the reservation. The term "at a well site" was deleted to avoid redundancy.

Under subsection (5), the word "subbasin" was replaced with "water user in Table V." This language refers to ecology's notification process to identify when certain percentages of a reserve have been appropriated. Rather than notify according to subbasin totals, ecology will notify for each user within a subbasin. Change was made in response to comments.

WAC 173-527-140 Future surface water withdrawals for environmental restoration. Under subsection (1)(a), a typographical error was corrected.

A final cost-benefit analysis is available by contacting Tryg Hoff, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6631, fax (360) 407-6574, e-mail THOF461@ecy.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 14, Amended 0, Repealed 13.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 14, Amended 0, Repealed 13.

Number of Sections Adopted on the Agency's Own Initiative: New 14, Amended 0, Repealed 13.

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

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

Date Adopted: December 19, 2008.

Jay J. Manning
Director

Chapter 173-527 WAC

WATER RESOURCES MANAGEMENT PROGRAM
FOR THE LEWIS BASIN, WRIA 27PART A
GENERALNEW SECTION

WAC 173-527-010 Authority and purpose. (1) The department of ecology (ecology) adopts this chapter under the Watershed Planning Act (chapter 90.82 RCW), Water Resources Act of 1971 (chapter 90.54 RCW), Minimum Water Flows and Levels Act (chapter 90.22 RCW), Water code (chapter 90.03 RCW), Regulation of public ground waters (chapter 90.44 RCW), RCW 43.21A.064(9), and 43.21A.080.

(2) This chapter shall not affect existing water rights, unless otherwise stated in the conditions of the water right in question. It shall also not affect federal Indian and non-Indian reserved rights.

(3) This chapter does not limit ecology's authority to establish flow requirements or conditions under other laws, including hydropower licensing under RCW 90.48.260.

(4) The Salmon-Washougal and Lewis watershed management plan (plan) recommendations were approved in 2006 by the Salmon-Washougal and Lewis planning unit (planning unit) in accord with RCW 90.82.130. The planning unit is a group made up of Clark, Skamania, and Cowlitz county commissioners and a broad range of water use interests. Ecology shall use the plan as the framework for making future water resource decisions in the Lewis watershed. Ecology shall rely upon the plan as a primary consideration in determining the public interest related to such decisions, including this rule adoption.

(5) Ecology shall initiate a review of this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions. Ecology and the planning unit should periodically evaluate the effectiveness of this chapter.

NEW SECTION

WAC 173-527-020 Definitions. For purposes of this chapter, the following definitions shall be used:

"Allocation" means the designation of specific amounts of water for specific beneficial uses.

"Appropriation" means a beneficial use of waters of the state, authorized by and consistent with all applicable laws and regulations.

"Community water supplier" means an entity that supplies water for fifteen or more residential service connections or for providing residential use of water for a nonresidential population that is, on average, at least twenty-five people for at least sixty days a year.

"Consumptive use" means a use of water whereby there is diminishment of the amount or quality of the water source.

"Ecology" means the Washington state department of ecology.

"Environmental restoration project" or "ERP" means a project with a primary purpose of restoring salmonids, requiring a temporary use of water.

"Habitat-forming function" means a physical, chemical, or biological function that is necessary to create and maintain natural or desired habitat conditions that benefit fish and other aquatic life. Habitat forming functions include but are not limited to creating and maintaining the following: Channel migration, gravel and sediment transport, water quality, nutrients, large woody material recruitment, flood plain flows, and riparian habitat.

"Habitat-related action" means reestablishment of pre-disturbance or other desirable riparian, stream, wetland, or flood plain functions and related biological, chemical, and physical processes.

"Instream flow" means a level of stream flow, established under chapters 90.03, 90.22, 90.54 and 90.82 RCW, needed in perennial streams to preserve wildlife, fish, scenic, aesthetic, and other environmental and navigational values. The term instream flow is synonymous with "minimum flow" as used in chapters 90.03 and 90.22 RCW, "base flow" as used in chapter 90.54 RCW, and "minimum instream flow" as used in chapter 90.82 RCW.

"Interruptible use" means a type of water use that relies upon withdrawals on a periodic or seasonal basis that if interrupted would not cause substantial hardship or health or safety concerns, or that is highly unlikely to be interrupted during the expected period of use. For the purposes of this chapter, interruptible uses are subject to the instream flows set in WAC 173-527-060.

"Net stream flow depletion" means the total depletion of water from a subbasin that may be available for future use under the reservation set in this chapter. The net stream flow depletion equals the flow depletion that remains after performance of offsetting actions, and is available for use only after applicable conditions in WAC 173-527-110 have been met.

"Nonconsumptive use" means a type of water use where either there is no diversion or withdrawal from a source or where there is no diminishment of the amount or quality of the water source.

"Permit-exempt withdrawal" or "permit exemption" means a ground water withdrawal exempted from permit requirements under RCW 90.44.050, but otherwise subject to the surface and ground water statutes and other applicable laws. For the purpose of this chapter, stockwater use does not include feedlots or other activities not related to normal grazing land uses.

"Planning unit" means the Salmon-Washougal and Lewis watershed planning unit, established under chapter 90.82 RCW, and all successors, formally designated by the Salmon-Washougal and Lewis watershed planning initiating governments.

"Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pre-

treatment storage facilities not under control of the purveyor but primarily used in connection with the system.

"Regional supply area" means a defined area where ecology finds water to be available for future ground water withdrawal. Regional supply areas are designated by WAC 173-527-090 or by public order of ecology.

"Reservation" means a one time, finite allocation of water for future beneficial uses. For the purposes of this chapter, the reservation is not subject to instream flows set in WAC 173-527-060, nor to closures set in WAC 173-527-070. The reservation is senior to the instream flow water rights set in WAC 173-527-060.

"Water-related action" means an offsetting activity that provides a quantity of water during certain times and at certain places that essentially replaces water at or upstream of where a proposed water right would impact surface flow. Water-related actions include but are not limited to acquiring an active water right or donating a water right to the trust water right program under chapter 90.42 RCW.

"Water right" means a right to make beneficial use of public waters of the state, including any water right established for instream flow purposes or a permit-exempt ground water withdrawal.

"Watershed plan" means the Salmon-Washougal and Lewis watershed management plan, adopted on July 21, 2006, by the Clark, Cowlitz, and Skamania county commissioners.

"Withdrawal" means the extraction of ground water, or the diversion of surface water for a beneficial use.

NEW SECTION

WAC 173-527-040 Compliance and enforcement. (1)

Ecology shall prepare and make available to the public, technical and educational information regarding the scope and requirements of this chapter. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws and rules.

(2) When ecology determines that a violation of this chapter has occurred, it shall:

(a) First attempt to achieve voluntary compliance, except in appropriate cases involving potential harm to other water rights or the environment. An approach to achieving voluntary compliance is to offer information and technical assistance to a violator. The information or technical assistance identifies, in writing, one or more means to accomplish the person's purposes within the framework of the law.

(b) If education and technical assistance do not achieve compliance, ecology has the authority to issue a notice of violation, a formal administrative order under RCW 43.27A.-190, or assess penalties under RCW 43.83B.336 and 90.03.-600, or may seek criminal enforcement under RCW 90.03.-400, 90.03.410, and 90.44.120.

**PART B
INSTREAM FLOWS AND CLOSURES**

NEW SECTION

WAC 173-527-050 Stream management control points. Ecology hereby establishes the following stream management control points shown in Table I. Management point locations are shown in WAC 173-527-030.

**Table I
Stream Management Control Point Information**

Stream Management Point Name	Control Station by River Mile (RM); Latitude (Lat.), Longitude (Long.)
Kalama River (at USGS gage #14223500)	RM 2.8; 46°02'51"N, 122°50'10"W
Cedar Creek (near Lewis River Hatchery)	RM 0.02; 45°56'09"N, 122°37'09"W
North Fork Lewis River (at USGS gage #14220500)	RM 19.0; 45°57'07"N, 122°33'46"W
Canyon Creek (at NE Healy Road)	RM 2.9; 45°56'24"N, 122°18'58"W
Jenny Creek (at Pacific Highway/Clark Co. Road)	RM 0.3; 45°52'22"N, 122°41'53"W
McCormick Creek (at 11th Ave. crossing)	RM 2.0; 45°50'34"N, 122°40'51"W
Breeze Creek (at La Center, Co. Rd. 42 crossing)	RM 0.4; 45°51'45"N, 122°39'52"W

Table I

Stream Management Control Point Information

Stream Management Point Name	Control Station by River Mile (RM); Latitude (Lat.), Longitude (Long.)
Lockwood Creek (at Co. Rd. 42)	RM 1.2; 45°51'17"N, 122°38'14"W
Mason Creek (at J.A. Moore Rd. crossing)	RM 1.2; 45°50'00"N, 122°37'30"W
East Fork Lewis River (at Ecology gage 27D090)	RM 10.1; 45°48'51"N, 122°35'30"W
Rock Creek #2 (at 319th St. Bridge off Highway 503)	RM 1.8; 45°51'13"N, 122°31'14"W
Yacolt Creek (at confluence at Moulton Falls)	RM 0.02; 45°49'56"N, 122°23'13"W
Rock Creek #1 (1/2 mile south of Dole)	RM 1.8; 45°46'31"N, 122°20'16"W
Gee Creek (at Ridgefield, Highway 501 crossing)	RM 4.9; 45°48'55"N, 122°43'52"W

NEW SECTION

WAC 173-527-060 Instream flows. (1) The instream flows established in this chapter are based on the recommendations of the planning unit; consultation with the department of fish and wildlife, department of agriculture, and department of community, trade, and economic development; and public input received during the rule-making process. The planning unit recommended these instream flow levels by unanimous vote.

(2) Instream flows established in this chapter are water rights, which protect instream values and functions from future appropriations. The priority date of the instream flows is the effective date of this chapter. In accordance with RCW 90.82.080, this priority date received unanimous approval from the planning unit.

(3) Instream flow rights shall be protected from impairment by any new water rights commenced after the effective date of this chapter and by all future changes and transfers of senior and junior water rights, including both surface and ground water rights. The following water rights are not subject to the instream flows:

(a) A water right put to beneficial use before the effective date of this chapter, unless otherwise stated in the conditions of the water right or change authorization.

(b) Water rights appropriated from the reservation of water established in WAC 173-527-110.

(c) Future withdrawals for environmental restoration purposes under WAC 173-527-140 unless included as a permit condition.

(4) Instream flows, expressed in cubic feet per second (cfs), are measured at the stream management control points

in WAC 173-527-050. Instream flows apply to all stream reaches that contribute to flow at stream management control points, as shown in Table II of this section. For reaches that are downstream of all management points, the flows set for the nearest upstream management control point shall apply to

those reaches. However, if a point of withdrawal is downstream of the confluence of two or more branches, each having a designated management point, the combined flows of the management points shall apply to that withdrawal.

Table II
Instream Flows in the Lewis Basin
(cubic feet per second)

Month	Stream Management Control Point				
	Kalama River, RM 2.8	Cedar Creek, RM 0.02	Lower Lewis River, RM 19.0	Canyon Creek, RM 2.9	Gee Creek, RM 4.9
January	950	125	2000	66	23
February	950	156	2000	66	42
March	950	156	2000 for Mar. 1, 2200 from Mar. 2 to Mar. 15, 2500 from Mar. 16 to Mar. 30, 2700 for Mar. 31	208	42
April	950	156	2700	208	42
May	950	156	2700	208	42
June	900	104	2700	139	28
July	616	104	2300 from July 1 to July 10, 1900 from July 11 to July 20, 1500 from July 21 to July 30, 1200 for July 31	139	28
August	434 from Aug. 1 to Aug. 15, 400 from Aug. 16 to Aug. 31	46	1200	66	9
September	589	188	1200	66	9
October	1050	188	1200 from Oct. 1 to Oct. 15, 2500 from Oct. 16 to Oct. 31	66	23
November	1050	188	4200	66	23
December	1050	125	4200 from Dec. 1 to Dec. 15, 2000 from Dec. 16 to Dec. 31	66	23

Month	Stream Management Control Point									
	Jenny Creek, RM 0.3	McCormick Creek, RM 2.0	Breeze Creek, RM 0.4	Lockwood Creek, RM 1.2	Mason Creek, RM 1.2	East Fork Lewis River, RM 10.1	Rock Creek #2, RM 1.8	Yacolt Creek, RM 0.02	Rock Creek #1, RM 1.8	
January	19	15	31	30	23	500	23	59	75	
February	36	28	39	54	42	500	43	97	121	
March	36	28	39	54	42	460	43	97	121	
April	36	28	39	54	42	460	43	97	121	
May	36	28	39	54	42	460	43	97	121	
June	24	28	39	36	28	420	29	66	80	
July	24	28	39	36	28	233	29	66	80	

Month	Stream Management Control Point								
August	8	6	8	13	9	122	10	26	34
September	8	6	8	13	9	175 from Sep. 1 to Sep. 15, 295 from Sep. 16 to Sep. 30	10	26	34
October	19	15	21	30	23	500	23	59	75
November	19	15	21	30	23	500	23	59	75
December	19	15	21	30	23	500	23	59	75

NEW SECTION

WAC 173-527-070 Surface and ground water closed to further consumptive appropriations. (1) Based on historical and current low flows and the water withdrawals by existing water right holders, ecology has determined that no waters are reliably available for new consumptive uses from certain surface water sources in the basin. Therefore, all surface waters listed in Table III are closed to any further consumptive appropriation, except as provided in WAC 173-527-080.

(2) Based on the hydrogeology of the basin, and the location and depth where ground water withdrawals generally occur, there is a high likelihood that future ground water withdrawals would capture water that affects closed surface waters. Therefore, the basin is closed to new withdrawals of ground water (including any new permit-exempt withdrawals) that would affect closed surface waters, except as provided in WAC 173-527-080.

(3) Applications for a withdrawal that would not affect the closed reaches, listed in Table III, shall be evaluated on a case-by-case basis under applicable law.

**Table III
Surface Water Closures**

Subbasin Name*	Affected Reach
Kalama River	Kalama River from mouth to headwaters, including tributaries.
Middle Lewis River	Lewis River from Forest Road 90 bridge (46°1'13"N, 122°1'13"W) to headwaters, including tributaries.
Upper Lewis River	All surface waters in the subbasin.
Lower Lewis River	Lewis River from RM 7.1 (45°54'53"N, 122°44'12"W) to Merwin Dam outflow (45°33'21"N, 122°33'21"W), including tributaries.
East Fork Lewis River	East Fork Lewis River from Interstate Highway 5 bridge crossing (45°52'23"N, 122°42'42"W) to headwaters, including tributaries. Gee Creek from mouth at Columbia River to headwaters, including tributaries.
*Subbasin boundaries are shown in WAC 173-527-030, and are consistent with the boundary descriptions used in the watershed plan.	

**PART C
FUTURE WATER RIGHTS**

NEW SECTION

WAC 173-527-080 Future water rights—Generally. A new surface or ground water appropriation (including any permit-exempt withdrawal) may be commenced only if consistent with the surface and ground water statutes and other applicable requirements of law and if any one of the following seven conditions (subsections (1) through (7) of this section) apply:

- (1) The proposed water use is nonconsumptive.
- (2) The proposed surface water diversion is not located on any of the surface waters closed in WAC 173-527-070, Table III.
- (3) The proposed ground water withdrawal is located where it would not affect any of the surface waters closed in WAC 173-527-070, Table III by either meeting condition (a) or (b) of this subsection:
 - (a) The person or entity seeking to commence a proposed ground water use shows, through scientifically sound studies and technical analysis, that the ground water use would not affect any of the closed surface waters identified in WAC 173-527-070, Table III.
 - (b) The proposed ground water withdrawal occurs in a regional supply area designated in WAC 173-527-090 or by order of ecology.
- (4) The person or entity seeking to commence the new appropriation submits a scientifically sound mitigation plan, and such plan is approved by ecology. A mitigation plan may

be approved if the proponent can demonstrate to ecology's satisfaction that when the mitigation is implemented the proposed withdrawal(s) will not impair senior water rights, including instream flow rights, adversely impact instream resources, or diminish water quality. A mitigation plan can be submitted to mitigate for an individual withdrawal or to mitigate for multiple withdrawals in a defined region.

An approved mitigation plan shall include a monitoring and reporting plan. It shall also include conditions that the plan be implemented as long as the associated water right is used and that any water provided for mitigation purposes be prohibited from being applied to any other purpose. If monitoring of a mitigation plan shows the mitigation is not effective, departmental approval of the mitigation plan shall be suspended and the water use shall cease until the department approves a new or revised mitigation plan.

(5) The proposed water use qualifies as an interruptible use as defined in WAC 173-527-020, and meets the criteria in WAC 173-527-100.

(6) The proposed water use qualifies for the reservation established and as conditioned in WAC 173-527-110.

(7) The proposed use is for an environmental restoration project and meets the criteria in WAC 173-527-140.

NEW SECTION

WAC 173-527-090 Regional supply areas for future ground water withdrawals. (1) Ecology finds there to be certain locations where water is potentially available on a year-round basis for future ground water withdrawals. Ecology further finds that withdrawals in these areas are unlikely to affect surface waters closed in WAC 173-527-070, Table III or instream flow values protected under RCW 90.54.020 (3). Such regional supply areas are recognized in the watershed plan and supported by the public interest as preferred locations for developing future water supply. Ground water withdrawals (including permit-exempt withdrawals) may be commenced in the designated regional supply areas to the extent such withdrawals are consistent with chapters 90.03 and 90.44 RCW, and any other applicable requirements of law.

(2) Based on local hydrology, ecology finds that ground water withdrawals made in areas designated below meet the conditions for regional supply areas in subsection (1) of this section and are so designated:

(a) All lands west of Interstate Highway 5, north of the East Fork Lewis River, and east of the Lewis River mainstem;

(b) All lands west of Interstate Highway 5, north of Lewis River mainstem, and within the Lower Lewis subbasin.

(3) Ecology, in consultation with the department of fish and wildlife, may by order designate other regional supply areas that meet the criteria in subsection (1) of this section.

(4) In order to protect instream values of surface waters in regional supply areas, ecology reserves the right to deny any withdrawals whereby drawdown effects from pumping would create a significant impact to local surface waters. For the purposes of this section, significant impact includes but is

not limited to a noticeable reduction in lake level or flow in local streams.

NEW SECTION

WAC 173-527-100 Future appropriations for interruptible use. (1) Ecology finds there may be water available above existing water rights and instream flows, which may be captured for interruptible use. This water is only available from November 16 to May 14 and may only be withdrawn from the Kalama, North Fork Lewis (below Merwin Dam), and East Fork Lewis rivers.

(2) Prior to commencement, the person or entity seeking a new interruptible appropriation must demonstrate a seasonal need and provide assurances that any effects on surface water that may result from withdrawals will be limited to the above time period and locations.

(3) Ecology shall deny an appropriation for interruptible use if such use, or the cumulative effects of such uses, would compromise habitat-forming functions provided by high flows. In no case shall new individual or cumulative allocations exceed the values indicated in Table IV as specified for each river. However, these allocation limits may be lowered on a case-by-case basis whenever more protection of habitat-forming functions is needed.

(4) Interruptible uses are subject to existing water rights and instream flows set in WAC 173-527-060.

**Table IV
Limits on Future Allocation for Interruptible Uses**

River Name	Allocation Limit* (cubic feet per second)
Kalama River	150
Lewis River (from river mile 7.1 to Merwin Dam)	200
East Fork Lewis	90
*The allocation limits in this table are based upon an allowance for ten percent of the average historic flow. Due to case-by-case determinations of flow for habitat-forming function needs, the maximum allocation may be less.	

NEW SECTION

WAC 173-527-110 Reservation of surface and ground water for future uses. (1) Ecology has weighed the public interest that supports the reservation of a limited amount of water for future consumptive uses against the potential for negative impact to instream resources. Ecology finds that the public interest advanced by a limited reservation clearly overrides the small potential for negative impacts on instream resources.

Based on this finding, ecology hereby allocates an amount and rate of use of water for specific water users and subbasins, as indicated under the subtitle "Net streamflow depletion" in Table V. The reservations are a one time, finite resource. When and if water is fully appropriated from the reservation, all remaining waters in closed areas are hereby appropriated for instream flow use.

This reservation is available to a user only if the conditions set forth in subsection (2) or (6) of this section are met, as well as any applicable requirements of law, including but not limited to all water resource laws and regulations.

(2) Ecology may approve a water right application for water from the reservation if all of the following conditions in (a), (b), (c), and (d) of this subsection are met:

Alternatives analysis

(a) The applicant demonstrates that no practicable supply alternatives to the reservation are available. In order to satisfy this condition, an applicant must demonstrate consideration of other regional water sources to supply water for the same use now being proposed, including:

- (i) Existing public water system supply;
- (ii) Water from a ground or surface water source, which may be withdrawn without affecting any of the surface waters closed in WAC 173-527-070, such as water from a hydraulically disconnected deep aquifer source;
- (iii) Supply options from surface and ground water storage;
- (iv) Water savings from conservation techniques, such as reuse of waste water; and
- (v) Mitigation and minimization considerations to the extent required in (d) of this subsection, impact analysis.

Water-related offset

(b) The applicant demonstrates it will offset the overall streamflow depletion(s) through water-related actions to the maximum extent practicable. Applicants should offset at least one-half of the overall streamflow depletion(s) through water-related actions.

(i) In evaluating the adequacy of water-related actions to offset depletions, ecology will evaluate the action based on the degree of aquatic benefit it would provide. A water-related offset may have a greater or lesser benefit due to the seasonality, location, or quality of water provided. The level of benefit will be used to determine if any additional offsets will be required of the applicant.

(ii) Ecology will consider water-related offsets only to the extent that reasonable assurance exists that such offsets will be successfully delivered or donated to the trust water right program under chapter 90.42 RCW where delivery is legally guaranteed.

Habitat-related offset

(c) After satisfying the water-related offset requirement in (b) of this subsection, an applicant must offset any remaining streamflow depletion through habitat-related actions that create or enhance habitat. Habitat-related offsets must compensate for the habitat loss or degradation that will result from the net streamflow depletion.

An applicant must provide adequate assurances that a habitat-related action in fact occurs. Ecology, as appropriate, shall condition use of the reservation with performance standards and monitoring requirements, or require financial assurance mechanisms prior to reservation use.

Impact analysis

(d) In keeping with the findings of the watershed plan, ecology finds that the public interest supports avoidance and minimizing impacts to tributaries. The applicant must demonstrate one of the following:

(i) The proposed withdrawal does not impact tributaries to subbasin mainstems; or

(ii) An impact to a tributary to a subbasin mainstem is unavoidable, as demonstrated by an impact analysis, included as part of the alternatives analysis under (a) of this subsection. In addition to demonstrating the necessary considerations under (a) of this subsection, the impact analysis must demonstrate consideration of water supply options that avoid the impact to the tributary as well as supply options that may minimize such impact.

Ecology, in consultation with the department of fish and wildlife, may require an applicant to monitor affects of a ground water withdrawal as a condition of water use.

Application review and permitting

(3) In determining practicability in subsection (2) of this section, ecology will consider both economic and logistic considerations, as well as guidance from the watershed plan.

(4) Ecology, in consultation with the department of fish and wildlife, will evaluate the adequacy of proposed offsets and alternatives analysis in subsection (2) of this section. The evaluation shall be consistent with the watershed plan and guidance documents approved by ecology. Ecology will also consider recommendations and technical advice received from the planning unit or by an advisory committee, formally designated by the planning unit.

(5) Ecology will issue a permit for use of water equal to the amount it determines appropriate to allocate from the reservation, and such amount will be debited from the total reservation amount. The total quantity of water appropriated shall not exceed the amount and rate listed under the subtitle "Net streamflow depletion" in Table V. However, ecology will issue a permit for a quantity beyond the amount debited from the reservation for the following:

(a) Water-related offsets to the extent such offsets are water-for-water, to the satisfaction of RCW 90.03.380 or 90.44.100, any other applicable laws, and terms of an approved mitigation plan under WAC 173-527-080(4); and

(b) Water use to the extent closed water sources are not affected and to the satisfaction of applicable requirements of law, including but not limited to all water resource laws and regulations.

Permit-exempt ground water use

(6) The requirements in subsection (2) of this section do not apply to permit-exempt withdrawals. However, permit-exempt withdrawals under RCW 90.44.050 are subject to both of the following conditions in order to occur under the reservation:

(a) Future permit-exempt well use may not occur where connection to an existing community water supplier can be provided in a timely and reasonable manner. Determinations of timely and reasonable shall be consistent with public water system plans, local laws, and state laws, including but not limited to Clark County Code 40.370.020 and chapter 246-290 WAC.

(b) Water use from a permit-exempt ground water well must be consistent with the allocation limits of this reservation and the Clark, Cowlitz, and Skamania County code and other applicable laws, including the statute on permit exemptions, RCW 90.44.050. Single or group domestic uses under the permit exemption shall not exceed five thousand gallons

per day. Irrigation of lawn and noncommercial garden under the permit exemption shall not exceed one-half acre.

**Table V
Allocation of Reservation**

Subbasin Name*	Water User**	Expected Streamflow Depletion without Offset (overall depletion) cubic feet per second (cfs)	Expected Water-related Offset Requirement (cfs)	Net Streamflow Depletion*** (cfs)
Kalama River	City of Kalama	1.92	0.00	1.92
	Other public water systems	0.37	0.19	0.19
	Permit-exempt ground water wells	0.16	0.00	0.16
Lower Lewis River, Middle Lewis, and Upper Lewis Rivers	Public water systems in Cowlitz County	0.37	0.19	0.19
	Public water systems in Clark County	0.75	0.37	0.37
	Public water systems in Skamania County	0.40	0.00	0.40
	Permit-exempt ground water wells in Cowlitz County	0.07	0.00	0.07
	Permit-exempt ground water wells in Clark County	0.12	0.00	0.12
	Permit-exempt ground water wells in Skamania County	0.40	0.00	0.40
	Commercial use in Skamania County****	0.21	0.00	0.21
East Fork Lewis River Subbasin	Clark Public Utility, City of Battle Ground and Ridgefield	4.40	2.20	2.20
	Other public water systems in Clark County	0.37	0.19	0.19
	Permit-exempt ground water wells in Clark County	0.47	0.00	0.47
	Permit-exempt ground water wells in Skamania County	0.02	0.00	0.02

*Subbasin boundaries are shown in WAC 173-527-030, and are consistent with the boundary descriptions used in the watershed plan.

**In the watershed plan, the term "domestic wells" has the same meaning as "permit-exempt ground water wells" and the term "small community water systems" has the same meaning as "public water systems."

*** If conditions in subsections (2) and (6) of this section are satisfied, the net depletion of a closed water source, set in WAC 173-527-070, shall not exceed the quantities listed for specific users.

****Withdrawal impacts shall be limited to segments of the mainstem North Fork Lewis River that are located upstream of the Forest Road 90 bridge crossing (46°1'13"N, 122°1'13"W).

NEW SECTION

WAC 173-527-120 Priority dates of reservation and repeal of chapter 173-592 WAC. (1) The reservation created in WAC 173-527-110 is not subject to the instream flows or closures set in this chapter, and the priority date of the reservation for all areas outside Clark County is the effective date of this chapter.

(2) Ecology hereby transfers unappropriated water from the existing reservation for Clark County in WAC 173-592-070 in such quantities and to the users and areas of use in Clark County as set forth in WAC 173-527-110, Table V and WAC 173-528-110, Table IV. Pursuant to this transfer, the priority date of withdrawals from all Clark County portions of the reservation in WAC 173-527-110 is August 13, 1986. However, the designation of specific municipal suppliers in this reservation does not create a right for these entities to use such water. Such a right will arise only if a permit is applied for by such municipal suppliers to use water under the reservation and approved by ecology after applying the legal tests for a new appropriation. With respect to any water for which a permit has not been granted, ecology reserves the right to modify in all respects or rescind the reservation by future rule making.

(3) Based on new information made available through the local watershed planning process and hydrologic conditions as of the time of this rule making, ecology has determined that the remaining water reserved under WAC 173-592-070, which was not transferred in subsection (2) of this section or previously appropriated is no longer supported by available information and science. Therefore, chapter 173-592 WAC is hereby repealed in its entirety and all water reserved under that rule that has not been transferred or appropriated is hereby returned to the state. This repeal is not intended to affect any existing water rights issued under the reservation.

NEW SECTION

WAC 173-527-130 Accounting for use under the reservation. (1) A record of all appropriations from the reservation shall be maintained by ecology.

(2) For an appropriation under a permit, ecology will account for water use under the reservation based on authorized quantities under water right permits or certificates, and according to WAC 173-527-110(5).

(3) For permit-exempt ground water appropriations, ecology will deduct a standard amount of two hundred forty gallons per day for each well. For a group domestic water system under the permit-exemption, the standard amount will be applied for each domestic or residential service connection. The standard amount will be adjusted periodically to reflect actual use during low flow conditions. The standard amount assumes a rate of septic recharge from an on-site septic system. In the event that on-site septic recharge is known not to occur, ecology will deduct an additional five hundred and sixty gallons per day. Additionally, ecology reserves the right to account for water use based on the best available information contained in well logs, approvals issued by local jurisdictions, or other documents.

(4) If a water user under the reservation subsequently abandons or relinquishes the withdrawal, ecology will credit back to the reservation the actual amount of water used and/or debited from the reservation, upon demonstration to ecology that the well or surface water diversion has been decommissioned through written certification.

(5) Ecology shall notify either Clark, Skamania, or Cowlitz County and the planning unit; when it determines that fifty percent, seventy-five percent, and one hundred percent, respectively, of the reservation is appropriated for a water user in Table V.

NEW SECTION

WAC 173-527-140 Future surface water withdrawals for environmental restoration. In keeping with the findings of the watershed plan, ecology finds that the public interest advanced by future withdrawals for ERPs, as defined and conditioned in this section, clearly overrides the minimal negative impacts on instream flows.

(1) A future withdrawal for an ERP may be approved only if it meets all the following:

(a) The proposed water use is for a bypass flow for salmonid restoration or riparian planting project, and the primary purpose of the project is restoration of salmonids.

(b) The proposed project will result in aquatic habitat benefits, and such benefits will exceed any detriment to aquatic habitat that may be caused by reductions in flow at specific locations and times of withdrawal.

(c) The proposed use qualifies for a temporary permit.

(2) Ecology, in consultation with the department of fish and wildlife, will evaluate proposed ERPs. ERPs approved by ecology are not subject to closures or instream flows set in this chapter, unless otherwise conditioned by the permit.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-592-010	Purpose.
WAC 173-592-020	Authority.
WAC 173-592-030	General.
WAC 173-592-040	Reservation source of supply area defined.
WAC 173-592-050	Definitions.
WAC 173-592-060	Petition received—Notice.
WAC 173-592-070	Reservation.
WAC 173-592-080	Monitoring program.
WAC 173-592-090	Water quality.
WAC 173-592-100	Exemptions.
WAC 173-592-110	Regulation review.
WAC 173-592-115	Appeals.

WAC 173-592-120 Reservation source of supply area map.

WSR 09-01-127
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 08-03—Filed December 19, 2008, 2:56 p.m., effective January 19, 2009]

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

Purpose: In accordance with the Watershed Planning Act, chapter 90.82 RCW, this water management rule adopts the recommendations of the local watershed management plan (2006). The rules also help the Washington state department of ecology meet statutory obligations to manage waters for public use and for the protection of instream flows. This adoption sets instream flows, closes subbasins to future withdrawals, designates regional supply areas for future water supply, establishes reservations of water for future use, and specifies conditions of use for access to the reserves. The new rule will cause portions of water reserved under chapter 173-592 WAC to be transferred to the management scheme in chapter 173-528 WAC.

Citation of Existing Rules Affected by this Order: Repealing chapter 173-592 WAC.

Statutory Authority for Adoption: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW.

Adopted under notice filed as WSR 08-15-168 on July 23, 2008.

Changes Other than Editing from Proposed to Adopted Version: There are a number of changes from the proposed rule published with the CR-102 and the rule adopted and published with the CR-103. The changes were made in response to comments, as well as upon ecology's initiative. All changes made are for rule clarity to more precisely identify the rule requirements. The changes made do not change the substance or the intent of the rule as proposed.

WAC 173-528-010 Authority and purpose. No rule language changes made.

WAC 173-528-020 Definitions. The definition of "municipal water supplier" was omitted and replaced with a definition for "community water supplier." The change was made in order to remain consistent with the recent statutory repeal of the definition of "municipal water supplier" under RCW 90.03.015. The definition of "community water supplier" is consistent with the original intent of the rule; which is to have the timely and reasonable requirement, under WAC 173-528-110(6), apply to all suppliers servicing fifteen or more residential service.

In the definition of "reservation," it was further clarified that such allocations are "one time" and "finite." This clarification is consistent with original rule intent and was also made in response to comments.

WAC 173-528-030 Map. No changes were made.

WAC 173-528-040 Compliance and enforcement. No rule language changes were made.

WAC 173-528-050 Stream management control points. No changes were made.

WAC 173-528-060 Establishment of instream flows. Under subsection (2), additional language further clarified that instream flows are protected from instream flows and "functions." The word "consumptive" in subsection (2) was unnecessary and deleted. Both of these changes were made in response to comments from Washington state department of fish and wildlife.

Under subsection (3)(a), the word "commenced" was replaced with "put to beneficial use," making this provision more specific and more consistent with rule intent. The words "or change authorization" were added to the end of subsection (3)(a) for better accuracy and consistency with chapter 90.03 RCW. These changes were also made in response to comments.

Under subsection (4), the final sentence was rewritten for better clarity and in response to comments. The new language makes clear when and under what circumstance the combined flows of management points apply.

Table II was reorganized by naming the management control point in more logical sequence, starting at downstream locations and moving upstream. Reorganized in response to comments.

WAC 173-528-070 Surface and ground water closed to further consumptive appropriations. No rule language changes were made.

WAC 173-528-080 Future water rights—Generally. For better consistency with terminology used in the rule the term "permit-exempt ground water withdrawal" was changed to "permit-exempt withdrawal." The new term is defined under WAC 173-528-020.

Under subsection (2), language was changed for better readability.

Under subsection (4), additional detail was added to the description of "mitigation plan." The additional language is intended to provide the reader with more upfront information about the types of information needed by the agencies for approval of a mitigation plan. The new text points out that in order to be successful; an applicant should provide a monitoring and reporting plan. The new language also provides upfront information that describes the consequence of ineffective mitigation. These changes were made in response to comments.

WAC 173-528-090 Regional supply areas for future ground water withdrawals. Under subsection (1), sentences were restructured for improved grammar. For more clarity and consistency with other subsections in WAC 173-528-090, the word "potentially" was added to the statement about water availability. Clarifying language added according to comments.

Under subsection (3), language was added to clarify that the department of fish and wildlife will be consulted in the establishment of future water supply areas for future ground water withdrawals. This change made in response to comments and also further reflects the relationship between ecology and fish and wildlife under existing authorities in RCW

90.03.247 and other water resource statutes. Change made according to comments.

Under subsection (4), the word "creek" was replaced with "streams." Change made according to comments.

WAC 173-528-100 Future appropriations for interruptible use. No rule language changes were made.

WAC 173-528-110 Reservation of surface and ground water for future uses. Under subsection (1), the following language was added, "The reservations are a one time, finite resource. When and if water is fully appropriated from the reservation, all remaining waters in closed areas are hereby appropriated for instream flow use." This language was added in response to comments and in order to further clarify the original rule intent of making reservation allocations a discrete and finite allocation of water. After the reservations are used up, closures to future appropriation are intended to apply without any reservation in place. New reservations are not meant to be established in the future, nor any other type of allowance for any additional stream impacts that were not anticipated at the time of this rule making.

Under subsection (2)(a)(i), the word "municipal" was replaced with "existing" for further consistency with RCW 90.03.015, and according to comments.

Under subsection (2)(a), new provision (iv) was added to include considerations for conservation techniques, such as reuse of waste water. This provision was added in response to comments and is consistent with the adopted watershed management plan (2006) that requires conservation techniques to be considered in the alternatives analysis. New provision (iv) was added to cross-reference changes made under subsection (2)(d), see below.

Under subsection (2)(d), language describing the "impact analysis" was modified to better reflect current agency water right permitting practices. The newly prescribe[d] language better reflects the needs of permit writers in ecology's regional office. It also better meets the original intent of the rule. The chapter 90.82 RCW watershed planning unit approved the modification prior to its adoption. The modification to this section was made in response to comments received.

Under subsection (5)(a), the citation to the section in the rule with detail on mitigation plans, WAC 173-527-080(4), was inserted where "mitigation plan" is referenced. Change made for better clarity and in response to comments.

Under subsection (6), the words "permit-exempt ground water uses" were replaced with "permit-exempt withdrawals." This change was made for better consistency with terminology used in other provisions of the rule. The term "permit-exempt withdrawals" is defined under WAC 173-528-020.

Under subsection (6)(a), the citation to chapter 246-290 WAC was added to provide current department of health regulations in regard to "timely and reasonable" connections to municipalities. This citation was added in response to the department of health's comment. The term "municipal" was replaced with "community" for consistency with the definition changes made under WAC 173-528-020 (see description above).

In Table IV, a typographical error was corrected.

WAC 173-528-120 Priority dates of reservation and repeal of chapter 173-592 WAC. No rule language changes made.

WAC 173-528-130 Accounting for use under the reservation. Under subsection (3), the words "maximum daily use," describing standard debit amounts for permit-exempt ground water use, was deleted. The provision now reads, "the standard amount will be adjusted periodically to reflect actual use during low flow conditions." The change was made in order to provide more accurate information and make consistent with the method used to establish the original standard deduction of 240 gallons per day (gpd). The new language is consistent with original plan and is made in keeping with the original assumptions used in accounting for use under the reservation. The term "at a well site" was deleted to avoid redundancy.

Under subsection (5), the word "subbasin" was replaced with "water user in Table IV." This language refers to ecology's notification process to identify when certain percentages of a reserve have been appropriated. Rather than notify according to subbasin totals, ecology will notify for each user within a subbasin. Change was made in response to comments.

WAC 173-528-140 Future surface water withdrawals for environmental restoration. No changes made.

A final cost-benefit analysis is available by contacting Tryg Hoff, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6631, fax (360) 407-6574, e-mail THOF461@ecy.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 14, Amended 0, Repealed 13.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 14, Amended 0, Repealed 13.

Number of Sections Adopted on the Agency's Own Initiative: New 14, Amended 0, Repealed 13.

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

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

Date Adopted: December 19, 2008.

Jay J. Manning
Director

Chapter 173-528 WAC

WATER RESOURCES MANAGEMENT PROGRAM
FOR THE SALMON-WASHOUGAL BASIN, WRIA 28PART A
GENERALNEW SECTION

WAC 173-528-010 Authority and purpose. (1) The department of ecology (ecology) adopts this chapter under the Watershed Planning Act (chapter 90.82 RCW), Water Resources Act of 1971 (chapter 90.54 RCW), Minimum Water Flows and Levels Act (chapter 90.22 RCW), Water code (chapter 90.03 RCW), Regulation of public ground waters (chapter 90.44 RCW), RCW 43.21A.064(9), and 43.21A.080.

(2) This chapter shall not affect existing water rights, unless otherwise stated in the conditions of the water right in question. It shall also not affect federal Indian and non-Indian reserved rights.

(3) This chapter does not limit ecology's authority to establish flow requirements or conditions under other laws, including hydropower licensing under RCW 90.48.260.

(4) The Salmon-Washougal and Lewis watershed management plan (plan) recommendations were approved in 2006 by the Salmon-Washougal and Lewis planning unit (planning unit) in accord with RCW 90.82.130. The planning unit is a group made up of Clark, Skamania, and Cowlitz county commissioners and a broad range of water use interests. Ecology shall use the plan as the framework for making future water resource decisions in the Salmon-Washougal watershed. Ecology shall rely upon the plan as a primary consideration in determining the public interest related to such decisions, including this rule adoption.

(5) Ecology shall initiate a review of this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions. Ecology and the planning unit should periodically evaluate the effectiveness of this chapter.

NEW SECTION

WAC 173-528-020 Definitions. For purposes of this chapter, the following definitions shall be used:

"Allocation" means the designation of specific amounts of water for specific beneficial uses.

"Appropriation" means a beneficial use of waters of the state, authorized by and consistent with all applicable laws and regulations.

"Community water supplier" means an entity that supplies water for fifteen or more residential service connections or for providing residential use of water for a nonresidential population that is, on average, at least twenty-five people for at least sixty days a year.

"Consumptive use" means a use of water whereby there is diminishment of the amount or quality of the water source.

"Ecology" means the Washington state department of ecology.

"Environmental restoration project" or "ERP" means a project with a primary purpose of restoring salmonids, requiring a temporary use of water.

"Habitat-forming function" means a physical, chemical, or biological function that is necessary to create and maintain natural or desired habitat conditions that benefit fish and other aquatic life. Habitat forming functions include but are not limited to creating and maintaining the following: Channel migration, gravel and sediment transport, water quality, nutrients, large woody material recruitment, flood plain flows, and riparian habitat.

"Habitat-related action" means enhancing desirable riparian, stream, wetland, or flood plain functions and related biological, chemical, and physical processes.

"Instream flow" means a level of stream flow, established under chapters 90.03, 90.22, 90.54 and 90.82 RCW, necessary in perennial streams to preserve wildlife, fish, scenic, aesthetic, and other environmental and navigational values. The term instream flow is synonymous with "minimum flow" as used in chapters 90.03 and 90.22 RCW, "base flow" as used in chapter 90.54 RCW, and "minimum instream flow" as used in chapter 90.82 RCW.

"Interruptible use" means a type of water use that relies upon withdrawals on a periodic or seasonal basis that if interrupted would not cause substantial hardship or health or safety concerns, or that is highly unlikely to be interrupted during the expected period of use. For the purposes of this chapter, interruptible uses are subject to the instream flows set in WAC 173-528-060.

"Net stream flow depletion" means the total depletion of water from a subbasin that may be available for future use under the reservation set in this chapter. The net stream flow depletion equals the flow depletion that remains after performance of offsetting actions, and is available for use only after applicable conditions in WAC 173-528-110 have been met.

"Nonconsumptive use" means a type of water use where either there is no diversion or withdrawal from a source or where there is no diminishment of the amount or quality of the water source.

"Permit-exempt withdrawal" or "permit exemption" means a ground water withdrawal exempted from permit requirements under RCW 90.44.050, but otherwise subject to surface and ground water statutes and other applicable laws. For the purpose of this chapter, stockwater use does not include feedlots or other activities not related to normal grazing land uses.

"Planning unit" means the Salmon-Washougal and Lewis watershed planning unit, established under chapter 90.82 RCW, and all successors, formally designated by the Salmon-Washougal and Lewis watershed planning initiating governments.

"Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pre-treatment storage facilities not under control of the purveyor but primarily used in connection with the system.

"Regional supply area" means a defined area where ecology finds water to be available for future ground water withdrawal. Regional supply areas are designated by WAC 173-528-090 or by order of ecology.

"Reservation" means a one time, finite allocation of water for future beneficial uses. For the purposes of this chapter, the reservation is not subject to instream flows set in WAC 173-528-060, nor to closures set in WAC 173-528-070. The reservation is senior to the instream flow water rights set in WAC 173-528-060.

"Water-related action" means an offsetting activity that provides a quantity of water during certain times and at certain places that essentially replaces water at or upstream of where a proposed water right would impact surface flow. Water-related actions include but are not limited to acquiring an active water right or donation of a water right to the trust water right program under chapter 90.42 WAC.

"Water right" means a right to make beneficial use of public waters of the state, including any water right established for instream flow purposes or a permit-exempt ground water withdrawal.

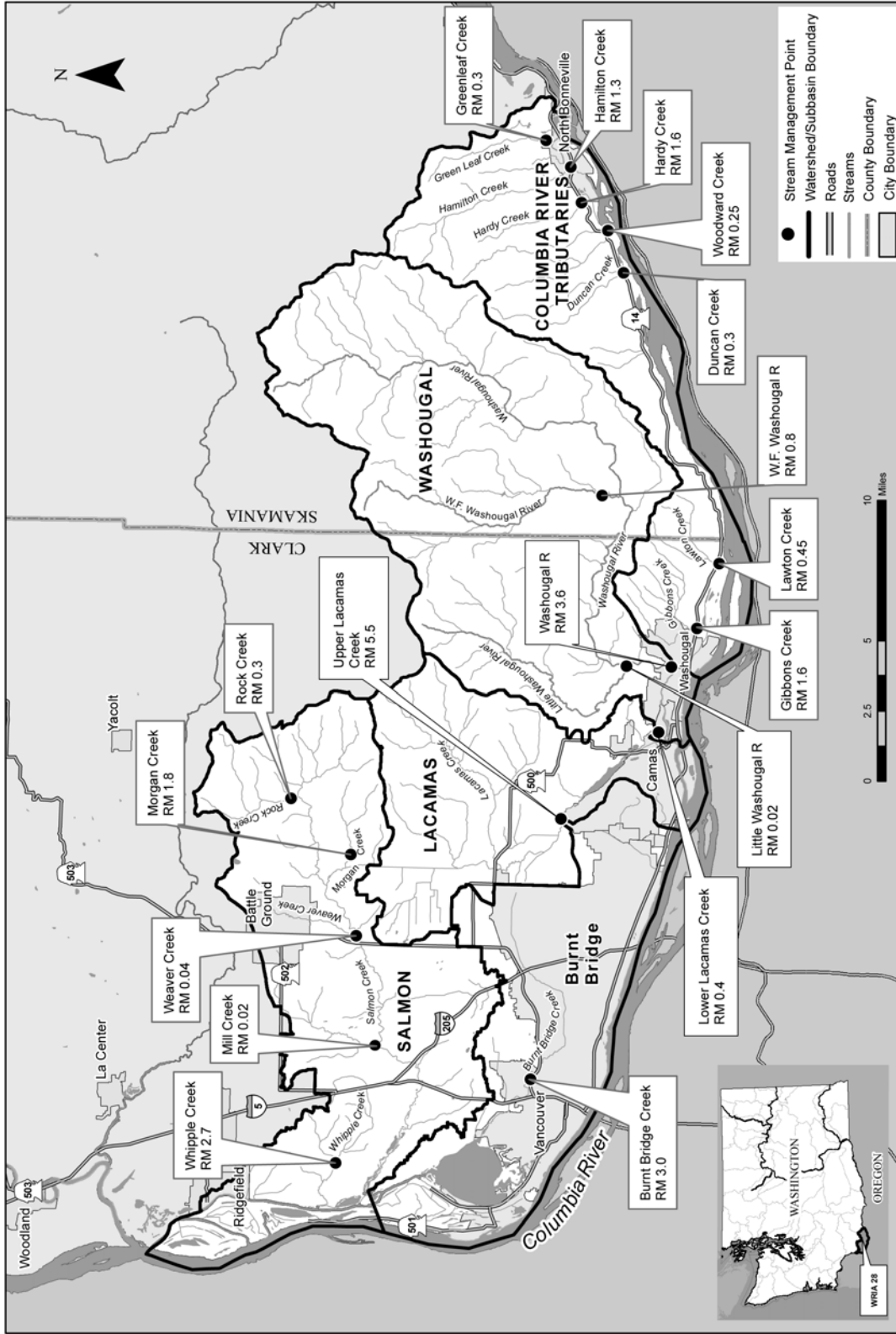
"Watershed plan" means the Salmon-Washougal and Lewis watershed management plan, adopted on July 21, 2006, by the Clark, Cowlitz, and Skamania county commissioners.

"Withdrawal" means the extraction of ground water, or the diversion of surface water for a beneficial use.

NEW SECTION

WAC 173-528-030 Map.

WRIA 28 Stream Management Subbasins and Control Points



WRIA 28 Sub-Basin delineation from Sanborn Mapping Solutions Western Washington Land Cover Change Analysis
<http://www.ecy.wa.gov/services/gis/data/impervious/basins.htm>

WATER RESOURCES DIVISION
 WASHINGTON STATE DEPARTMENT OF ECOLOGY
 Water Resources GIS 5/29/2008

NEW SECTION

WAC 173-528-040 Compliance and enforcement. (1)

Ecology shall prepare and make available to the public, technical and educational information regarding the scope and requirements of this chapter. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws and rules.

(2) When ecology determines that a violation of this chapter has occurred, it shall:

(a) First attempt to achieve voluntary compliance, except in appropriate cases involving potential harm to other water rights or the environment. An approach to achieving voluntary compliance is to offer information and technical assistance to a violator. The information or technical assistance identifies, in writing, one or more means to accomplish the person's purposes within the framework of the law.

(b) If education and technical assistance do not achieve compliance, ecology has the authority to issue a notice of violation, a formal administrative order under RCW 43.27A.190, assess penalties under RCW 43.83B.336 and 90.03.600, or may seek criminal enforcement under RCW 90.03.400, 90.03.410, and 90.44.120.

PART B

INSTREAM FLOWS AND CLOSURES

NEW SECTION

WAC 173-528-050 Stream management control points. Ecology hereby establishes the following stream management control points shown in Table I. Management point locations are shown in WAC 173-528-030.

Table I

Stream Management Control Point Information

Stream Management Point Name	Control Station by River Mile (RM); Latitude (Lat.), Longitude (Long.)
Whipple Creek (at 179th St. crossing)	RM 2.7; 45°45'00"N, 122°42'52"W
Mill Creek (at North Salmon Creek Rd.)	RM 0.02; 45°43'50"N, 122°37'39"W
Weaver Creek (at 199th Rd. crossing)	RM 0.04; 45°44'33"N, 122°32'48"W
Morgan Creek (at 182nd St. crossing)	RM 1.8; 45°44'47"N, 122°29'13"W
Rock Creek (near 213th Rd.)	RM 0.3; 45°46'40"N, 122°26'47"W
Little Washougal River (at Highway 140 crossing)	RM 0.02; 45°36'26"N, 122°20'37"W
Washougal River (at Hathaway Park, Ecology gage 28B090)	RM 3.6; 45°35'02"N, 122°20'36"W
West Fork Washougal River (at Skamania Hatchery)	RM 0.8; 45°37'18"N, 122°13'07"W

Table I

Stream Management Control Point Information

Stream Management Point Name	Control Station by River Mile (RM); Latitude (Lat.), Longitude (Long.)
Gibbons Creek (at Frontage Rd. crossing)	RM 1.6; 45°34'31"N, 122°18'53"W
Lawton Creek (at Highway 14 crossing)	RM 0.45; 45°33'39"N, 122°16'00"W
Duncan Creek (at Highway 14 crossing)	RM 0.3; 45°36'47"N, 122°03'16"W
Woodward Creek (at Beacon Rock State Park Rd. crossing)	RM 0.25; 45°37'17"N, 122°01'25"W
Hardy Creek (at Highway 14 crossing)	RM 1.6; 45°38'07"N, 122°00'13"W
Hamilton Creek (near North Bonneville)	RM 1.3; 45°38'28"N, 121°58'39"W
Greenleaf Creek (at Cascade Drive crossing)	RM 0.3; 45°39'15"N, 121°57'29"W
Upper Lacamas Creek (at NE Goodwin Rd. crossing)	RM 5.5; 45°38'20"N, 122°27'25"W
Lower Lacamas Creek (NE 3rd Ave. crossing)	RM 0.4; 45°35'26"N, 122°23'28"W
Burnt Bridge Creek (at Arnold Park)	RM 3.0; 45°39'05"N, 122°38'57"W

NEW SECTION

WAC 173-528-060 Establishment of instream flows.

(1) The instream flows established in this chapter are based on the recommendations of the planning unit; consultation with the department of fish and wildlife, department of agriculture, and department of community, trade, and economic development; and public input received during the rule-making process. The planning unit recommended these instream flow levels by unanimous vote.

(2) Instream flows established in this chapter are water rights, which protect instream values and functions from future appropriations. The priority date of the instream flows is the effective date of this chapter. In accordance with RCW 90.82.080, this priority date received unanimous approval from the planning unit.

(3) Instream flow rights shall be protected from impairment by any new water rights commenced after the effective date of this chapter and by all future changes and transfers of senior and junior water rights, including both surface and ground water rights. The following water rights are not subject to the instream flows:

(a) A water right put to beneficial use before the effective date of this chapter, unless stated in the conditions of the water right or change authorization.

(b) Water rights appropriated from the reservation of water established in WAC 173-528-110.

(c) Water rights for environmental restoration purposes under WAC 173-528-140, unless included as a permit condition.

(4) Instream flows, expressed in cubic feet per second (cfs), are measured at the stream management control points in WAC 173-528-050. Instream flows apply to all stream reaches that contribute to flow at stream management control points, as shown in Table II of this section. For reaches that

are downstream of all management points, the flows established for the nearest upstream management control point shall apply to those reaches. However, if a point of withdrawal is downstream of the confluence of two or more branches, each having a designated management point, the combined flows of the management points shall apply to that withdrawal.

Table II
Instream Flows in the Salmon/Washougal Basin (cubic feet per second)

Month	Stream Management Control Point						
	Whipple Creek, RM 2.7	Mill Creek, RM 0.02	Weaver Creek, RM 0.04	Morgan Creek, RM 1.8	Rock Creek, RM 0.3	Burnt Bridge Creek, RM 3.0	Lower Lacomas Creek, RM 0.4
January	28	27	12	17	36	20	112
February	51	50	23	33	63	38	112
March	51	50	23	33	63	38	96
April	51	50	23	33	63	38	96
May	51	50	23	33	63	38	96
June	34	33	15	22	42	25	64
July	34	33	15	22	42	25	64
August	12	11	4	7	15	8	27
September	12	11	4	7	15	8	112
October	28	27	12	17	36	20	112
November	28	27	12	17	36	20	112
December	28	27	12	17	36	20	112

Month	Stream Management Control Point						
	Upper Lacomas Creek, RM 5.5	Washougal River, RM 3.6	Little Washougal River, RM 0.02	W.F. Washougal River, RM 0.8	Gibbons Creek, RM 1.6	Lawton Creek, RM 0.45	Duncan Creek, RM 0.3
January	39	425	193	205	27	24	21
February	39	425	193	205	49	44	39
March	39	375	160	169	49	44	39
April	39	375	160	169	49	44	39
May	39	375	160	169	49	44	39
June	39	525	107	112	33	29	26
July	39	240	107	112	33	29	26
August	39	168	48	51	11	10	8
September	39	264/425*	193	205	11	10	8
October	39	425	193	205	27	24	21
November	39	425	193	205	27	24	21
December	39	425	193	205	27	24	21

*The Washougal River, RM 3.6, instream flow right is for 264 cubic feet per second from September 1 to September 15, and 425 cubic feet per second from September 16 to September 30.

Month	Stream Management Control Point			
	Woodward Creek, RM 0.25	Hardy Creek, RM 1.6	Hamilton Creek, RM 1.3	Greenleaf Creek, RM 0.3
January	42	40	72	31
February	72	69	117	55
March	72	69	117	55
April	72	69	117	55
May	72	69	117	55
June	48	46	78	37
July	48	46	78	37
August	18	17	33	13
September	18	17	33	13
October	42	40	72	31
November	42	40	72	31
December	42	40	72	31

NEW SECTION

WAC 173-528-070 Surface and ground water closed to further consumptive appropriations. (1) Based on historical and current low flows and the water withdrawals by existing water right holders, ecology has determined that no waters are reliably available for new consumptive uses from certain surface water sources in the basin. Therefore, all surface waters listed in Table III are closed to any further consumptive appropriation, except as provided in WAC 173-528-080.

**Table III
Surface Water Closures**

Subbasin Name*	Affected Reach
Salmon Creek	Salmon Creek from confluence with Lake River (45°43'32"N, 122°44'07"W) to headwaters, including tributaries. Whipple Creek from confluence with Lake River (45°45'30"N, 122°44'57"W) to headwaters, including tributaries.
Burnt Bridge Creek	Burnt Bridge Creek from mouth at Vancouver Lake to headwaters, including tributaries.
Lacamas Creek	Lacamas Creek from confluence with Washougal River (45°35'13"N, 122°23'40"W) to headwaters, including tributaries.

**Table III
Surface Water Closures**

Subbasin Name*	Affected Reach
Washougal River	Washougal River from mouth at Columbia River to headwaters, including tributaries.
Columbia River Tributaries	All surface waters in the Columbia River tributaries subbasin from mouth at Columbia River to headwaters, including tributaries.

*Subbasin boundaries are shown in WAC 173-528-030, and are consistent with the boundary descriptions used in the watershed plan.

(2) Based on the hydrogeology of the basin, and the location and depth where ground water withdrawals generally occur, there is a high likelihood that future ground water withdrawals would capture water that affects closed surface waters. Therefore, the basin is closed to new withdrawals of ground water (including any new permit-exempt withdrawals) that would affect closed surface waters, except as provided in WAC 173-528-080.

(3) Applications for a withdrawal that would not affect the closed reaches, listed in Table III, shall be evaluated on a case-by-case basis under applicable law.

**PART C
FUTURE WATER RIGHTS**

NEW SECTION

WAC 173-528-080 Future water rights, generally. A new surface or ground water appropriation (including any permit-exempt withdrawal) may be commenced only if consistent with the surface and ground water statutes and other

applicable requirements of law and if any one of the following seven conditions (subsections (1) through (7) of this section) apply:

(1) The proposed water use is nonconsumptive.

(2) The proposed surface water diversion is not located on any of the surface waters closed in WAC 173-528-070, Table III.

(3) The proposed ground water withdrawal is located where it would not affect any of the surface waters closed in WAC 173-528-070, Table III by either meeting condition (a) or (b) of this subsection:

(a) The person or entity seeking to commence a proposed ground water use shows, through scientifically sound studies and technical analysis, that the ground water use would not affect any of the closed surface waters identified in WAC 173-528-070, Table III.

(b) The proposed ground water withdrawal occurs in a regional supply area designated in WAC 173-528-090 or by order of ecology.

(4) The person or entity seeking to commence the new appropriation submits a scientifically sound mitigation plan, and such plan is approved by ecology. A mitigation plan may be approved if the proponent can demonstrate to ecology's satisfaction that when the mitigation is implemented the proposed withdrawal(s) will not impair senior water rights, including instream flow rights, adversely impact instream resources, or diminish water quality. A mitigation plan can be submitted to mitigate for an individual withdrawal or to mitigate for multiple withdrawals in a defined region.

An approved mitigation plan shall include a monitoring and reporting plan. It shall also include conditions that the plan be implemented as long as the associated water right is used and that any water provided for mitigation purposes be prohibited from being applied to any other purpose. If monitoring of a mitigation plan shows the mitigation is not effective, departmental approval of the mitigation plan shall be suspended and the water use shall cease until the department approves a new or revised mitigation plan.

(5) The proposed water use qualifies as an interruptible use as defined in WAC 173-528-020, and meets the criteria in WAC 173-528-100.

(6) The proposed water use qualifies for the reservation established and as conditioned in WAC 173-528-110.

(7) The proposed use is for an environmental restoration project and meets the criteria in WAC 173-528-140.

NEW SECTION

WAC 173-528-090 Regional supply areas for future ground water withdrawals. (1) Ecology finds there to be certain locations where water is potentially available on a year-round basis for future ground water withdrawals. Ecology further finds that withdrawals in these areas are unlikely to affect surface waters closed in WAC 173-528-070, Table III or instream flow values protected under RCW 90.54.020(3). Such regional supply areas are recognized in the watershed plan and supported by the public interest as preferred locations for developing future water supply. Ground water withdrawals (including permit-exempt withdrawals) may be commenced in the designated regional sup-

ply areas to the extent such withdrawals are consistent with chapters 90.03 and 90.44 RCW, and any other applicable requirements of law.

(2) Based on local hydrology, ecology finds that ground water withdrawals made in areas designated below meet the conditions for regional supply areas in subsection (1) of this section and are so designated:

(a) The Vancouver Lake Lowlands Area, defined as all lands located west of the Burlington Northern Santa Fe Railroad right of way that are within Water Resource Inventory Area 28; and

(b) The Steigerwald Wildlife Refuge Area, defined as all lands located east of 15th Street in the city of Washougal, south of Washington State Highway 14, and west of Lawton Creek.

(3) Ecology, in consultation with the department of fish and wildlife, may by order designate other regional supply areas that meet the criteria in subsection (1) of this section.

(4) In order to protect instream values of surface waters in regional supply areas, ecology reserves the right to deny any withdrawals whereby drawdown effects from pumping would create a significant impact to local surface waters. For the purposes of this section, significant impact includes but is not limited to a noticeable reduction in lake level or flow in local streams.

NEW SECTION

WAC 173-528-100 Future appropriations for interruptible use from the Washougal River. (1) Ecology finds there may be water available in the Washougal River, above existing water rights and instream flows, which could be captured for interruptible use. This water is only available from November 16 to May 14.

(2) Prior to commencement, the person or entity seeking a new interruptible appropriation must demonstrate a seasonal need and provide assurances that any effects on surface waters that may result from withdrawals will be limited from November 16 to May 14 and only from the Washougal River.

(3) Ecology shall deny an appropriation for interruptible use if such use, or the cumulative effects of such uses, would compromise habitat-forming functions provided by high flows. In no case shall new individual or cumulative allocations exceed one hundred cubic feet per second. This allocation limit is based upon an allowance for ten percent of the average historic flow. The allocation limit may be lowered on a case-by-case basis whenever more protection of habitat-forming functions is needed.

(4) Interruptible uses are subject to existing water rights and instream flows set in WAC 173-528-060.

NEW SECTION

WAC 173-528-110 Reservation of surface and ground water for future uses. (1) Ecology has weighed the public interest that supports the reservation of a limited amount of water for future consumptive uses against the potential for negative impact to instream resources. Ecology finds that the public interest advanced by a limited reservation clearly overrides the small potential for negative impacts on instream resources.

Based on this finding, ecology hereby allocates an amount and rate of use of water for specific water users and subbasins, as indicated under the subtitle "Net streamflow depletion" in Table IV. The reservations are a one time, finite resource. When and if water is fully appropriated from the reservation, all remaining waters in closed areas are hereby appropriated for instream flow use.

This reservation is available to a user only if the conditions set forth in subsection (2) or (6) of this section are met, as well as any applicable requirements of law, including but not limited to all water resource laws and regulations.

(2) Ecology may approve a water right application for water from the reservation if all of the following conditions in (a), (b), (c), and (d) of this subsection are met:

Alternatives analysis

(a) The applicant demonstrates that no practicable supply alternatives to the reservation are available. In order to satisfy this condition, an applicant must demonstrate consideration of other regional water sources to supply water for the same use now being proposed, including:

- (i) Existing public water system supply;
- (ii) Water from a ground or surface water source, which may be withdrawn without affecting any of the surface waters closed in WAC 173-528-070, such as water from a hydraulically disconnected deep aquifer source or regional supply area;
- (iii) Supply options from surface and ground water storage;
- (iv) Water savings from conservation techniques, such as reuse of waste water; and
- (v) Mitigation and minimization considerations to the extent required in (d) of this subsection, impact analysis.

Water-related offset

(b) The applicant demonstrates it will offset the overall streamflow depletion(s) through water-related actions to the maximum extent practicable. Applicants should offset at least one-half of the overall streamflow depletion(s) through water-related actions.

(i) In evaluating the adequacy of water-related actions to offset depletions, ecology will evaluate the action based on the degree of aquatic benefit it would provide. A water-related offset may have a greater or lesser benefit due to the seasonality, location, or quality of water provided. The level of benefit will be used to determine if any additional offsets will be required of the applicant.

(ii) Ecology will consider water-related offsets only to the extent that reasonable assurance exists that such offsets will be successfully delivered or donated to the trust water right program under chapter 90.42 RCW where delivery is legally guaranteed.

Habitat-related offset

(c) After satisfying the water-related offset requirement in (b) of this subsection, an applicant must offset any remaining streamflow depletion through habitat-related actions that create or enhance habitat. Habitat-related offsets must compensate for the habitat loss or degradation that will result from the net streamflow depletion.

An applicant must provide adequate assurances that a habitat-related action in fact occurs. Ecology, as appropriate, shall condition use of the reservation with performance stan-

dards and monitoring requirements, or require financial assurance mechanisms prior to reservation use.

Impact analysis

(d) In keeping with the findings of the watershed plan, ecology finds that the public interest supports avoidance and minimizing impacts to tributaries. The applicant must demonstrate one of the following:

- (i) The proposed withdrawal does not impact tributaries to subbasin mainstems; or
- (ii) An impact to a tributary to a subbasin mainstem is unavoidable, as demonstrated by an impact analysis, included as part of the alternatives analysis under (a) of this subsection. In addition to demonstrating the necessary considerations under (a) of this subsection, the impact analysis must demonstrate consideration of water supply options that avoid the impact to the tributary as well as supply options that may minimize such impact.

Ecology, in consultation with the department of fish and wildlife, may require an applicant to monitor affects of a ground water withdrawal as a condition of water use.

Application review and permitting

(3) In determining practicability in subsection (2) of this section, ecology will consider both economic and logistic considerations, as well as guidance from the watershed plan.

(4) Ecology, in consultation with the department of fish and wildlife, will evaluate the adequacy of proposed offsets and alternatives analysis in subsection (2) of this section. The evaluation shall be consistent with the watershed plan and guidance documents approved by ecology. Ecology will also consider recommendations and technical advice received from the planning unit or by an advisory committee, formally designated by the planning unit.

(5) Ecology will issue a permit for use of water equal to the amount it determines appropriate to allocate from the reservation, and such amount will be debited from the total reservation amount. The total quantity of water appropriated shall not exceed the amount and rate listed under the subtitle "Net streamflow depletion" in Table IV. However, ecology will issue a permit for a quantity beyond the amount debited from the reservation for the following:

(a) Water-related offsets to the extent such offsets are water-for-water, to the satisfaction of RCW 90.03.380 or 90.44.100, any other applicable laws, and terms of an approved mitigation plan under WAC 173-528-080(4); and

(b) Water use to the extent closed water sources are not affected and to the satisfaction of applicable requirements of law, including but not limited to all water resource laws and regulations.

Permit-exempt ground water use

(6) The requirements in subsection (2) of this section do not apply to permit-exempt withdrawals. However, permit-exempt withdrawals under RCW 90.44.050 are subject to both of the following conditions in order to occur under the reservation:

(a) Future permit-exempt well use may not occur where connection to an existing community water supplier can be provided in a timely and reasonable manner. Determinations of timely and reasonable shall be consistent with public water system plans, local laws, and state laws, including but not

limited to Clark County Code 40.370.020 and chapter 246-290 WAC.

(b) Water use from a permit-exempt ground water well must be consistent with the allocation limits of this reservation and the Clark and Skamania County code and other

applicable laws, including the statute on permit exemptions, RCW 90.44.050. Single or group domestic uses under the permit exemption shall not exceed five thousand gallons per day. Irrigation of lawn and noncommercial garden under the permit exemption shall not exceed one-half acre.

**Table IV
Allocation of Reservation**

Subbasin Name*	Water User**	Expected Streamflow Depletion without Offset (overall depletion) cubic feet per second (cfs)	Expected Water-related Offset Requirement (cfs)	Net Streamflow Depletion*** (cfs)
Salmon Creek	Clark Public Utility, Battle Ground and Ridgefield	0.25	0.13	0.13
	Permit-exempt ground water wells	0.12	0.00	0.12
Burnt Bridge	City of Vancouver	0.04	0.02	0.02
Lacamas Creek	City of Camas	1.00	0.50	0.50****
	Clark Public Utility	0.60	0.30	0.30
	Other public water systems	0.37	0.19	0.19
	Permit-exempt ground water wells	0.17	0.00	0.17
Washougal River	City of Camas	1.00	0.50	0.50****
	Other public water systems in Clark County	0.37	0.19	0.19
	Permit-exempt ground water wells in Clark County	0.17	0.00	0.17
	Other public water systems in Skamania County	0.20	0.10	0.10
	Permit-exempt ground water wells in Skamania County	0.64	0.00	0.64
Columbia River Tributaries	Public water systems in Clark County	0.21	0.10	0.10
	Permit-exempt ground water wells in Clark County	0.12	0.00	0.12
	Public water systems in Skamania County	0.21	0.10	0.10
	Permit-exempt ground water wells in Skamania County	0.12	0.00	0.12

*Subbasin boundaries are shown in WAC 173-528-030, and are consistent with the boundary descriptions used in the watershed plan.

** In the Salmon-Washougal and Lewis watershed management plan, the term "domestic wells" has the same meaning as "permit-exempt ground water wells" and the term "small community water systems" has the same meaning as "public water systems."

**Table IV
Allocation of Reservation**

Subbasin Name*	Water User**	Expected Streamflow Depletion without Offset (overall depletion) cubic feet per second (cfs)	Expected Water-related Offset Requirement (cfs)	Net Streamflow Depletion*** (cfs)
<p>*** If conditions in subsections (2) and (6) of this section are satisfied, the net depletion of a closed water source, set in WAC 173-528-070, shall not exceed the quantities listed for specific users.</p> <p>****The total net stream flow depletion for the city of Camas from both Lacamas and Washougal river subbasins shall not exceed 0.50 cfs.</p>				

NEW SECTION

WAC 173-528-120 Priority dates of reservation and repeal of chapter 173-592 WAC. (1) The reservation created in WAC 173-528-110 is not subject to the instream flows or closures set in this chapter, and the priority date of the reservation for all areas outside Clark County is the effective date of this chapter.

(2) Ecology hereby transfers unappropriated water from the existing reservation for Clark County in WAC 173-592-070 in such quantities and to the users and areas of use in Clark County as set forth in WAC 173-528-110, Table IV and WAC 173-527-110, Table V. Pursuant to this transfer, the priority date of withdrawals from all Clark County portions of the reservation in WAC 173-528-110 is August 13, 1986. However, the designation of specific municipal suppliers in this reservation does not create a right for these entities to use such water. Such a right will arise only if a permit is applied for by such municipal suppliers to use water under the reservation and approved by ecology after applying the legal tests for a new appropriation. With respect to any water for which a permit has not been granted, ecology reserves the right to modify in all respects or rescind the reservation by future rule making.

(3) Based on new information made available through the local watershed planning process and hydrologic conditions as of the time of this rule making, ecology has determined that the remaining water reserved under WAC 173-592-070, which was not transferred in subsection (2) of this section or previously appropriated is no longer supported by available information and science. Therefore, chapter 173-592 WAC is hereby repealed in its entirety and all water reserved under that rule that has not been transferred or appropriated is hereby returned to the state. This repeal is not intended to affect any existing water rights issued under the reservation.

NEW SECTION

WAC 173-528-130 Accounting for use under the reservation. (1) A record of all appropriations from the reservation shall be maintained by ecology.

(2) For an appropriation under a permit, ecology will account for water use under the reservation based on authorized quantities under water right permits or certificates, and according to WAC 173-528-110(5).

(3) For permit-exempt ground water appropriations, ecology will deduct a standard amount of two hundred forty gallons per day for each well. For a group domestic water system under the permit-exemption, the standard amount will be applied for each domestic or residential service connection. The standard amount will be adjusted periodically to reflect actual use during low flow conditions. The standard amount assumes a rate of septic recharge from an on-site septic system. In the event that on-site septic recharge is known not to occur, ecology will deduct an additional five hundred sixty gallons per day. Additionally, ecology reserves the right to account for water use based on the best available information contained in well logs, approvals issued by local jurisdictions, or other documents.

(4) If a water user under the reservation subsequently abandons or relinquishes the withdrawal, ecology will credit back to the reservation the actual amount of water used and/or debited from the reservation, upon demonstration to ecology that the well or surface water diversion has been decommissioned through written certification.

(5) Ecology shall notify either Clark or Skamania County and the planning unit, when it determines that fifty percent, seventy-five percent, and one hundred percent, respectively, of the reservation is appropriated for a water user in Table IV.

NEW SECTION

WAC 173-528-140 Future surface water withdrawals for environmental restoration. In keeping with the findings of the watershed plan, ecology finds that the public interest advanced by future withdrawals for ERPs, as defined and conditioned in this section, clearly overrides the minimal negative impacts on instream flows.

(1) A future withdrawal for an ERP may be approved only if it meets all the following:

(a) The proposed water use is for a bypass flow for salmonid restoration or riparian planting project, and the primary purpose of the project is restoration of salmonids.

(b) The proposed project will result in aquatic habitat benefits, and such benefits will exceed any detriment to aquatic habitat that may be caused by reductions in flow at specific locations and times of withdrawal.

(c) The proposed use qualifies for a temporary permit.

(2) Ecology, in consultation with the department of fish and wildlife, will evaluate proposed ERPs. ERPs approved by ecology are not subject to closures or instream flows set in this chapter, unless otherwise conditioned by the permit.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-592-010	Purpose.
WAC 173-592-020	Authority.
WAC 173-592-030	General.
WAC 173-592-040	Reservation source of supply area defined.
WAC 173-592-050	Definitions.
WAC 173-592-060	Petition received—Notice.
WAC 173-592-070	Reservation.
WAC 173-592-080	Monitoring program.
WAC 173-592-090	Water quality.
WAC 173-592-100	Exemptions.
WAC 173-592-110	Regulation review.
WAC 173-592-115	Appeals.
WAC 173-592-120	Reservation source of supply area map.

WSR 09-01-156
PERMANENT RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Division of Consumer Services)

[Filed December 23, 2008, 9:07 a.m., effective January 23, 2009]

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

Purpose: Amending the rules in chapter 208-660 WAC to implement chapters 78, 108, and 109, Laws of 2008, that amended the Mortgage Broker Practices Act, and generally amending the rules for clarity and consistency.

Citation of Existing Rules Affected by this Order: Amending WAC 208-660-006, 208-660-008, 208-660-155, 208-660-163, 208-660-195, 208-660-250, 208-660-260, 208-660-300, 208-660-350, 208-660-360, 208-660-370, 208-660-400, 208-660-420, 208-660-430, 208-660-440, 208-660-500, and 208-660-600.

Statutory Authority for Adoption: RCW 43.320.040.

Other Authority: RCW 19.144.070, chapter 109, Laws of 2008.

Adopted under notice filed as WSR 08-21-165 on October 22, 2008.

Changes Other than Editing from Proposed to Adopted Version: 1. WAC 208-660-006, application, the CR-103 ver-

sion is amended to reflect changes in federal law that were not reflected in the CR-102.

2. WAC 208-660-006, business day, the CR-103 version of the definition amends the CR-102 version after further consideration of industry comments.

3. WAC 208-660-155(11), the CR-103 version amends the CR-102 version to correctly identify a process that must be completed through the NMLS.

4. WAC 208-660-163(12), the CR-103 version amends the CR-102 version to correctly identify a process that must be completed through the NMLS.

5. WAC 208-660-195(4), the CR-103 version amends the CR-102 version to correctly identify a process that must be completed through the NMLS.

6. WAC 208-660-350 (2)(c), the CR-103 version amends the CR-102 version to reflect that while federal law authorizes the CR-102 version, state law does not.

7. WAC 208-660-370(2), the CR-103 version amends the CR-102 version to reflect that the state may require clock hours of continuing education in addition to the federally required clock hours.

8. WAC 208-660-430(1), the CR-103 version amends the CR-102 version to give more specificity to the requirement in the rule.

9. WAC 208-660-500 (3)(o), the CR-103 version amends the CR-102 version to give an example of the prohibition in the rule.

10. WAC 208-660-500(6) Federal guidance, the CR-103 version amends the CR-102 version to remove a section on risk management after further consideration of industry comments.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 2, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 14, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 14, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 17, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 23, 2008.

Deborah Bortner, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 08-11-103, filed 5/20/08, effective 6/20/08)

WAC 208-660-006 Definitions. What definitions are applicable to these rules? Unless the context clearly requires otherwise, the definitions in this section apply throughout these rules.

"Act" means the Mortgage Broker Practices Act, chapter 19.146 RCW.

"Advertising material" means any form of sales or promotional materials used in connection with the mortgage broker business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; or internet pages.

"Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

"Application" means the ~~((same as in Regulation X, Real Estate Settlement Procedures, 24 C.F.R. Sec. 3500 as of the effective date of these rules, which is the))~~ submission ~~(, whether written or computer-generated,)~~ of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which shall include the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator. An application may be in writing or electronically submitted, including a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

~~((For a refinance or purchase application that is not a prequalification, the credit report may be enough to constitute an application. The credit report date determines when the mortgage broker, or loan originator on behalf of the mortgage broker, has gathered sufficient information to make a credit decision. This may be a trigger for early disclosures when the property address is known.))~~

"Appraisal" means the act or process of developing an opinion of value, the act pertaining to an appraisal-related function, or any verbal or written opinion of value offered by an appraiser. The opinion of value by the appraiser includes any communication that is offered as a single point, a value range, a possible value range, exclusion of a value, or a minimum value.

"Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

"Branch office" means a fixed physical location such as an office, separate from the principal place of business of the licensee, where the licensee holds itself out as a mortgage broker.

"Branch office license" means a branch office license issued by the director allowing the licensee to conduct a mortgage broker business at the location indicated on the license.

"Business day" means Monday through Friday excluding federally recognized bank holidays.

"Certificate of passing an approved examination" means a certificate signed by the testing administrator verifying that the individual performed with a satisfactory score or higher.

"Certificate of satisfactory completion of an approved continuing education course" means a certificate signed by the course provider verifying that the individual has attended an approved continuing education course.

"Compensation or gain" means remuneration, benefits, or an increase in something having monetary value, including, but not limited to, moneys, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing moneys that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special or unusual bank or financing terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payments of another person's expenses, or reduction in credit against an existing obligation. "Compensation or gain" is not evaluated solely on a loan by loan basis.

For example, a realtor advertising that buyers using their services will receive free loan origination assistance is doing so in the anticipation of "compensation or gain" through increased real estate business.

"Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

For purposes of this definition, the CLI system includes computer hardware or software, an internet-based system, or any combination of these, which provides information to consumers about residential mortgage interest rates and other loan terms which are available from another person.

"Computer loan information system provider" or "CLI provider" is any person who provides a computer loan information service, either directly, or as an owner-operator of a CLI system, or both.

"Consumer Protection Act" means chapter 19.86 RCW.

"Control" including the terms "controls," "is controlled by," or "is under common control" means the power, directly or indirectly, to direct or cause the direction of the management or policies of a person, whether through ownership of the business, by contract, or otherwise. A person is presumed to control another person if such person is:

- A general partner, officer, director, or employer of another person;
- Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interests of another person; or
- Has similar status or function in the business as a person in this definition.

"Convicted of a crime," irrespective of the pronouncement or suspension of sentence, means a person:

- Has been convicted of the crime in any jurisdiction;

- Has been convicted of a crime which, if committed within this state would constitute a crime under the laws of this state;

- Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or

- Has been found guilty of a crime by the decision or judgment of a state or federal judge or magistrate, or by the verdict of a jury.

"Department" means the department of financial institutions.

"Designated broker" means a natural person designated as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210 (1)(e).

"Director" means the director of financial institutions.

"Discount points" or "points" mean a fee paid by a borrower to a lender to reduce the interest rate of a residential mortgage loan. Pursuant to Regulation X, discount points are to be reflected on line 802 of the good faith estimate and settlement statement as a percentage of the loan amount.

"Division of consumer services" means the division of consumer services within the department of financial institutions, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

"Employee" means an individual who has an employment relationship with a mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

"Examination" or "compliance examination" means the examination performed by the division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules to determine whether the licensee is in compliance with applicable laws and regulations.

Federal statutes and regulations used in these rules are:

- "Alternative Mortgage Transaction Parity Act" means the Alternative Mortgage Transaction Parity Act (AMTPA), 12 U.S.C. Sec. 3801 et seq.

- "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 et seq., Regulation B, 12 ((~~C.F.R.~~)) CFR Part 202.

- "Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

- "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 45(a).

- "Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 ((~~C.F.R.~~)) CFR Parts 313-314.

- "Home Equity Loan Consumer Protection Act" means the Home Equity Loan Consumer Protection Act, 15 U.S.C. Sec. 1637 and 1647.

- "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Sec. 2801-2810, Regulation C, 12 ((~~C.F.R.~~)) CFR Part 203.

- "Home Ownership and Equity Protection Act" means the Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. Sec. 1639.

- "Homeowners Protection Act" means the Homeowners Protection Act of 1998 (HPA), 12 U.S.C. Sec. 4901 et seq.

- "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sec. 2601 et seq., Regulation X, 24 ((~~C.F.R.~~)) CFR Part 3500 et seq.

"SAFE" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 ("HERA"), Public Law No. 110-289, effective July 30, 2008.

- "Telemarketing and Consumer Fraud and Abuse Prevention Act" means the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101-6108, Telephone Sales Rule, 16 ((~~C.F.R.~~)) CFR Part 310.

- "Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 ((~~C.F.R.~~)) CFR Part 226 et seq.

"Federally insured financial institution" means a savings bank, savings and loan association, or credit union, whether state or federally chartered, or a federally insured bank, authorized to conduct business in this state.

"Financial misconduct," for the purposes of the act, means a criminal conviction for any of the following:

- Any conduct prohibited by the act;

- Any conduct prohibited by statutes governing mortgage brokers in other states, or the United States, if such conduct would constitute a violation of the act;

- Any conduct prohibited by statutes governing other segments of the financial services industry, including but not limited to the Consumer Protection Act, statutes governing the conduct of securities broker dealers, financial advisers, escrow officers, title insurance companies, limited practice officers, trust companies, and other licensed or chartered financial service providers; or

- Any conduct commonly known as white collar crime, including, but not limited to, embezzlement, identity theft, mail or wire fraud, insider trading, money laundering, check fraud, or similar crimes.

"Independent contractor" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws.

The following factors may be considered to determine if a person is an independent contractor:

Is the person instructed about when, where and how to work?

Is the person guaranteed a regular wage?

Is the person reimbursed for business expenses?

Does the person maintain a separate business?

Is the person exposed to potential profits and losses?

Is the person provided employee benefits such as insurance, a pension plan, or vacation or sick pay?

"Licensee" means:

- A mortgage broker licensed by the director; or

- The principal(s) or designated broker of a mortgage broker; or
- A loan originator licensed by the director; or
- Any person subject to licensing under RCW 19.146.200; or
- Any person acting as a mortgage broker or loan originator subject to any provisions of the act.

"License application fee" means immediately available funds paid to the department for each mortgage broker, loan originator, or mortgage broker branch office license application.

"Loan application" means the same as "application," in this section.

"Loan originator" means a natural person who:

- Takes a residential mortgage loan application for a mortgage broker; or
- Offers or negotiates terms of a mortgage loan, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain. "Loan originator" also includes a person who holds themselves out to the public as able to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a loan. A person who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

For purposes of further defining "loan originator," "taking a residential mortgage loan application" includes soliciting, accepting, or offering to accept an application for a residential mortgage loan or assisting a borrower or offering to assist a borrower in the preparation of a residential mortgage loan application.

For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that the person engages in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate lists or other promotional items.

"Loan originator licensee" means a natural person who is licensed as a loan originator or is subject to licensing under RCW 19.146.200 or who is acting as a loan originator subject to any provisions of the act.

"Loan processor" means a natural person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensed or exempt mortgage broker. The job responsibilities may include the receipt, collection and distribution of information common for the processing of a loan. The loan processor may also communicate with a borrower to obtain the information necessary for the processing of a loan, provided that such communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms.

"Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms

will be the rate or terms at which it will make a loan available to that borrower.

"Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan.

For purposes of this definition, a person "assists a person in obtaining or applying to obtain a residential mortgage loan" by, among other things, counseling on loan terms (rates, fees, other costs), preparing loan packages, or collecting enough information on behalf of the consumer to anticipate a credit decision under Regulation X, 24 CFR Part 3500, Section 3500 (2)(b).

For purposes of this definition, a person "holds himself or herself out" by advertising or otherwise informing the public that they engage in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate sheets, or other promotional items.

"Mortgage broker licensee" means a person that is licensed as a mortgage broker or is subject to licensing under RCW 19.146.200 or is acting as a mortgage broker subject to any provisions of the act.

"Mortgage Broker Practices Act" means chapter 19.146 RCW.

"Nationwide Mortgage Licensing System and Registry (NMLSR)" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators.

"Out-of-state applicant or licensee" means a person subject to licensing that maintains an office outside of this state.

"Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

"Prepaid escrowed costs of ownership," as used in RCW 19.146.030(4), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan.

"Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, or corporation, and the owner of a sole proprietorship.

"Registered agent" means a person located in Washington appointed to accept service of process for a licensee.

"Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units.

For purposes of this definition, a loan "primarily for personal, family, or household use" includes loan applications for a finance or refinance of a primary residence for any purpose, loan applications on second homes, and loan applications on nonowner occupied residential real estate provided the licensee has knowledge that proceeds of the loan are

intended to be used primarily for personal, family or household use.

"Residential real estate" is real property upon which is constructed or intended to be constructed, a single family dwelling or multiple family dwelling of four or less units.

- Residential real estate includes, but is not limited to:
 - A single family home;
 - A duplex;
 - A triplex;
 - A fourplex;
 - A single condominium in a condominium complex;
 - A single unit within a cooperative;
 - A manufactured home when the home and real property together will secure the residential mortgage loan; or
 - A fractile, fee simple interest in any of the above.
- Residential real estate does not include:
 - An apartment building or dwelling of five or more units;
 - A single piece of real estate with five or more single family dwellings unless each dwelling is capable of being financed independently of the other dwellings; or
 - Any dwelling on leased or rented land or space, such as dwellings in a manufactured home park unless the mortgage broker treats such property as residential real estate.

"Table-funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. The mortgage broker originates the loan and closes the loan in its own name with funds provided contemporaneously by a lender to whom the closed loan is assigned.

"Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

"Underwriting" means a lender's detailed credit analysis preceding the offering or making of a loan. The analysis may be based on information furnished by the borrower (employment history, salary, financial statements), the borrower's credit history from a credit report, the lender's evaluation of the borrower's credit needs and ability to pay, and an assessment of the collateral for the loan. While mortgage brokers may have access to various automated underwriting systems to facilitate an evaluation of the borrower's qualifications, the mortgage broker who qualifies or approves a borrower in this manner is not the underwriter of the loan and cannot charge a fee for underwriting the loan. Third-party charges the mortgage broker incurs in using or accessing an automated system to qualify or approve a borrower may, like other third-party expenses, be passed on to the borrower.

AMENDATORY SECTION (Amending WSR 08-11-103, filed 5/20/08, effective 6/20/08)

WAC 208-660-008 Exemption from licensing. (1) **If I am licensed as an insurance agent under RCW 48.17.060,**

must I have a separate license to act as a loan originator or mortgage broker? Yes. You will need a separate license as a loan originator or mortgage broker if you are a licensed insurance agent and you do any of the following:

- (a) Take a residential mortgage loan application for a mortgage broker;
- (b) Offer or negotiate terms of a mortgage loan for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain;
- (c) ~~(Make a residential mortgage loan, or)~~ Assist a person in obtaining or applying to obtain a residential mortgage loan, for compensation or gain; or
- (d) Hold yourself out as being able to perform any of the above services.

(2) **Are insurance companies exempt from the Mortgage Broker Practices Act?** Yes. Insurance companies authorized to transact the business of insurance in this state by the Washington state office of the insurance commissioner are exempt from the Mortgage Broker Practices Act.

(3) **If I make residential mortgage loans under the Consumer Loan Act, chapter 31.04 RCW, am I exempt from the Mortgage Broker Practices Act?** If you are licensed under the Consumer Loan Act, only residential mortgage loans are exempt from the Mortgage Broker Practices Act. Complying with the Consumer Loan Act includes abiding by the requirements and restrictions of that act and counting all loans originated and made under that act for purposes of your annual assessment.

(4) **If I make residential mortgage loans under the Consumer Loan Act, chapter 31.04 RCW, are my loan originators exempt from the Mortgage Broker Practices Act?** Your loan originator employees are also exempt from the Mortgage Broker Practices Act for their loan originator activities on residential mortgage loans.

Your independent contractor loan originators are not exempt from the Mortgage Broker Practices Act for their residential mortgage loan originator activities.

(5) **As an attorney, must I have a mortgage broker or loan originator license to assist a person in obtaining or applying to obtain a residential mortgage loan in the course of my practice?**

(a) If you are an attorney licensed in Washington and if the mortgage broker activities are incidental to your professional duties as an attorney, you are exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (1)(c).

(b) Whether an exemption is available to you depends on the facts and circumstances of your particular situation. For example, if you hold yourself out publicly as being able to perform the services of a mortgage broker or loan originator, or if your fee structure for those services is different from the customary fee structure for your professional legal services, the department will consider you to be principally engaged in the mortgage broker business and you will need a mortgage broker or loan originator license before performing those services. A "customary" fee structure for the professional legal service does not include the receipt of compensation or gain associated with assisting a borrower in obtaining a residential mortgage loan on the property.

(6) **As a licensed real estate broker or salesperson, must I have a mortgage broker or loan originator license**

when I assist the purchaser in obtaining financing for a residential mortgage loan involving a bona fide sale of real estate? You are exempt from the act under RCW 19.146.020 (1)(~~(g)~~) (f) if you only receive the customary real estate commission in connection with the transaction. A "customary" real estate commission does not include receipt of compensation or gain associated with the financing of the property. A "customary" real estate commission only includes the agreed upon commission designated in the listing or purchase and sale agreement for the bona fide sale of the subject property.

(7) Under what circumstances will the director approve an exemption under RCW 19.146.020(4) for the exclusive agents working as loan originators of an affiliate of a bank that is wholly owned by the bank holding company that owns that bank?

(a) The director will provide a written exemption from loan originator licensing for the exclusive agents of an affiliate of a bank that is wholly owned by the bank holding company that owns the bank if the director finds that the affiliate is licensed and is in "good standing" with the department and the affiliate has procedures in place, as evidenced by a written "plan of business," to reasonably assure the department that:

(i) The exclusive agents of the affiliate of a bank operate exclusively as loan originators for the affiliate and not for other mortgage brokers;

(ii) The affiliate of the bank requires continuing education for the exclusive agents that meets the same or similar requirements approved by the director for licensed loan originators;

(iii) The affiliate of the bank will notify the department if the affiliate terminates an exclusive agent because the exclusive agent:

(A) Has had any license, or any authorization to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years; or

(B) Has been convicted of a felony, or a gross misdemeanor involving dishonesty or financial misconduct, within the prior seven years; or

(C) Has been subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

(b) To qualify for this exemption, the affiliate must make a written request to the department and submit a "plan of business" with the request. After receipt of this request, the department will notify the affiliate in writing within ten business days whether the affiliate's exclusive agents qualify for the exemption, or if the department will conduct additional review of the affiliate and the "plan of business." The affiliates must receive the department's notice of qualification for exemption before the affiliate's exclusive agents take any action that would subject them to licensing under the act.

(c) The exemption granted by the director remains valid as long as the affiliate complies in all material respects with its "plan of business" and the affiliate remains in good standing with the department.

(8) What are the responsibilities of a mortgage broker that is exempt from the licensing provisions of the act? The owners of companies exempt from licensing under RCW 19.146.020 (1)(e), (g), or (4), are responsible for:

(a) Complying with RCW 19.146.0201 through 19.146.080, and 19.146.235;

(b) Ensuring compliance with the act by all persons representing the exempt mortgage broker; and

(c) Notifying the director of any change affecting the mortgage broker's exempt status under the act.

(9) Are the independent contractor(~~(s)~~) loan originators of a mortgage broker exempt from licensing under RCW 19.146.020 (1)(b), (c), (e), and (g) themselves exempt? No. After January 1, 2007, an independent contractor working as a loan originator for a mortgage broker exempt under RCW 19.146.020 (1)(b), (c), (e), and (g) must hold a loan originator license.

(10) What other persons or entities are exempt from the Mortgage Broker Practices Act?

(a) Any person doing any act under order of any court except for a person subject to an injunction to comply with any provision of the act or any order of the director issued under the act.

(b) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the entities in this subsection (b).

(11) When is a CLI provider exempt from the licensing requirements of the act? A CLI provider is exempt from the licensing requirements of the act:

(a) When the CLI provider meets the general statutory requirements under RCW 19.146.020 (1)(a), (c), (d), (e), (g), or (h); or

(b) When a real estate broker or salesperson licensed in Washington, acting as a CLI provider and a real estate agent, obtains financing for a real estate transaction involving a bona fide sale of real estate and does not receive either:

(i) A separate fee for the CLI service; or

(ii) A sales commission greater than that which would be otherwise customary in connection with the sales transaction; or

(c) When a person, acting as a CLI provider:

(i) Provides only information regarding rates, terms, and lenders;

(ii) Complies with all requirements of subsection (12) of this section;

(iii) Does not represent or imply to a borrower that they are able to obtain a residential mortgage loan from a mortgage broker or lender;

(iv) Does not accept a loan application, assist in the completion of a loan application, or submit a loan application to a mortgage broker or lender on behalf of a borrower;

(v) Does not accept any deposit for third-party provider services or any loan fees from a borrower in connection with a loan, regardless of when the fees are paid;

(vi) Does not negotiate interest rates or terms of a loan with a mortgage broker or lender on behalf of a borrower; and

(vii) Does not provide to the borrower a good faith estimate or other disclosure(s) required of mortgage brokers or lender(s) by state or federal law.

(d) If the CLI provider is not exempt under (a), (b), or (c) of this subsection, the CLI provider is not required to have a mortgage broker license if the CLI provider does not receive any fee or other compensation or gain, directly or indirectly, for performing or facilitating the CLI service.

(12) When is a CLI provider required to have a mortgage broker license?

(a) If a CLI provider, who is not otherwise exempt from the licensing requirements of the act, performs any act that would otherwise require that they be licensed, including accepting a loan application, or submitting a loan application to a mortgage broker or lender, the CLI provider must obtain a mortgage broker or a loan originator license.

(b) Example - License required: A CLI provider uses an internet-based CLI system in which an abbreviated application is available for online completion by borrower. Once the borrower presses "submit," the information collected in the abbreviated application is forwarded to lender. The information contains the borrower's name, Social Security number, contact information, purpose of the loan sought (e.g., purchase, refinance, home equity, second mortgage), size of loan requested, annual salary, and a self-declaration of total unsecured debt. The electronic entries made by the borrower are then used by lender to electronically populate "form fields" and to initiate lender's loan application. A loan originator for the lender then follows up with borrower to complete the loan application. On or after closing, CLI provider receives a CLI service fee.

(c) Example - License not required: A CLI provider uses an internet-based CLI system in which various interactive informational tools are present, including an online "prequalification" tool. Based upon borrower's self-declared data input, borrower receives an indication of borrower's "maximum affordable loan amount," based upon standard norms of debt-to-income ratio and loan-to-value ratio, and also subject to verification of information, availability and suitability of loan products, and independent underwriting by any lender. The borrower indicates a desire for follow-up from one or more lenders by inputting personal contact information and pressing "submit." A number of lenders receive only the personal identity information of borrower and not any financial information. However, the CLI system has been programmed (and may be continuously reprogrammed) to route personal contact information to certain lenders based upon borrower's "prequalification" data input and the lending criteria of each of the lenders for whom CLI provider has a relationship. None of borrower's self-declared financial information is actually submitted to any of the lenders whose criteria match borrower's profile. Loan originators from lender A and lender B initiate contact with borrower based solely on borrower's contact information. Lender A and lender B, through their assigned loan originators, contact borrower with the object of beginning and hopefully completing a loan application. In this example, CLI provider has not taken a loan application.

(13) Must the CLI provider provide any disclosures?

(a) Yes. If a borrower using or accessing the CLI services pays for the CLI service, either directly or indirectly, the CLI provider must give the following disclosure:

(i) The amount of the fee the CLI provider charges the borrower for the service;

(ii) That the use of the CLI system is not required to obtain a residential mortgage loan; and

(iii) That the full range of loans available may not be listed on the CLI system, and different terms and conditions, including lower rates, may be available from others not listed on the system.

(b) Each CLI provider must give the borrower a copy of the disclosure form when the first CLI service is provided to the borrower. The form must be signed and dated by the borrower and a copy maintained as part of the CLI provider's books and records for at least two years.

(14) Are CLI system providers subject to enforcement under the act? Yes. CLI system providers are responsible for any violations of the act and will be subject to any applicable fines or penalties.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-155 Mortgage brokers—General. (1) May I originate residential mortgage loans in Washington without a license? No. Mortgage brokers and loan originators must have a valid Washington license, or be exempt from licensing pursuant to RCW 19.146.020, in order to originate residential mortgage loans. There is no "one-time one loan" exception.

(2) May I originate a Washington residential mortgage loan using the license of an already licensed or exempt Washington mortgage broker and then split the proceeds with that mortgage broker? No. Mortgage broker licenses may only be used by the person named on the license. Mortgage broker licenses may not be transferred, sold, traded, assigned, loaned, shared, or given to any other person.

(3) As a licensed mortgage broker, am I responsible for the actions of my employees and independent contractors? Yes. You are responsible for any conduct violating the act or these rules by any person you employ, or engage as an independent contractor, to work in the business covered by your license.

(4) Who at the licensed mortgage broker company is responsible for the licensee's compliance with the act and these rules? The designated broker, principals, and owners with supervisory authority are responsible for the licensee's compliance with the act and these rules.

(5) What is the nature of my relationship with the borrower? You have a fiduciary relationship with the borrower. See RCW 19.146.095.

(6) Under what circumstances may a mortgage broker charge the borrower a fee, commission, or other compensation for services rendered by the mortgage broker in obtaining a loan for the borrower? The mortgage broker may charge the borrower a fee, commission, or other compensation for the preparation, negotiation, and brokering of a

residential mortgage loan when the loan is closed on the terms and conditions agreed upon by the borrower and the mortgage broker.

~~((6))~~ **(7) Under what circumstances may a mortgage broker charge the borrower a fee, commission, or other type of compensation for services rendered when the loan does not close at all, or does not close on the terms and conditions agreed upon by the borrower and the mortgage broker?** A mortgage broker may charge a fee, and may bring a suit for collection of the fee, not to exceed three hundred dollars, for services rendered, for the preparation of documents, or for the transfer of documents in the borrower's file which were prepared for, or paid for by, the borrower if:

(a) The mortgage broker has obtained a written commitment from a lender on the same terms and conditions agreed upon by the borrower and the mortgage broker; and

(b) The borrower fails to close on a loan through no fault of the mortgage broker; and

(c) The fee is not otherwise prohibited by the Truth in Lending Act.

~~((7))~~ **(8) As a mortgage broker, may I solicit or accept fees from a borrower in advance to pay third-party providers?** Yes. However, prior to accepting the funds, you must provide the borrower in writing a notice identifying the specific third-party provider goods and services the funds are to be used for. Additionally, you must not charge the borrower more for the third-party provider goods and services than the actual costs of the goods and services charged by the provider. Once you have the funds you must then:

(a) Deposit the funds in a trust account pursuant to the act and these rules (see WAC 208-660-410 on Trust accounting);

(b) Refund any fees collected for goods or services not provided.

~~((8))~~ **(9) What is a "written commitment from a lender on the same terms and conditions agreed upon by the borrower and mortgage broker"?** The written commitment is a written agreement or contract between the mortgage broker and lender containing mutually acceptable loan provisions and terms. The lender must be one with whom the mortgage broker maintains a written correspondent or loan brokerage agreement as required by RCW 19.146.040(3). The mutually acceptable loan provisions and terms must be the same terms and conditions set forth in the most recent good faith estimate signed by both the borrower and the mortgage broker.

~~((9))~~ **(10) What action must a mortgage broker take to activate a loan originator license?** To activate a loan originator license, the licensed mortgage broker must ~~((confirm with the department that the loan originator will be working for the licensed mortgage broker))~~ file a sponsorship request through the NMLSR.

~~((10))~~ **(11) What action must a mortgage broker take to terminate a working relationship with a loan originator?** The licensed mortgage broker must ~~((notify the department it is terminating the working relationship with the loan originator))~~ process the termination through the NMLSR.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-163 Mortgage brokers—Licensing.

(1) How do I apply for a mortgage broker license? Your application consists of an on-line filing through the NMLSR and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLSR system.

(a) **Appoint a designated broker.** You must appoint a designated broker who meets the requirements of WAC 208-660-250.

(b) **Submit an application.** You must ~~((fill out))~~ complete an application in a form prescribed by the director. ~~((Submit the application with the appropriate attachments to the department for review.))~~

(c) **Pay the application and license fees.** You will have to pay ~~((an))~~ application fees to cover the ~~((department's))~~ costs of processing ~~((and reviewing))~~ the application. You must also pay a separate annual license fee. See WAC 208-660-550, Department fees and costs.

(d) **Prove your identity.** You must provide information about the identity of owners, principals, officers, and the designated broker, including fingerprints.

(e) **Provide a surety bond.** Mortgage brokers must have a surety bond of twenty to sixty thousand dollars depending on the average number of loan originators representing the mortgage broker. See WAC 208-660-175 (1)(e).

(2) What information will the department consider when deciding whether to approve a mortgage broker license application? The department considers the financial responsibility, character, and general fitness of the applicant, principals, and the designated broker.

(3) Why does the department consider financial responsibility, character, and general fitness before issuing a mortgage broker license? One of the purposes of the act is to ensure that mortgage brokers and loan originators deal honestly and fairly with the public. Applicants, principals, and designated brokers who have demonstrated their financial responsibility, character, and general fitness to operate their businesses honestly, fairly, and efficiently are more likely to deal honestly and fairly with the public.

(4) What specific information will the department consider to determine if the mortgage broker business will be operated honestly, fairly, and in compliance with applicable law?

(a) Whether the applicant, licensee, or other person subject to the act has had any license, or any authorization to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years.

(b) Whether the applicant, licensee or other person subject to the act has been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony, within the prior seven years.

(c) Whether the licensee or other person subject to the act is, or has been, subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

(d) Whether the director has filed a statement of charges, or there is an outstanding order by the director to cease and desist against the licensee or other person subject to the act.

(e) Whether there is documented evidence of serious or significant complaints filed against the licensee, or other person subject to the act, and the licensee or other person subject to the act has been notified of the complaints and been given the opportunity to respond.

(f) Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition that would result in denial of a new application for a license.

(g) Whether the licensee or other person subject to the act has failed to comply with an order, directive, subpoena, or requirement of the director or director's designee, or with an assurance of discontinuance entered into with the director or director's designee.

(h) Whether the licensee or other person subject to the act has interfered with an investigation, or disciplinary proceeding by willful misrepresentation of facts before the director or director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

(5) What will happen if my mortgage broker license application is incomplete? The department will reject and return the entire application package to you with a notice identifying the incomplete, missing, or inaccurate information. You must follow the department's directions to correct the problems. You can then resubmit the application package.

(6) How do I withdraw my application for a mortgage broker license? Send the department a written request, in a form prescribed by the department, to withdraw your mortgage broker license application.

(7) When will the department consider my mortgage broker license application package abandoned? If you do not respond to the department within ten business days from the date of the department's second request for information, your application is considered abandoned. You may reapply by submitting a new application per subsection (1) of this section.

(8) What are my rights if the director denies my application for a mortgage broker license? You have the right to request an administrative hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW. To request a hearing, you must notify the department within twenty days from the date of the director's notice to you that your license application has been denied, that you wish to have a hearing.

Upon denial of your mortgage broker license application, and provided the department finds no unlicensed activity, the department will return your surety bond, and refund the license fee and any unused portion of the application fee.

(9) What Washington law protects my rights when my application for a mortgage broker license is denied, or my mortgage broker license is suspended or revoked? The Administrative Procedure Act, chapter 34.05 RCW, governs the proceedings for license application denials, cease and desist orders, license suspension or revocation, the im-

sition of civil penalties or other remedies ordered by the department, and any appeals or reviews of those actions.

(10) May I advertise my business while I am waiting for my mortgage broker license application to be processed? No. It is a violation of the act for nonlicensed, non-exempt mortgage brokers or loan originators to hold themselves out as mortgage brokers or loan originators in Washington.

(11) May I originate Washington residential mortgage loans while waiting for my mortgage broker license application to be processed? No. You may not originate loans prior to receiving your mortgage broker license.

(12) How do I change information on my mortgage broker license? You must file a license amendment application (~~with the department, in a form prescribed by the department~~) through the NMLSR. You must file the amendment application within thirty days of the change occurring.

(13) When does a mortgage broker license expire? The mortgage broker license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

(14) When may the department issue interim mortgage broker licenses? To prevent an undue delay, the director may issue interim mortgage broker licenses, including branch office licenses, with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

For purposes of this section, undue delay includes the adjustment of license expiration or renewal dates to coincide with the implementation of systems designed to assist in licensing uniformity and provide data repositories of licensing information.

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the result of the applicant's background check.

(15) May the department issue replacement licenses with an expiration date? Yes. In order to create and maintain a licensing system with expiration or renewal dates that are uniform, the department may issue new licenses with expiration dates to existing license holders. The new licenses will expire annually.

(16) How do I renew my mortgage broker license?

(a) Before the license expiration date you must:

(i) File the mortgage broker annual report, and any other required notices, with the director. See WAC 208-660-400, Reporting requirements.

(ii) Show evidence that your designated broker completed the required annual continuing education.

(iii) Verify the surety bond is adequate for the average number of loan originators, including all locations.

(iv) Pay the annual license assessment fee.

(b) The renewed license is valid for the term listed on the license or until surrendered, suspended, or revoked.

(17) If I let my mortgage broker license expire must I apply to get a new license? If you complete all the requirements for renewal within forty-five days of the expiration date, you may renew an expired license. However, if you

renew your license during this forty-five day period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (16) of this section for the license renewal requirements.

During this forty-five day period, your license is expired and you must not conduct any business under the act that requires a license until your license has been renewed.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or a department "date received" stamp within the forty-five days. If you fail to comply with the renewal request requirements within forty-five days, you must apply for a new license.

(18) May I still conduct my mortgage broker business if my mortgage broker license has expired? No. If your mortgage broker license expires, you must not conduct any business under the act that requires a license until you renew your license.

(19) What should I do if I wish to close my mortgage broker business? You may surrender the mortgage broker license by notifying the department, in a form prescribed by the department, of your intention to stop doing mortgage loan business in Washington. Surrendering your license does not change your civil or criminal liability, or your liability for any administrative actions arising from any acts or omissions occurring before you surrender your license. Contact the Washington department of revenue to find out how to handle any unclaimed funds in your trust account.

(20) May I transfer, sell, trade, assign, loan, share, or give my mortgage broker license to another person or company? No. A mortgage broker license authorizes only the person named on the license to conduct the business at the location listed on the license. See also WAC 208-660-155(2).

(21) Must I display my mortgage broker license? Yes. Your mortgage broker license must be prominently displayed at the licensed location.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-195 Mortgage brokers—Branch offices. (1) **May I open branch offices under my mortgage broker license?** Yes. A licensed mortgage broker may submit license application(s) to the department to establish branch office(s) under the existing mortgage broker license. Each branch office must be licensed and must pay an annual license fee. See WAC 208-660-550, Department fees and costs.

(2) **If my branch offices are under separate ownership, does that limit my liability for their activities?** No. Licensed mortgage brokers are responsible for the activity and violations at their branch offices regardless of the structure or label given the branch offices. Licensure of a branch office creates a direct line of responsibility from the main office to the branch.

(3) **If my branch offices are under separate ownership, what level of supervision must I maintain?** Because branch offices, regardless of their business structure, are not

independent from your license and surety bond, you are responsible for the conduct of anyone conducting business under your license. You must have a written supervisory plan. The details of the plan, and how you implement the plan for your branch offices, must take into account the number of branch offices, their location, and the number of individuals working at the branch offices. You must maintain your written supervisory plan as part of your business books and records.

(4) **How do I apply for a mortgage broker branch office license?** As the licensed mortgage broker, you must apply (~~(to the department)~~) for a branch office license through the NMLSR and receive a branch office license from the department before operating from any location other than your licensed location. (~~The application for a mortgage broker branch office license must be in a form prescribed by the director. The licensed mortgage broker~~) You must be in good standing, and may need to increase the amount of the surety bond. You will have to pay application and annual assessment fees for the branch office(s). See WAC 208-660-550, Department fees and costs.

(5) **What does the department consider when reviewing an application for a branch office license?** The department considers:

(a) Whether the mortgage broker is in good standing. See WAC 208-660-007.

(b) Whether the amount of the mortgage broker's surety bond is sufficient to cover the loan originators that will be working from the branch office.

(c) Whether the physical address listed in the application can be verified as a branch office location.

(6) **Must I display my branch office license?** Yes. Your mortgage broker branch office license must be prominently displayed in the branch office.

(7) **If I am an internet company, how do I display my license?** You must display your license information, as it appears on your license, including any or all business names, and the license number, on your web site. The information must also include a list of the states in which you are licensed.

(8) **How do I change information on my mortgage broker branch office license?** You must file a license amendment (~~(application with the department, in a form prescribed by the department. You must file the application)~~) through the NMLSR within thirty days of the change occurring.

(9) **Does my branch office license expire?** The license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

(10) **How do I renew my mortgage broker branch office license?**

(a) Before the expiration date, the licensed mortgage broker must:

(i) Verify the surety bond is adequate for the licensee's average number of loan originators.

(ii) Submit a renewal and pay the branch office annual assessment fee through the NMLSR.

(b) The renewed mortgage broker branch office license is valid for the term listed on the license or until surrendered, suspended, or revoked.

(11) **If my mortgage broker branch office license expires, must I apply for a new license?** If you complete all the requirements for renewal within forty-five days of the expiration date you may renew an existing license. However, if you renew your license during this forty-five day period, in addition to paying the annual assessment on your branch office license, you must pay an additional fifty percent of your annual assessment for that branch. See subsection (10) of this section for the license renewal requirements.

During this forty-five day period, your license is expired and you must not conduct any business under the act that requires a license until your license has been renewed.

Any renewal requirements received by the department must be evidenced by either a postmark or "date received" stamp within the forty-five days. If you fail to comply with the renewal request requirements within forty-five days, you must apply for a new license.

(12) **If my mortgage broker branch office license has expired, may I still conduct my mortgage broker business from that location?** No. Once the mortgage broker branch office license has expired, you must not conduct any business under the act that requires a license until you renew your license.

(13) **If my mortgage broker main office license expires, may I still conduct my mortgage broker business from a branch office?** No. Once the mortgage broker main office license expires, you must not conduct any business under the act that requires a license from any location until you renew the main office license.

(14) **May I add a trade name (or "DBA") to my mortgage broker branch office license?** Yes. You may add a trade name, or "DBA" name, to the mortgage broker branch office license if you first apply to the department, in a form prescribed by the director, and receive department approval. The branch office trade name must at all times be identified as connected with the mortgage broker's license name as it appears on the mortgage broker license. When the department has approved the trade name, you must conduct business under that trade name in at least one of the two following ways:

- (a) Use your license name together with the branch office trade name; or
- (b) Use the branch office trade name and mortgage broker branch office license number together.
- (c) See WAC 208-660-180(10).

(15) **How must I identify my mortgage broker branch office(s)?** The branch office must be prominently identified as a branch or division of the licensed mortgage broker so as not to appear to be an independent enterprise.

(16) **Does my branch office have to be a physical location?** Yes. The physical location may be at a commercial or residential address but does not have to be in Washington. See WAC 208-660-420, Out-of-state mortgage brokers and loan originators.

(17) **Must I have a branch manager?** No. Although you may appoint one, the act does not require a branch manager. The licensee and designated broker are responsible for the business conducted at all locations.

(18) **Must I have a designated broker at each branch?** No. The licensed mortgage broker may have only one design-

ated broker who is responsible for the mortgage broker business at all locations.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-250 Designated brokers—General. (1) How do I become a designated broker?

- (a) Be eighteen years or older.
- (b) Have a high school diploma, an equivalent to a high school diploma, or two years experience in the industry in addition to the experience required in (e) of this subsection. The experience must meet the criteria in (e) of this subsection.
- (c) You must pass the designated broker test. See WAC 208-660-260, Designated brokers—Testing.
- (d) You must be appointed to the designated broker position by the licensed mortgage broker through an application and approval process with the department and the NMLSR.
- (e) You must have a minimum of two years experience lending or originating residential mortgage loans.
 - (i) The work experience must be in one or more of the following, within the last five years:
 - (A) As a mortgage broker or designated broker of a mortgage broker for a minimum of two years; or
 - (B) As a mortgage banker, responsible individual, or manager of a mortgage banking business; or
 - (C) As a loan originator with responsibility primarily for originating loans secured by a lien on residential real estate; or
 - (D) As a branch manager of a lender with responsibility primarily for loans secured by a lien on residential real estate; or
 - (E) As a manager or supervisor of mortgage loan originators; or
 - (F) As a mortgage processor, underwriter, or quality control professional; or
 - (G) As a regulator, examiner, investigator, compliance expert, or auditor, whose primary function is the review of mortgage companies and their compliance processes, and the department determines your background is sufficient.
 - (ii) The work experience must be evidenced by a detailed work history and:
 - (A) W-2 Federal Income Tax Reporting Forms in the designated broker appointee's name; or
 - (B) 1099 Federal Income Tax Reporting Forms in the designated broker appointee's name; or
 - (C) Corporate tax returns signed by the designated broker appointee or corporate officer for a licensed or exempt residential mortgage company; or
- (f) In addition to supplying the application information, both you and the licensed mortgage broker must be in good standing with the department.
- (g) **Financial background.**
 - (i) You are not eligible to become a designated broker if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

(ii) You may not be eligible to become a designated broker if your financial background during the two years prior to the appointment application shows a history of unpaid debts.

(2) **May I work as the designated broker for more than one company?** Yes. You may be the designated broker for more than one licensee.

(3) **Must the designated broker ~~((also))~~ hold a loan originator's license?** Yes. A designated broker approved by the department will be given a loan originator license if they do not already have one. If the designated broker already has a loan originator license, that license will be added to the licensed mortgage broker's list of loan originators.

(4) **May I work as the designated broker for one licensee and a licensed loan originator for another licensee?** Yes. If you want to originate loans for a mortgage broker different from the mortgage broker for whom you are the designated broker, you must apply to the department for an additional loan originator license.

(5) **May a designated broker hire employees or independent contractors apart from the employees or independent contractors working for the mortgage broker licensee?** No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against a designated broker having employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

(6) **As a designated broker, what reporting requirements must I comply with?** See WAC 208-660-400, Reporting requirements.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-260 Designated brokers—Testing. (1) Must I pass a test prior to becoming a designated broker? Yes. You must take and pass a test prior to becoming a designated broker. See WAC 208-660-250(1) if you have never been a designated broker.

(2) **I am currently a designated broker, will I have to take the test again?** You will only have to take the designated broker test again if you stop working as a designated broker for five years or longer.

(3) **I am currently a designated broker that originates loans. Will I have to take the loan originator test and obtain a loan originator license?** No. The department will provide you with a loan originator license automatically because you are a designated broker. Your loan originator license will renew in conjunction with the renewal of the mortgage broker main office you work with. If you stop acting as a designated broker, your loan originator license will become inactive. See WAC 208-660-350(12). You can reactivate the license by becoming affiliated with the same or another licensed mortgage broker as a loan originator. If you do not renew your license as provided in WAC 208-660-350(19), the license will expire.

(4) **Where can I get information about the designated broker test?** The department will publish the names and contact information of approved testing providers on the department web site.

(5) **What topics may be covered in the designated broker test?** ~~((The department will publish a list of designated broker test topics on the department's web site.))~~ See WAC 208-660-600.

(6) **How soon after failing the designated broker test may I take it again?** After failing the test three consecutive times you must wait at least fourteen days before taking the test again.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-300 Loan originators—General. (1) May I work as a loan originator for more than one mortgage broker? Yes.

(2) **How do I obtain approval to work for more than one mortgage broker?** ~~((Use the form prescribed by the director to get approval to add mortgage broker relationships to your license.))~~ Using the NMLSR, the company will submit a sponsorship request. The department will notify you ~~((if the))~~ when the relationship is ~~((not))~~ approved. The department will notify you and others associated with your license upon approval of your request. ~~((The application must include))~~ NMLSR will charge a fee for the additional relationship. See WAC 208-660-550.

(3) **If I work as a loan originator for more than one mortgage broker, may I take an application from a borrower without identifying one specific mortgage broker?** No. You may take an application for only one mortgage broker at a time in any one transaction. Prior to presenting yourself to a specific borrower as licensed to originate mortgage loans, you must state who you represent. You must clearly identify the mortgage broker by name and address on the application, on all disclosures, authorization forms, and other material provided to the borrower. There must be no confusion by the borrower as to which mortgage broker you are representing at any given time.

(4) **May I work from any location when I am a licensed loan originator?** No. You can only work from a licensed location. The licensed location can be the main company office, or any licensed branch.

(5) **May a loan originator transfer loan files to a mortgage broker other than the mortgage broker the loan originator is associated with?** No. Only the borrower may submit a written request to the licensed mortgage broker to transmit the borrower's selected information to another mortgage broker or lender. Loan files are the property of the mortgage broker named on the loan application and the mortgage broker must keep the original files and documents. The licensed mortgage broker must transmit the information within five business days after receiving the borrower's written request.

~~((5))~~ (6) **May I act as a loan originator and a real estate agent in the same transaction or for the same borrower in different transactions?** Yes, you may be both the loan originator and real estate broker or salesperson in the same transaction, or for the same borrower in different transactions. When either of these occur, you must provide to the borrower the following written disclosure:

"THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS, AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER, OR LENDER OF YOUR CHOOSING."

~~((6))~~ **(7) As a loan originator, may I be paid directly by the borrower for my services?** No. As a loan originator, you may not be paid any compensation or fees directly by the borrower.

~~((7))~~ **(8) May a loan originator charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?** No. A loan originator may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan.

~~((8))~~ **(9) As a loan originator, may I be paid my portion of the mortgage broker fee directly from the loan closing?**

(a) Yes. If authorized in the mortgage broker's demand, the settlement service provider may pay your portion of the mortgage broker fee directly to you; provided however, that the HUD-1 or equivalent settlement statement has the following information:

- (i) Your name as it appears on your loan originator license;
- (ii) Your loan originator license number; and
- (iii) The amount to be paid to you by the settlement service provider.

(b) You must provide a copy of the HUD-1 or equivalent settlement statement to the licensed mortgage broker within twenty-four hours of your receipt of funds from closing.

~~((9))~~ **(10) May a loan originator bring a lawsuit against a borrower for the collection of compensation?** No. Only licensed mortgage brokers, or exempt mortgage brokers, may bring collection actions against borrowers to collect compensation.

~~((10))~~ **(11) May I work as a licensed loan originator for a mortgage broker located out of the state?** Yes. You may originate loans for any mortgage broker you are affiliated with who is licensed under Washington law.

~~((11))~~ **(12) May a licensed loan originator hire employees or independent contractors to assist in the mortgage broker licensee's activities?** No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

~~((12))~~ **(13) Do loan processors have to be licensed as loan originators?** ~~(No.)~~ W-2 employee loan processors are not required to have a loan originator license provided they work under the supervision and instruction of a licensed or exempt mortgage broker and do not hold themselves out as

able to conduct the activities of a mortgage broker or loan originator. ~~((However, a))~~ Independent contractor loan processors ~~((may not work as an independent contractor unless))~~ must be licensed as a mortgage broker, mortgage broker branch office, or loan originator.

(14) May loan processors work on files from an unlicensed location? A loan processor may work on loan files from an unlicensed location under the following circumstances:

(a) The loan files are in electronic format and the loan processor accesses the files directly from the licensed mortgage broker's main computer system. The loan processor may not maintain any electronic files on any computer system other than the system belonging to the licensed mortgage broker.

(b) The loan processor does not conduct any of the activities of a licensed loan originator.

(c) The licensed mortgage broker must have safeguards in place for the computer system that safeguards borrower information.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-350 Loan originators—Licensing. (1) How do I apply for a loan originator license? Your application consists of an on-line filing through the NMLSR and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLSR system.

(a) **Be eighteen years or older.**

(b) **Have a high school diploma, an equivalent to a high school diploma, or three years experience in the industry. The experience must meet the criteria in WAC 208-660-250 (1)(e)(i) and (ii).**

(c) **Pass a licensing test.** You must take and pass a test that assesses your knowledge of the mortgage business and related regulations. See WAC 208-660-360, Loan originators—Testing.

(d) **Submit an application.** ~~((The application form will be prescribed by the director.))~~ You must complete an application in a form prescribed by the director.

(e) **Prove your identity.** You must provide information to prove your identity.

(f) **Pay the application fee.** You must pay an application fee ~~((to cover the department's cost of processing and reviewing))~~ for your application(s). See WAC 208-660-550, Department fees and costs.

(2) In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken

against you, or any person you were responsible for, in this state, or any jurisdiction.

(b) **License suspensions or revocations.** You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules, or have had a license issued under the act or any similar state statute suspended or revoked within five years of the filing of the present application.

(c) **Criminal history.**

You are not eligible for a loan originator license if you have been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony, within seven years of the filing of the present application.

(d) **Financial background.**

(i) You are not eligible to receive a loan originator license if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

(ii) You may not be eligible to receive a loan originator license if your financial background during the two years prior to the appointment application shows a history of unpaid debts.

(3) ~~((May I originate residential mortgage loans in Washington without a loan originator license? Persons conducting the business of a loan originator without an active loan originator license must fall under one of the following categories of exemption from loan originator licensing:~~

~~(a) Persons conducting residential mortgage loan business exclusively for any exempt person under RCW 19.146.020 (1)(a)(i); or~~

~~(b) The exclusive agents conducting residential mortgage loan business for any exempt person under RCW 19.146.020 (1)(a)(ii); or~~

~~(c) The bona fide employees conducting residential mortgage loan business exclusively for any exempt person under RCW 19.146.020 (1)(b), (c), (g) or (h); or~~

~~(d) Those persons exempt under RCW 19.146.020 (1)(e) or (d).~~

~~((4)) **What will happen if my loan originator license application is incomplete?** After submitting your on-line application through the NMLSR, the department will ~~((reject and return the entire application package to you with a notice identifying the incomplete, missing, or inaccurate information. You must follow the department's directions to correct the problems. You may then resubmit the application package))~~ notify you of any application deficiencies.~~

~~((5)) **4) How do I withdraw my application for a loan originator license?** ~~((Provide the department with a written request to withdraw your application in a form prescribed by the director.))~~ Once you have submitted the on-line application through NMLSR you may withdraw the application through NMLSR. You will not receive a refund of the NMLSR application fee.~~

~~((6)) **5) When will the department consider my loan originator license application to be abandoned?** If you do not respond within ten business days to the department's second request for information, your loan originator license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You~~

may reapply by submitting a new application package and new application fee.

~~((7)) **6) What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?**~~

~~(a) The department will notify you if your application is denied. ~~((You will receive a refund of any unused portion of the application fee.))~~~~

~~(b) If your license application lists any mortgage brokers, the department will also notify the mortgage brokers of the license denial.~~

~~(c) Under the Administrative Procedure Act, chapter 34.05 RCW, you have the right to request brief adjudicative proceeding. To request a hearing, notify the department, in writing, within twenty days from the date of the director's notice to you notifying you your license application has been denied.~~

~~(i) Brief Adjudicative Proceeding Adopted. The director adopts RCW 34.05.482 through 34.05.494 to administer brief adjudicative proceedings under WAC 208-660-350.~~

~~(ii) Presiding Officer. Brief adjudicative proceedings are conducted by a presiding officer designated by the director. The presiding officer must have department expertise in the subject matter, but must not have personally participated in the department's licensing application denial, or work in the department's division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules.~~

~~(iii) Preliminary Records. The preliminary record for the brief adjudicative proceeding consists of the application and all associated documents including all documents relied upon by the department to deny the application and all correspondence between the applicant and the department regarding the application.~~

~~(iv) Notice of Hearing. The department will set the date, time, and place of the hearing, giving at least seven business days notice to the applicant.~~

~~(v) Written Documents. The applicant or their representatives may present written documentation. The presiding officer must designate the date for submission of written documents.~~

~~(vi) Oral Argument. The presiding officer may exercise discretion in allowing oral argument.~~

~~(vii) Witnesses. Witnesses will not be allowed to testify.~~

~~(viii) Agency Expertise Considered. The presiding officer may rely upon agency expertise in addition to the written record as a basis for a decision.~~

~~(ix) Initial Order. The presiding officer must make a written initial order within ten business days of the final date for submission of materials, or oral argument, if any. The initial order will become final twenty-one days after service on the applicant unless the applicant requests an administrative review or the department decides to review the matter.~~

~~((8)) **7) How will the department provide me with my loan originator license?** The department may use any of the following methods to provide you with your loan originator license:~~

~~(a) A printed paper license sent to you by regular mail.~~

~~(b) A license sent to you electronically that you may print.~~

(c) A license verification available on the department's web site and accessible for viewing by the public.

~~((9))~~ **(8) May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else?** No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

~~((10))~~ **(9) How do I change information on my loan originator license?** ~~((You must file a license amendment application with the department, in a form prescribed by the director within thirty days of the change occurring.~~

~~((11))~~ **If I am not required to have a loan originator license to do my job, may I apply for and receive a loan originator license?** Yes, you may apply for a license at any time. However, if you are not required to hold the license to conduct the activities of your job, your license will be considered inactive.

~~((12))~~ **You must submit an amendment to your license through the NMLSR. You may be charged a fee.**

~~((10))~~ **What is an inactive loan originator(~~s~~) license?** ~~((If an individual holds a loan originator license when they are not required to under the act, they hold an inactive license))~~ When a licensed loan originator is not sponsored by a licensed or exempt company, the license is inactive. When a person ~~((holding))~~ holds an inactive license, they may not conduct any of the activities of a loan originator, or hold themselves out as a licensed loan originator.

~~((13))~~ **(11) When my loan originator(~~s~~) license is inactive, am I subject to the director's enforcement authority?** Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the director's authority even if you are not doing any activity covered by the act.

~~((14))~~ **(12) When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year?** Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

~~((15))~~ **(13) May I originate loans from a web site when my license is inactive?** No. You may not originate loans, or engage in any activity that requires a license under the act, while your license is inactive ~~((except as allowed in subsection (3) of this section)).~~

~~((16))~~ **(14) How do I activate my loan originator license?** ~~((When the department receives a notice, in a form prescribed by the department, from a licensed or exempt mortgage broker establishing a working relationship with you, your loan originator license will become active.))~~ The sponsoring company must submit a sponsorship request for your license through the NMLSR. The department will notify you and all ~~((mortgage brokers))~~ the companies you are working with of the new working relationship ~~((established by the licensed mortgage broker))~~ if approved.

~~((17))~~ **(15) When may the department issue interim loan originator licenses?** To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

For purposes of this section, undue delay includes the adjustment of license expiration or renewal dates to coincide with the implementation of systems designed to assist in uniformity and provide data repositories of licensing information.

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the results of the applicant's background check.

~~((18))~~ **(16) When does my loan originator license expire?** The loan originator license expires annually on December 31st. ~~((The expiration date is shown on the license.))~~ If the license is an interim license, it may expire in less than one year.

~~((19))~~ **(17) How do I renew my loan originator license?**

(a) Before the license expiration date you must renew your license through the NMLSR. Renewal consists of:

- (i) Pay the annual assessment fee; and
- (ii) Meet the continuing education requirement.

(b) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

~~((20))~~ **(18) If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal within forty-five days of the expiration date you may renew an existing license. However, if you renew your license during this forty-five day period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection ~~((19))~~ **(17)** of this section for the license renewal requirements.

During this forty-five day period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp within the forty-five days. If you fail to comply with the renewal request requirements within forty-five days, you must apply for a new license.

~~((21))~~ **(19) If I let my loan originator license expire and then apply for a new loan originator license within one year of the expiration, must I comply with the continuing education requirements from the prior license period?** Yes. Before the department will consider your new loan originator application complete, you must provide proof of satisfying the continuing education requirements from the prior license period.

~~((22))~~ **(20) May I still originate loans if my loan originator license has expired?** No. Once your license has expired you may no longer conduct the business of a loan originator, or hold yourself out as a licensed loan originator, as defined in the act and these rules.

~~((23))~~ **(21) What happens to the loan applications I originated before my loan originator license expired?** Existing loan applications must be processed by the licensed mortgage broker or another licensed loan originator working for the mortgage broker.

~~((24))~~ **(22) May I surrender my loan originator's license?** Yes. Only you may surrender your license before the license expires ((by notifying the department, in a form prescribed by the department)) through the NMLSR.

~~((Surrender of))~~ Surrendering your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omission occurring before the license surrender.

~~((25))~~ **(23) Must I display my loan originator license where I work as a loan originator?** No. Neither you nor the mortgage broker company is required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

~~((26))~~ **(24) If I operate as a loan originator on the internet, must I display my license number on my web site?** Yes. You must display your license number, and the license number and name as it appears on the license of the licensed mortgage broker you represent, on the web site.

~~((27))~~ **(25) Must I include my loan originator license number on any documents?** You must include your license number immediately following your name on solicitations, including business cards, advertisements, and residential mortgage loan applications.

~~((28))~~ **(26) When must I disclose my loan originator license number?** In the following situations you must disclose your loan originator license number and the name and license number of the mortgage broker you are associated with:

(a) When asked by any party to a loan transaction, including third party providers;

(b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

(27) May I conduct business under a name other than the name on my loan originator license? No. You must only use the name on your license when conducting business. If you use a nickname for your first name, you must use your name like this: "FirstName "Nickname" LastName."

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-360 Loan originators—Testing. (1) Must I pass a test prior to becoming a loan originator? Yes. You must take and pass a test prior to becoming a loan originator. You must receive a score of seventy-five percent or higher to pass the test.

(2) Where may I find information about the loan originator test? The department will publish the names and contact information of approved testing providers on the department web site.

(3) How much does the loan originator test cost? Testing costs are set by contract between the test provider and the department and may be modified from time to time. The department will publish the current testing fee with the testing provider contact information.

(4) How do I register to take the loan originator test? The department will publish registration information with the testing provider contact information.

(5) What topics may be covered in the loan originator test? ~~((The department will publish a list of loan originator))~~ At a minimum, the test topics ((on the department's web site)) will include ethics, federal and state law and regulation pertaining to mortgage origination, federal and state law and regulation on fraud, consumer protection, nontraditional mortgage products, and fair lending. See WAC 208-660-600.

(6) After passing the loan originator test, will I have to take it again? You must retake the loan originator test if you have not been a loan originator within the past five years.

(7) How soon after failing the loan originator test may I take it again? After taking and failing the test three consecutive times, you must then wait at least fourteen days before taking the test again.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-370 Loan originators—Continuing education. (1) Where may I get information about continuing education for loan originators? The department will publish a list of the approved professional organizations that provide continuing education, and approved individual courses on the department's web site. The professional organizations will have detailed information about the continuing education courses they offer. See also WAC 208-660-600.

(2) How many clock hours of loan originator continuing education must I have each year? ~~((The continuing education requirement will be in the form of approved courses. While the individual clock hours may vary,))~~ You must complete ((two courses, of no less than three hours each, annually. Alternatively, you may attend three mortgage broker commission meetings instead of completing one continuing education course)) a minimum of eight hours annually.

(3) As a loan originator, may I take the same approved course multiple times to meet my annual continuing education requirement? No. You may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) If I teach an approved continuing education course may I use my course as credit toward my annual loan originator continuing education requirement? Yes. As an instructor of an approved continuing education course, you may receive credit for your annually required loan originator continuing education courses from the course(s) you teach. You will receive credit at the rate of one course taught equaling two continuing education course credits.

(5) How do I receive credit toward my continuing education requirement when I teach an approved continuing education course? When you renew your license and seek to get credit for continuing education, submit to the department documentation evidencing approval of the continuing course you taught. The department will credit you with completing two continuing education courses for each one approved course you teach.

(6) Is ethics a required continuing education course for loan originators? Yes. You must take ~~((an ethics continuing education course in your first year of holding a loan originator license. However, if you teach an approved continuing education course on ethics during your first year of holding a loan originator license, that will satisfy your ethics continuing education requirement for that year))~~ at least two ethics hours annually. The annual ethics credits must include the topics of fraud, consumer protection, and fair lending.

(7) If I take a loan originator continuing education course approved for multiple jurisdictions, will the department accept it as part of my continuing education requirement? ~~((If any state has continuing education requirements or standards at least as stringent as Washington's, their continuing education courses may be approved by the department as meeting the continuing education requirements under the act and these rules.))~~ Yes. There will be continuing education courses that meet the requirements for all states.

(8) If I accumulate more than the required loan originator continuing education course credits during a year, may I carry-over the excess credit to the next year? No. Continuing education credits only apply to the year in which they are taken.

(9) If I fail to complete the required continuing education, what happens to my loan originator license? When your license expires, the department will not renew it, and you cannot continue conducting any business under the act. See WAC 208-660-350~~((20))~~ (18) to renew your license within forty-five days of it expiring. See also, WAC 208-660-350~~((21))~~ (19).

(10) How will I know which courses and providers satisfy the continuing education requirement? The department will approve continuing education courses offered by course providers and will approve professional organizations offering courses. The providers, courses, and contact information will be listed on the department's web site.

(11) How do I provide the department with proof of the continuing education courses I have completed? You must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.

(12) If the department reissues my license and the new expiration date does not coincide with the prior annual assessment period, will the department still give me credit for the continuing education courses I have taken in preparation for meeting the prior annual assessment date? Yes. The department will give you credit for the continuing education courses you have taken. You will not lose any credits due to the department's license expiration date adjustment.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-400 Reporting requirements and notices to the department. (1) **As a licensed mortgage broker, what annual report must I provide to the depart-**

ment? You must file a mortgage broker annual report, in a form prescribed by the director. The report must include:

(a) The total number of residential mortgage loans secured by Washington real estate that you originated and closed in the prior calendar year; and

(b) The total dollar volume (principal loan amounts) of the residential mortgage loans secured by Washington real estate that you originated and closed in the prior calendar year.

(2) When must I provide the mortgage broker annual report to the department? You must provide the completed report to the department by March 31st of each year. The first annual report, for activity occurring in 2007, must be received by the department before or on March 31, 2008.

(3) What period of time must the mortgage broker annual report cover? The mortgage broker annual report must cover the prior calendar year from January 1st to December 31st.

(4) What action will the department take if I fail to file my mortgage broker annual report?

(a) When the report is over thirty days late, the department may begin an enforcement action against you.

(b) When your license is due for renewal, the department will not renew it if you have not filed your annual report.

(5) How do I notify the department when I want to change information on my mortgage broker or loan originator license? You must file a license amendment ~~((application with the department, in a form prescribed by the department))~~ through the NMLSR within thirty days of the change occurring.

(6) As a designated broker or loan originator, must I notify the department if I change my residential address or telephone number? Yes. Whether your license is active or inactive, you must notify ~~((the department in a form prescribed by))~~ the department, through the NMLSR, within thirty days of a change in your residential address and telephone number.

(7) As a designated broker or loan originator must I notify the department if I change my name? Yes. Whether your license is active or inactive, you must notify the department ~~((in a form prescribed by the department)),~~ through NMLSR, within thirty days of a name change.

(8) Must I notify the department of the physical address of my mortgage broker books and records? Yes. You must provide the physical address of your mortgage broker books and records in your initial license application through NMLSR. If the location of your books and records changes, you must provide the department, ~~((in a form prescribed by the department))~~ through the NMLSR, with the new physical address within five business days of the change.

(9) Must I notify the department if my designated broker leaves, or is no longer my designated broker? Yes. You must notify the department, ~~((in a form prescribed by the department))~~ through NMLSR, within five business days of the loss of or change of status of your designated broker. See WAC 208-660-180(3).

(10) When and how do I change the information about my registered agent? Within five business days of the change, you must file a statement of change ~~((with the~~

department, in a form prescribed by the department)) through the NMLSR.

(11) **If I am a registered agent under the act, must I notify the department if I resign?** Yes. You must provide the department with your statement of resignation letter at least thirty-one days prior to the intended effective date. You must also provide a copy of the resignation letter to the licensed mortgage broker. The department will terminate your appointment thirty-one days after receiving your resignation letter.

(12) **Must I notify the department if I change the business structure of my company? When must I notify the department?** If the change to your business adds officers, directors, or principal stockholders owning ten percent or more of the company, you must notify the department, (~~in a form prescribed by the department~~) through the NMLSR, at least thirty days prior to the change. The department will consider the qualifications of the new people and notify you whether or not the proposed change is acceptable. You may have to submit fingerprint cards for new controlling people directly to DFI.

(13) **What are my responsibilities when I sell my business?**

(a) At least thirty days prior to the effective date of sale, you must notify the department of the pending sale (~~in a form prescribed by the director.~~

(b) You must surrender your license and complete the year's annual report.

(~~e~~) by completing the following: Update and file all required information through the NMLSR for your main and any branch offices, including updating information about the location of your books and records.

(b) You must give written notice to borrowers whose applications or loans are in process, advising them of the change in ownership.

(~~c~~) (c) You must give written notice to third party providers that have or will provide services on loans in process, and all third-party providers you owe money to, bringing accounts payable current.

(~~e~~) ~~You must maintain your records as required under the act and these rules.~~

(~~f~~) (d) Surrender all physical licenses to DFI.

(e) You must reconcile the trust account and return any funds to the borrowers or others to whom they belong, or transfer funds into a new trust account at the borrower's direction. If excess funds still remain and are unclaimed, follow the procedures provided by the department of revenue's unclaimed property division.

(14) **Must I notify the department if I cease doing business in this state?** Yes. You must notify the department within twenty days after you cease doing business in the state by updating your record and filing a surrender through the NMLSR, and filing your Mortgage Broker (~~Closure Form and the~~) annual report directly with DFI.

(15) **Must I notify the department of changes to my trust account?** Yes. You must notify the department within five business days of any change in the status, location, account number, or other particulars of your trust account, made by you or the federally insured financial institution

where the trust account is maintained. A change in your trust account includes the addition of a trust account.

(16) **Must I notify the department of changes to my Washington master business license?** Yes. You must notify the department within five business days of any changes to your Washington master business license made by you or the agency issuing the license.

(17) **Must I notify the department of changes to my standing with the Washington secretary of state?** Yes. You must notify the department within five business days of any changes to your standing with the Washington secretary of state made by you or the secretary of state.

(18) **What must I do if my licensed mortgage broker company files for bankruptcy?**

(a) Chapter 7 bankruptcy. If you are a licensed mortgage broker that files for a Chapter 7 bankruptcy, you must:

(i) Notify the director and surrender your mortgage broker license within ten business days of filing the bankruptcy.

(ii) Provide the department with a mortgage broker annual report for the calendar year preceding the filing within ten business days of filing the bankruptcy.

(b) Chapter 11 bankruptcy. If your licensed mortgage broker company files for a Chapter 11 bankruptcy, you must notify the director within ten business days of filing the bankruptcy.

(c) Chapter 13 bankruptcy. If your licensed mortgage broker company files for a Chapter 13 bankruptcy, you must:

(i) Notify the director and surrender your mortgage broker license within ten business days of filing the bankruptcy.

(ii) Provide the department with a mortgage broker annual report for the calendar year preceding the filing within ten business days of filing the bankruptcy.

(19) **If I am a designated broker and file for personal bankruptcy, what are my reporting responsibilities?** A designated broker must notify the department in writing within ten business days of filing for bankruptcy protection.

(20) **If I am a designated broker and file for personal bankruptcy, what action may the department take?** The director may require the licensed mortgage broker to replace you with another designated broker.

(21) **If I am a loan originator and file for personal bankruptcy, what are my reporting responsibilities?** A licensed loan originator must notify the director in writing within ten business days of filing for bankruptcy protection.

(22) **If I am a loan originator and file for personal bankruptcy, what action may the department take?** Depending on the circumstances, the director may revoke or condition your license.

(23) **When may I apply for a license after surrendering one due to my personal bankruptcy filing?** If you surrendered your license, you may apply for a license at any time. However, the department may deny your license application for three years after the bankruptcy has been discharged provided that no new bankruptcies have occurred or are in progress.

(24) **When may I apply for a license after the department has revoked my license due to my personal bankruptcy filing?** The director will not issue a license to any person who has had their license revoked within five years of applying. While you may apply at any time, the application

will be denied until the five years have elapsed. For this reason it is important for you to consider a surrender of your license rather than allowing it to be revoked.

(25) Who in the mortgage broker company must notify the department if they are charged with or convicted of a crime? Licensees, whether on active or inactive license status, must notify the department in writing within ten business days of being:

(a) Charged by indictment or information with any felony, or a gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(b) Convicted of any felony, or any gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(c) Convicted outside of Washington for any crime that if charged in Washington would constitute a felony, or gross misdemeanor for dishonesty or financial misconduct.

(26) Who in the mortgage broker company must notify the department if they are the subject of an administrative enforcement action? Licensees, whether holding active or inactive licenses, must notify the department in writing within ten business days of the occurrence if:

(a) Charged with any violations by an administrative authority in any jurisdiction; or

(b) The subject of any administrative action, including a license revocation action, in any jurisdiction.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-420 Out-of-state mortgage brokers and loan originators. (1) **May I be a licensed mortgage broker in Washington without a physical office in Washington?** Yes. You are not required by the act to have a physical location in Washington.

(2) **May I be a licensed mortgage broker in Washington and have branch offices both in Washington and outside of Washington?** Yes. However, each of your branch offices that offer Washington residential mortgage loans must hold a Washington license, even if the location is outside Washington.

(3) **May my mortgage broker business be conducted entirely on the internet?** Yes. But you must have a license for all locations including those that offer loans by mail or internet.

(4) **May I work as a loan originator in Washington if I do not have a physical location in Washington?** Yes. You may originate Washington loans from any location licensed under the act, inside or outside of Washington.

(5) **May I work as a licensed loan originator for a mortgage broker that is out of the state?** Yes, as long as the location from which you work is licensed under the act.

(6) **If my mortgage broker business is not located in Washington, where must I keep my records?** If your business is located outside of Washington, you may either maintain the books and records at a location in Washington, or pay the department's travel expenses to the out-of-state location to examine the books and records. Travel expenses may include, but are not limited to, transportation, meals, and lodging.

(7) What additional requirements must I comply with if my business does not have a physical location in Washington? You must continuously maintain a registered agent in Washington and provide the department with the registered agent's name, physical and mailing address, and written consent to be the registered agent.

(8) How do I change the information about my registered agent? You must ~~((file a statement of change with the department))~~ update the information in the NMLSR within five business days from the change. ~~((The statement of change must contain:~~

~~(a) Your name and license number.~~

~~(b) If the agent's office location has changed, the new physical address.~~

~~(c) If the registered agent has changed, the name and physical address of the new registered agent. The director will send a request directly to the new agent to obtain written consent to the appointment.))~~

(9) If I am a registered agent under the act, what must I do to resign as registered agent?

(a) Provide the department with a statement of resignation at least thirty-one days prior to the intended effective date of your resignation.

(b) Provide a copy of the statement of resignation to the licensed mortgage broker.

(c) The department will terminate your appointment on the thirty-first day after the date on which the statement of resignation was delivered.

(10) Where must the director initiate lawsuits arising under the act against out-of-state licensees? Lawsuits initiated by the director under the act must be initiated in the superior court of Thurston county, Washington.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-430 Disclosure requirements. (1) **What disclosures must I make to borrowers and when?** Within three business days of receiving a borrower's loan application, or receiving money from a borrower for third-party provider services, you, as a mortgage broker or loan originator on behalf of a mortgage broker, must make all disclosures required by RCW 19.146.030 (1), (2), ~~((and))~~ (3), and 19.144.020. The one page disclosure summary required by RCW 19.144.020 must be dated when provided to the borrower. The disclosures must be in a form acceptable to the director.

(2) **What is the disclosure required under RCW 19.146.030(1)?** A full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker. A good faith estimate of a fee or cost must be provided if the exact amount of the fee or cost is not determinable. This subsection does not require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

The specific content of the disclosure required under RCW 19.146.030(1) is identified in RCW 19.146.030(2).

(3) **What is the disclosure required under RCW 19.146.030(2)?** Mortgage brokers must disclose the following content:

(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase.

Disclosure in compliance with the requirements of the Truth-in-Lending Act and Regulation Z, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure through good faith estimates of settlement services and special information booklets in compliance with the requirements of RESPA and Regulation X, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(c) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, and whether the lock-in agreement is guaranteed by the mortgage broker or lender, and if a lock-in agreement has not been entered, disclosure in a form acceptable to the director that the disclosed interest rate and terms are subject to change;

(d) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower, to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent;

(e) Whether and under what conditions any lock-in fees are refundable to the borrower; and

(f) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

(4) ~~((How do I disclose my mortgage broker fees on the good faith estimate and settlement statement? You must disclose or direct the disclosure of your fees on lines 808 through 811 of the good faith estimate and HUD-1/1A settlement statement or similar document.))~~ **What is the disclosure required under RCW 19.144.020?** See WAC 208-600-200.

(5) **How do I disclose my yield spread premium (YSP) from the lender?**

(a) You should disclose the YSP in the 800 series of lines on the GFE. The YSP must be listed using the words "yield

spread premium" and expressed as a dollar amount or dollar amount range.

(b) You must direct the settlement service provider to disclose the YSP in the 800 series of lines on the HUD-1 or equivalent settlement statement. The YSP must be listed using the words "yield spread premium" and expressed as a dollar amount ~~((or dollar amount range))~~.

(c) Failure to properly disclose the yield spread premium (YSP) is a violation of RCW 19.146.0201 (6) and (11), and RESPA.

(6) **Are there additional disclosure requirements related to interest rate lock-ins?** Yes. Pursuant to RCW 19.146.030(3), if subsequent to the written disclosure being provided under this section, a mortgage broker or loan originator enters into a lock-in agreement with a borrower or represents to the borrower that the borrower has entered into a lock-in agreement, then within three business days the mortgage broker or loan originator must deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement, which must include a copy of the disclosure made under subsection (3)(c) of this section.

(7) **What must I disclose to the borrower if they do not choose to enter into a lock-in agreement?** If a lock-in agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change.

(8) **Will a lock-in agreement always guarantee the interest rate and terms?** No. A lock-in agreement may or may not be guaranteed by the mortgage broker or lender. The lock-in agreement must clearly state whether the lock-in agreement is guaranteed by the mortgage broker or lender.

(9) **Must a mortgage broker enter into a lock-in agreement with a borrower?** No. The statute does not require a mortgage broker to enter into a lock-in agreement with a borrower.

(10) **Are there any model forms that suffice for the disclosure content under RCW 19.146.030(2)?** Yes. The following model forms are acceptable forms of disclosure:

(a) For RCW 19.146.030 (2)(a), mortgage brokers are encouraged to use the federal truth-in-lending disclosure form for mortgage loan transactions provided under the Truth-in-Lending Act and Regulation Z, as now or hereafter amended. However, the federal truth-in-lending disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(a). The delivery of disclosures is governed by RCW 19.146.030(1).

(b) For RCW 19.146.030 (2)(b), mortgage brokers are encouraged to use the federal good faith estimate disclosure form provided under the Real Estate Settlement Procedures Act and Regulation X, as now or hereafter amended. However, the federal good faith estimate disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(b). The delivery of disclosures is governed by RCW 19.146.030 (1).

(c) For RCW 19.146.030 (2)(c), (d), (e), (f) and (3), the department encourages mortgage brokers to use the department published model disclosure forms that can be found on the department's web site.

(11) **May my mortgage broker fees increase following the disclosures required under RCW 19.146.030(1)?** Pur-

suant to RCW 19.146.030(4), a mortgage broker must not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the initial written good faith estimate disclosure required in RCW 19.146.030 (1) and (2)(b), unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and

(b) The mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.

(12) Are there any situations in which fees that benefit the mortgage broker can increase without additional disclosure? Yes, there are two possible situations where an increase in the fees benefiting the mortgage broker may increase without the requirement to provide additional disclosures. These situations are:

(a) The additional disclosure is not required if the borrower's closing costs, excluding prepaid escrowed costs of ownership, on the final settlement statement do not exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower. For purposes of this section "prepaid escrowed costs of ownership" mean any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan; or

(b) The fee or set of fees that benefit the mortgage broker are disclosed as a percentage of the loan amount and the increase in fees results from an increase in the loan amount, provided that:

(i) The increase in loan amount is requested by the borrower; and

(ii) The fee or set of fees that are calculated as a percentage of the loan amount have been disclosed on the initial written disclosure as both a percentage of the loan amount and as a dollar amount based upon the assumed loan amount used in the initial written disclosure; and

(iii) The total aggregate increase in the fee or set of fees that benefit the mortgage broker as a result of the increase in loan amount is less than seven hundred fifty dollars.

This section does not apply to the disclosure required in RCW 19.144.020.

(13) What action may the department take if I disclose my mortgage broker fees on the good faith estimate and HUD-1/1A statement on lines other than 808 through 811? If you fail to disclose your mortgage broker fees as required, the department may request, direct, or order you to refund those fees to the borrower. For example, if you disclose your mortgage broker fees as loan origination fees or discount points, the department may find that this is a deceptive practice and take action against you as indicated.

(14) May the department take action against a mortgage broker when mortgage broker fees are disclosed incorrectly on the HUD-1/1A and the incorrect disclosure was made by an independent escrow agent, title company, or lender? If the mortgage broker can show the department that they disclosed their fees correctly on the good faith estimate, and have instructed the independent escrow agent, title

company, or lender to disclose the fees correctly on the HUD-1/1A, and the independent escrow agent, title company, or lender has not followed the instructions, the department may not take action against the mortgage broker.

(15) What action may the department take if I fail to provide additional disclosures as required under RCW 19.146.030(4)? Generally, the department may request, direct, or order you to refund fees.

(16) How will the department determine whether to request, direct or order me to refund fees to the borrowers? Generally, the department will make its determination by answering the following questions:

(a) Has an initial good faith estimate disclosure of costs been provided to the borrower in accordance with RCW 19.146.030 (1) and (2)(b)?

(b) Were any subsequent good faith estimate disclosures of costs provided to the borrower no less than three business days prior to the signing of the loan closing documents? Additionally, was the subsequent disclosure accompanied by a clear written explanation of the change?

(c) How were the costs disclosed in each good faith estimate (e.g., dollar amount, percentage, or both)?

(d) Did the total costs, excluding prepaid escrowed costs of ownership, on the final settlement statement exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower no less than three business days prior to the signing of the loan closing documents?

(e) If the costs at closing did exceed the most recent disclosure of costs was the need to charge the fee reasonably foreseeable at the time the written disclosure was provided?

(f) If the costs at closing did exceed the most recent disclosure of costs did the mortgage broker provide a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed, no less than three business days prior to the signing of the loan closing documents?

(17) If I failed to provide the initial good faith estimate or TILA disclosure under RCW 19.146.030 (1) and (2)(a) and (b) what action may the department take? If you have not provided the initial good faith estimate or TILA disclosure as required, including both delivery and content requirements, the department may request, direct or order you to refund to the borrower fees that inured to your benefit.

(18) If I received trust funds from a borrower, but failed to provide the disclosures as required in RCW 19.146.030 (1) and (2), what action may the department take? If you did not provide the disclosures as required, including both delivery and content requirements, the department may request, direct, or order you to refund to the borrower any trust funds they have paid regardless of whether you have already expended those trust funds on third-party providers.

(19) Under what circumstances must I redisclose the initial disclosures required under the act? Generally, any loan terms or conditions that change must be redisclosed to the borrower no less than three business days(=) prior to ~~((closing, to the borrower))~~ the signing of the loan closing documents. Some examples are:

- (a) Adjustable rate loan terms, including index, margin, and any changes to the fixed period.
- (b) The initial fixed period.
- (c) Any balloon payment requirements.
- (d) Interest only options and any changes to the options.
- (e) Lien position of the loan.
- (f) Terms and the number of months or years for amortization purposes.
- (g) Prepayment penalty terms and conditions.
- (h) Any other term or condition that may be specific to a certain loan product.

(20) **Must I provide the written disclosures required under RCW 19.146.030 if all I do is obtain a credit report on a consumer who has identified a specific property for a purchase and sales agreement or contract, or a refinance loan?** Yes. At that point, you have collected enough information on behalf of the consumer for you to anticipate a credit decision under RESPA's Regulation X, 24 ((C.F.R.)) CFR Sections 3500 et seq. and you must provide the consumer with all required disclosures. See the definition of "application" in these rules.

(21) **If a loan application is canceled within three days of application must I provide the disclosures required under RCW 19.146.030?** If you have not used any borrower trust funds and those funds have been returned to the borrower in conformance with these rules, the disclosures pursuant to RCW 19.146.030 are not required.

(22) **Is a mortgage broker that table funds a loan exempt from disclosures?** No. A mortgage broker must provide all disclosures required by the act, and disclose all fees as required by Regulation X, regardless of the funding mechanism used in the transaction.

(23) **What must I disclose to a potential borrower when I advertise my business or services to them using information about their current loan?** You must disclose the source from which you obtained the information about the borrower's current loan when the information was not obtained by soliciting, making a residential loan, or assisting that potential borrower in obtaining or applying to obtain a residential mortgage loan. If the information was provided by a company that searched public records and provided you the information, the "source" is the company that provided the records, not "public records."

(24) **What must I provide to the borrower if I am unable to complete a loan for them and they have paid for services from third-party providers?** If you are unable to complete a loan for the borrower for any reason, and if the borrower has paid you for third-party provider services, and the borrower makes a written request to you, you must provide the borrower with copies of the product from any third-party provider, including, but not limited to, an appraisal, title report, or credit report. You must provide the copies within five business days of the borrower's request.

The borrower may also request that you provide the originals of the documents to another mortgage broker or lender of the borrower's choice. By furnishing the originals to another mortgage broker or lender, you are conveying the right to use the documents to the other broker or lender. You must, upon request by the other broker or lender, provide written evidence of the conveyance. You must provide the

originals to the mortgage broker or lender within five business days of the borrower's request.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-440 Advertising. (1) **Am I responsible for ensuring that my advertising material is accurate, reliable, and in compliance with the act?** Yes. Each mortgage broker is responsible for ensuring the accuracy and reliability of the advertising material.

(2) **A licensee is prohibited from advertising with envelopes or stationery that contain an official-looking emblem designed to resemble a government mailing or that suggest an affiliation that does not exist. What are some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws?** Some examples include, but are not limited to:

(a) An official-looking emblem such as an eagle, the Statue of Liberty, or a crest or seal that resembles one used by any state or federal government agency.

(b) Envelopes designed to resemble official government mailings, such as IRS or U.S. Treasury envelopes, or other government mailers.

(c) Warnings or notices citing government codes or form numbers not required by the U.S. Postmaster to be shown on the mailing.

(d) The use of the term "official business," or similar language implying official or government business, without also including the name of the sender.

(e) Any suggestion or representation that the solicitor is affiliated with any agency, bank, or other entity that it does not actually represent.

(3) **Is it a violation to advertise that third-party services are "free" when the licensee has paid for the services?** Yes. Advertising using the term "free," or any other similar term or phrase that implies there is no cost to the applicant is deceptive because you can recover the cost of the purportedly "free" item through the negotiation process. This is a violation of RCW 19.146.0201 (2), (7), and (11). See the Federal Trade Commission's Guide Concerning Use of the Word "Free" and Similar Representations (16 CFR §251.1(g) (2003)) available at <http://www.ftc.gov/bcp/guides/free.htm>.

(4) **When I am advertising interest rates, the act requires me to conspicuously disclose the annual percentage rate (APR) implied by the rate of interest. What does it mean to "conspicuously" disclose the APR?** The required disclosures in your advertisements must be reasonably understandable. Consumers must be able to read or hear, and understand the information. Many factors, including the size, duration, and location of the required disclosures, and the background or other information in the advertisement, can affect whether the information is clear and conspicuous. The disclosure of the APR must be as prominent or more prominent than any other rates disclosed in the advertisement, regardless of the form of the advertisement.

((4)) (5) **The act prohibits me from advertising an interest rate unless that rate is actually available at the**

time of the advertisement. How may I establish that an advertised interest rate was "actually available" at the time it was advertised? Whenever a specific interest rate is advertised, the mortgage broker must retain a copy of the lender's "rate sheet," or other supporting rate information, and the APR calculation for the advertised interest rate.

~~((5))~~ **(6) Must I quote the annual percentage rate when discussing rates with a borrower?** Yes. You must quote the annual percentage rate and other terms of the loan if you give an oral quote of an interest rate to the borrower. TILA's Regulation Z, 12 ~~((C.F.R.))~~ CFR, part 226.26 provides guidance for using the annual percentage rate in oral disclosures.

~~((6))~~ **(7) May a mortgage broker or loan originator advertise rates or fees as the "lowest" or "best"?** No. Rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. Therefore, they are a false or deceptive statement or representation prohibited by RCW 19.146.0201(7).

~~((7))~~ **(8) When I advertise, or present a business card to a potential borrower, must I make the disclosures required under the act and these rules?** No. You are not required to make disclosures until you accept a residential mortgage loan application, or until you assist a borrower in preparing an application.

~~((8))~~ **(9) May I solicit using advertising that suggests or represents that I am affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, when I am not; or that I am an entity other than who I am?** No. It is an unfair and deceptive act or practice and a violation of the act for you to suggest or represent that you are affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, or other entity you do not actually represent; or to suggest or represent that you are any entity other than who you are.

~~((9))~~ **(10) If I advertise using a borrower's current loan information, what must I disclose about that information?** When an advertisement includes information about a borrower's current loan that you did not obtain from a solicitation, application, or loan, you must provide the borrower with:

- (a) The name of the source of the information;
- (b) A statement that you are not affiliated with the borrower's lender; and
- (c) The information disclosed in (a) and (b) of this subsection must be in the same size type font as the rest of the information in the advertisement.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-500 Prohibited practices. (1) What may I request of an appraiser? You may request an area or market survey. While there are no strict definitions of these terms, generally they refer to general information regarding a region, area, or plat. The information usually includes the high, low and average sales price, numbers of properties available for sale or that have been sold within a set period,

marketing times, days on market, absorption rate or the mixture of different property types in the specified area, among other possible components. An area survey does not contain sufficient information or is not so defining as to allow an appraiser or reader to determine the value of a specified property or property type.

(2) How may I discuss property values with an appraiser, prior to the appraisal, without the discussion constituting improperly influencing the appraiser? You may inform the appraiser of your opinion of value, the borrower's opinion of value, or the list or sales price of the property. You are prohibited from telling the appraiser the value you need or that is required for your loan to be successful.

(3) What business practices are prohibited? The following business practices are prohibited:

(a) Directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.

(b) Engaging in any unfair or deceptive practice toward any person.

(c) Obtaining property by fraud or misrepresentation.

(d) Soliciting or entering into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower.

(e) Charging discount points on a loan which does not result in a reduction of the interest rate. Some examples of discount point misrepresentations are:

(i) A mortgage broker or lender charging discount points on the good faith estimate or settlement statement payable to the mortgage broker or any party that is not the actual lender on the resident mortgage loan.

(ii) Charging loan fees or mortgage broker fees that are represented to the borrower as discount points when such fees do not actually reduce the rate on the loan, or reflecting loan origination fees or mortgage broker fees as discount points.

(iii) Charging discount points that are not mathematically determinable as the same direct reduction of the rate available to any two borrowers with the same program and underwriting characteristics on the same date of disclosure.

(f) Failing to clearly and conspicuously disclose whether a payment advertised or offered for a residential mortgage loan includes amounts for taxes, insurance, or other products sold to the borrower. This prohibition includes the practice of misrepresenting, either orally, in writing, or in any advertising materials, a loan payment that includes only principal and interest as a loan payment that includes principal, interest, tax, and insurance.

(g) Failing to provide the exact pay-off amount of a loan you own or service as of a certain date five or fewer business days after being requested in writing to do so by a borrower of record or their authorized representative.

(h) Failing to record a borrower's payment, on a loan you own or service, as received on the day it is delivered to any of the licensee's locations during its regular working hours.

(i) Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connec-

tion with any application, examination or investigation conducted by the department.

(j) Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower in order to verify that the asset is not otherwise insured.

(k) Willfully filing a lien on property without a legal basis to do so.

(l) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction.

(m) Failing to reconvey title to collateral, if any, within thirty days when the loan is paid in full unless conditions exist that make compliance unreasonable.

(n) Failing to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law.

(o) Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan. An example is advertising a discounted rate without clearly and conspicuously disclosing in the advertisement the cost of the discount to the borrower and that the rate is discounted.

(p) Engage in bait and switch advertising.

Bait and switch means a deceptive practice of soliciting or promising a loan at favorable terms, but later "switching" or providing a loan at less favorable terms. While bait and switch will be determined by the facts of a case, the following examples, alone or in combination, may exhibit a bait and switch practice:

(i) A deceptive change of loan program from fixed to variable rate.

(ii) A deceptive increase in interest rate.

(iii) The misrepresentation of discount points. This may include discount points that have a different rate buydown effect than promised, or origination fees that a borrower has been led to believe are discount points affecting the rate.

(iv) A deceptive increase in fees or other costs.

(v) A deceptive disclosure of monthly payment amount. This practice may involve soliciting a loan with payments that do not include monthly amounts for taxes and insurance or other reserved items, while leading the borrower to believe that such amounts are included.

(vi) Additional undisclosed terms such as prepayment penalties or balloon payments, or deceiving borrowers about the effect of disclosed terms.

(vii) Additional layers of financing not previously disclosed that serve to increase the overall cost to the borrower. This practice may involve the surprise combination of first and second mortgages to achieve the originally promised loan amount.

(viii) Leading borrowers to believe that subsequent events will be possible or practical when in fact it is known that the events will not be possible or practical.

(ix) Advertising or offering rates, programs, or terms that are not actually available at the time. See WAC 208-660-440(4).

(q) Engage in unfair or deceptive advertising practices. Unfair advertising may include advertising that offends pub-

lic policy, or causes substantial injury to consumers or to competition in the marketplace.

(r) Negligently making any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department.

(s) Making any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

(t) Advertising a rate of interest without clearly and conspicuously disclosing the annual percentage rate implied by the rate of interest.

(u) Failing to comply with the federal statutes and regulations in RCW 19.146.0201(11).

(v) Failing to pay third-party providers within the applicable timelines.

(w) Collecting or charging, or attempting to collect or charge, or use or propose any agreement purporting to collect or charge any fees prohibited by the act.

(x) Acting as a loan originator and real estate broker or salesperson, or acting as a loan originator in a manner that violates RCW 19.146.0201(14).

(y) Failing to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

(4) What federal guidance has the director adopted for use by the department in determining if a violation under subsection (3)(b) of this section has occurred? The director has adopted the following documents:

(a) The Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators "Guidance on Nontraditional Mortgage Product Risks" (released November 14, 2006); and

(b) The Conference of State Bank Supervisors, American Association of Residential Mortgage Regulators, and National Association of Consumer Credit Administrators "Statement on Subprime Mortgage Lending," effective July 10, 2007 (published in the Federal Register at Vol. 72, No. 131).

(5) What must I do to comply with the federal guidelines on nontraditional mortgage loan product risks and statement on subprime lending? You must adopt written policies and procedures implementing the federal guidelines that are applicable to your mortgage broker business. The policies and procedures must be maintained as a part of your books and records and must be made available to the department upon request.

(6) When I develop policies and procedures to implement the federal guidelines, what topics must be included? The policies and procedures must include, at a minimum, the following:

(a) Consumer protection.

Communication with borrowers. Providers must focus on information important to consumer decision making; highlight key information so that it will be noticed; employ a user-friendly and readily navigable format for presenting the information; and use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products,

including reduced documentation programs, also may be useful for consumers. Promotional materials and other product descriptions must provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions. Specifically:

- Borrowers must be advised of potential increases in payment obligations. The information should describe when structural payment changes will occur and what the new payment would be or how it was calculated. For example, loan products with low initial payments based on a fixed introductory rate that expires after a short time and then adjusts to a variable index rate plus a margin must be adequately described to the borrower. Because initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier than scheduled recasting of monthly payments.

- Borrowers must be advised as to the maximum amount their monthly payment may be if the interest rate increases to its maximum rate under the terms of the loan.

- Borrowers must be advised as to the maximum interest rate that can occur under the terms of the loan.

- Borrowers must be alerted to the fact that the loan has a prepayment penalty and the amount of the penalty.

- Borrowers must be made aware of any pricing premium based on reduced documentation.

(b) Control standards.

(i) Actual practices must be consistent with the written policies and procedures. Employees must be trained in the policies and procedures and performance monitored for compliance. Incentive programs should not produce high concentrations of nontraditional products. Performance measures and reporting systems should be designed to provide early warning of increased risk.

(ii) Reporting to DFI. In a separate written document, as prescribed by the director and submitted with the mortgage broker annual report, every licensee must submit information regarding the offering of nontraditional mortgage loan products.

(7) May I charge a loan origination fee or discount points when I originate but do not make a loan? No. You may not charge a loan origination fee or discount points as described in Regulation X, Part 3500, Appendix A.

~~((6))~~ **(8) What mortgage broker fees may I charge?** You may charge a mortgage broker fee that was agreed upon between you and the borrower as stated on a good faith estimate disclosure form or similar document provided that such fee is disclosed in compliance with the act and these rules.

~~((7))~~ **(9) How do I disclose my mortgage broker fees on the good faith estimate and settlement statement?** You must disclose or direct the disclosure of your fees on lines 808 through 811 of the good faith estimate and HUD-1/1A Settlement Statement or similar document.

~~((8))~~ **(10) May I charge the borrower a fee that exceeds the fee I initially disclosed to the borrower?** Pursuant to RCW 19.146.030(4), you may not charge any fee that benefits you if it exceeds the fee you initially disclosed unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the initial disclosure was provided; and

(b) You have provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed. See WAC 208-660-430 for specific details, disclosures, and exceptions implementing RCW 19.146.030(4).

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-600 Administration and facilitation of continuing education. (1) Who may offer continuing education courses to principals, designated mortgage brokers, and loan originators? Continuing education may be offered by:

(a) Course providers with courses of education approved by the director; or

(b) Course providers with courses of education approved by professional organizations approved by the director.

(2) What does it mean to offer and administer a course of education? Offering and administering a course of education is the creation of a curriculum and the administrative processes to operate and maintain the curriculum. See the department's approval standards in subsections (7) and (14) of this section.

(3) What is a "course of education" under the act? A course of education is formal training that satisfies all or part of the continuing education requirements of the act and these rules.

(4) What is a "course provider" under the act? A course provider is a person or organization that provides continuing education. Course providers may provide education that meets the requirements of the act and these rules by applying for and receiving approval from the department for a specific course of education.

(5) What is a "professional organization" under the act? A professional organization is an organization with at least ten members created for the primary purpose of furthering the professional interests of its members, protecting the public interest, or both. Education must be an essential element of the professional organization's purpose. A professional organization must have the director's approval to offer and administer courses of education.

(6) If I am a course provider not affiliated with a professional organization, how do I obtain approval for my courses of education? You must apply to the department for course approval. If the department approves the course, you will be issued a certificate of approval that will be effective for two years from the date of issuance.

(7) What standard is required and what will the department review when considering approval of continuing education provided by course providers not affiliated with professional organizations? Continuing education courses must provide the course taker with a working knowledge of, and competency in, the subject matter. To ensure this standard, the department will review the following when considering approval of education courses:

(a) The instructor's experience and qualifications;

(b) Whether the instructor or proposed course of education has been approved, denied, or rescinded by the department in the past; and

(c) The course materials and lesson plans for the proposed courses. Each course must run a minimum of three hours; the materials and lesson plans must have the content to support a presentation of this length.

(8) If I am a course provider with courses of education approved by a professional organization, may I also offer courses of education unaffiliated with the professional organization? Yes. However, your courses of education unaffiliated with the professional organization must be approved by the department.

(9) May the department rescind approval of a course provider's course of education? Yes. The department may rescind approval of a course of education:

(a) Upon a determination that the course of education does not meet the standards in subsection (7) of this section; or

(b) If the course provider does not provide the required quarterly reports described in subsection (13) of this section.

(10) What action must a course provider take if notified by the department that its course of education has been rescinded? The course provider must immediately:

(a) Cease advertising or soliciting for the course of education;

(b) Inform registered course takers of the department's rescission of course approval, and cancel the course of education; and

(c) Refund any fees paid by course takers for the course.

(11) May a course provider appeal the department's decision to deny or rescind course approval? Yes. A course provider may appeal the department's decision to deny or rescind a course. The course provider must appeal the decision to the department within twenty days of being notified by the department of the decision.

(12) If a course provider has appealed the department's denial or rescission of a course of education, must it still take the immediate action in subsection (10) of this section? Yes. A course provider appealing a department decision about a course of education must comply with subsection (10) of this section.

(13) I am a course provider who provides approved continuing education courses directly to licensees, or I provide courses with the approval of a professional organization. What reports must I provide to the department? You must provide quarterly reports to the department, in a form prescribed by the director. The reports must be received by the department no later than April 10, July 10, October 10, and January 10 of each year. The reports must contain the following information:

(a) The course taker's name;

(b) The course taker's license number, or Social Security number;

(c) The name of the course;

(d) The date the course was taken; and

(e) Whether the course taker received a certificate of satisfactory completion.

If you provide the reports electronically, the data must be encrypted as prescribed by the director.

(14) What standards will the department review when considering approving professional organizations to offer and administer courses of education under the act and rules? The department will review the following:

(a) A description of the course of education curriculum that satisfies the content of continuing education under subsection (22) of this section;

(b) Whether the professional organization has sufficient procedures and guidelines to:

(i) Establish a course(s) of education and approve a course provider(s);

(ii) Audit and evaluate an approved course(s) of education and course provider(s);

(iii) Remove courses and providers from the professional organization's curriculum;

(iv) Provide board reconsideration of denial or removal of a course of education or a course provider;

(v) Ascertain the identity of course of education takers;

(vi) Issue certificates of satisfactory completion, that include, at a minimum, the course taker's name, the course provider's name, the course title, and the date of course completion;

(vii) Collect, hold, disburse and refund course of education fees;

(c) Whether the professional organization requires members to adhere to an established code of conduct or ethics.

(15) Is the department liable for a professional organization's decision to approve, deny, or revoke authorization for a course provider to offer courses of education? No. The department is not liable for a professional organization's decision to approve, deny, or revoke a course provider's authorization to provide courses of education for the professional organization.

(16) Is the department liable for a course provider's contractual relationship with a professional organization? No. Course providers independently contract with professional organizations and the department is not liable for the consequences of that relationship.

(17) May the department remove a professional organization's authorization to offer and administer courses of education? Yes. The department may rescind a professional organization's authorization to offer and administer courses of education:

(a) Upon a determination that the professional organization fails to meet subsection (14) of this section; or

(b) If the professional organization fails to provide the required quarterly reports described in subsection (21) of this section.

(18) What action must a professional organization take if notified by the department that its authorization has been rescinded? The professional organization must immediately:

(a) Cease advertising or soliciting for all courses of education;

(b) Inform registered course takers of the department's rescission of approval, and cancel the courses of education; and

(c) Refund any fees paid by course takers for the courses.

(19) May a professional organization appeal the department's decision to deny or rescind authorization?

Yes. A professional organization may appeal the department's decision to deny or rescind the professional organization's authorization to approve course providers. The professional organization must appeal the decision to the department within twenty days of being notified by the department of the decision.

(20) If a professional organization has appealed the department's denial or rescission of authorization, must it still take the immediate action in subsection (18) of this section? Yes. A professional organization appealing a department decision about a course provider or course of education must comply with subsection (18) of this section.

(21) When a professional organization is approved by the department to offer continuing education courses to licensees, and does so, what reports must the professional organization provide to the department? The professional organization must provide quarterly reports to the department, in a form prescribed by the director. The reports must be received by the department no later than April 10, July 10, October 10, and January 10 of each year. The reports must contain the following information:

- (a) The course taker's name;
- (b) The course taker's license number, or Social Security number if not currently licensed;
- (c) The name of the course;
- (d) The date the course was taken; and
- (e) Whether the course taker received a certificate of satisfactory completion.

If you provide the reports electronically, the data must be encrypted as prescribed by the director.

(22) How long does department approval for a professional organization to offer continuing education courses last, and may the approval be renewed? Approval of a continuing education course is valid for two years. Approval may be renewed by applying to the director forty-five days prior to expiration of a current approval and providing detailed information about the course(s) and instructor(s) if they are to be changed.

(23) What topics must be included as continuing education courses? Continuing education courses must include some or all of the topics listed below. Courses may be designed to cover a range of topics or they may focus in detail on a single topic.

(a) General.

(i) Ethics in the mortgage industry.

The responsibilities and liabilities of the profession including instruction on fraud, consumer protection, and fair lending issues.

(ii) Lending standards for nontraditional mortgage products.

(iii) Arithmetical computations common to mortgage lending including without limitation, the computation of annual percentage rate, finance charge, amount financed, payment and amortization.

(b) Compliance and internal audit standards.

Proper use and application of the department's published standards and guidelines for examinations.

Internal audit and compliance practices, standards, methods and procedures.

Developing policies and procedures for regulatory compliance.

Responding to regulatory inquiries, directives, subpoenas and enforcement orders.

Training and supervision of mortgage professionals.

Establishing, managing, reconciling and reviewing a trust account (trust account compliance under the act and these rules).

(c) Washington law and associated regulations.

The Mortgage Broker Practices Act.

The Consumer Protection Act.

The Escrow Agent Registration Act.

The Usury Act.

Unfair practices with respect to real estate transactions (RCW 49.60.222).

Mortgage, deed of trust, and real estate contract statutes set forth in Title 61 RCW.

Real estate and appraisal law, including without limitation, the provisions of chapters 18.85 and 18.140 RCW.

Washington principal and agent law.

Any subsequent act or regulation applying to mortgage brokers.

(d) Federal law and associated regulations.

The Real Estate Settlement Procedures Act.

Truth in Lending Act.

Equal Credit Opportunity Act.

Fair Credit Reporting Act.

Fair Housing Act.

Home Mortgage Disclosure Act.

Community Reinvestment Act.

Gramm-Leach Bliley Act.

Home Ownership Protection Act.

Bank Secrecy Act.

Appraisal regulations.

Underwriting.

The SAFE Act (Title V of the Housing and Economic Reform Act of 2008 ("HERA")) Public Law No. 110-289.

Any subsequent act or regulation applying to mortgage brokers.

(e) Mortgage services and products.

Conventional.

Reverse mortgages.

FHA mortgages.

VA mortgages.

Nonprime mortgages.

Other products or services deemed relevant to continuing education by the department.

(24) May the department audit or review a course of education? Yes. The department may audit or review any continuing education course by registering for the course or attending the course of education unannounced by presenting the course provider with official identification prior to the start of the course. The department will not be charged any fee for official audit or review of the course of education.

WSR 09-01-158
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed December 23, 2008, 9:34 a.m., effective March 1, 2009]

Effective Date of Rule: March 1, 2009.

Purpose: The purpose of this rule making is to change the reporting requirements contained in several chapters to match the reporting requirements in other safety standards administered and enforced by the department. These sections were inadvertently left out of the previous rule filing that changed these requirements (see WSR 08-05-012). Additionally, the definition of the term "hospitalization" is being clarified to reduce confusion and bring our rules into line with OSHA's interpretation of the word.

Citation of Existing Rules Affected by this Order: Amending WAC 296-27-00105 Partial exemption for private employers in certain industries, 296-27-00109 Nonmandatory appendix to this section—Partially exempt industries, 296-27-031 Reporting fatality, injury, and illness information, 296-37-525 Medical requirements, 296-305-01503 Accident investigation, 296-800-320 Summary, and 296-800-370 Definitions.

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

Adopted under notice filed as WSR 08-16-111 on August 5, 2008.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: December 23, 2008.

Judy Schurke
 Director

AMENDATORY SECTION (Amending WSR 04-07-161, filed 3/23/04, effective 6/1/04)

WAC 296-24-012 Definitions applicable to all sections of this chapter.

Note: Meaning of words. Unless the context indicates otherwise, words used in this chapter shall have the meaning given in this section.

(1) "Approved" means approved by the director of the department of labor and industries or his/her authorized representative: Provided, however, That should a provision of this chapter state that approval by an agency or organization

other than the department of labor and industries is required, such as Underwriters' Laboratories or the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH), the provisions of WAC 296-800-360 shall apply.

(2) "Authorized person" means a person approved or assigned by the employer to perform a specific type of duty or duties or to be at a specific location or locations at the job site.

(3) "Competent person" means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective action to eliminate them.

(4) "Department" means the department of labor and industries.

(5) "Director" means the director of the department of labor and industries, or his/her designated representative.

(6) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: Provided, That any person, partnership, or business entity not having employees, and who is covered by the industrial insurance act shall be considered both an employer and an employee.

(7) "First aid" means, for purposes of this section, the extent of treatment that could be expected to be given by a person trained in basic first aid, using supplies from a first-aid kit. Tests, such as X rays, shall not be confused with treatment.

(8) "Hazard" means that condition, potential or inherent, which can cause injury, death, or occupational disease.

(9) "Hospitalization" means to be ~~((sent to; to go to; or be))~~ admitted to a hospital or an equivalent medical facility ~~((and receive medical treatment beyond that which would be considered as first aid treatment, regardless of the length of stay in the hospital or medical facility))~~ on an emergent in-patient basis requiring an overnight stay.

(10) "Qualified" means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve or resolve problems relating to the subject matter, the work, or the project.

(11) "Safety factor" means the ratio of the ultimate breaking strength of a member or piece of material or equipment to the actual working stress or safe load when in use.

(12) "Safety and health standard" means a standard which requires the adoption or use of one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(13) "Shall" means mandatory.

(14) "Should" means recommended.

(15) "Standard safeguard" means a device designed and constructed with the object of removing the hazard of acci-

dent incidental to the machine, appliance, tool, building, or equipment to which it is attached.

Standard safeguards shall be constructed of either metal or wood or other suitable material or a combination of these. The final determination of the sufficiency of any safeguard rests with the director of the department of labor and industries.

(16) "Suitable" means that which fits, or has the qualities or qualifications to meet a given purpose, occasion, condition, function, or circumstance.

(17) "Working day" means a calendar day, except Saturdays, Sundays, and legal holidays as set forth in RCW 1.16.050, as now or hereafter amended, and for the purposes of the computation of time within which an act is to be done under the provisions of this chapter, shall be computed by excluding the first working day and including the last working day.

(18) "Worker," "personnel," "person," "employee," and other terms of like meaning, unless the context of the provision containing such term indicates otherwise, mean an employee of an employer who is employed in the business of his/her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is his/her personal labor for an employer whether by manual labor or otherwise.

(19) "Work place" means any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control, and includes, but is not limited to, all work places covered by industrial insurance under Title 51 RCW, as now or hereafter amended.

(20) Abbreviations used in this chapter:

(a) "ANSI" means American National Standards Institute.

(b) "API" means American Petroleum Institute.

(c) "ASA" means American Standards Association.

(d) "ASAE" means American Society of Agricultural Engineers.

(e) "ASHRE" means American Society of Heating and Refrigeration Engineers.

(f) "ASME" means American Society for Mechanical Engineers.

(g) "ASTM" means American Society for Testing and Materials.

(h) "AWS" means American Welding Society.

(i) "BTU" means British thermal unit.

(j) "BTUH" means British thermal unit per hour.

(k) "CFM" means cubic feet per minute.

(l) "CFR" means Code of Federal Regulations.

(m) "CGA" means Compressed Gas Association.

(n) "CIE" means Commission Internationale de l'Éclairage.

(o) "DOT" means department of transportation.

(p) "FRP" means fiberglass reinforced plastic.

(q) "GPM" means gallons per minute.

(r) "ICC" means Interstate Commerce Commission.

(s) "ID" means inside diameter.

(t) "LPG" means liquefied petroleum gas.

(u) "MCA" means Manufacturing Chemist Association. (New name: Chemical Manufacturers Association.)

(v) "NBFU" means National Board of Fire Underwriters.

(w) "NEMA" means National Electrical Manufacturing Association.

(x) "NFPA" means National Fire Protection Association.

(y) "NTP" means normal temperature and pressure.

(z) "OD" means outside diameter.

(aa) "PSI" means pounds per square inch.

(bb) "PSIA" means pounds per square inch atmospheric.

(cc) "PSIG" means pounds per square inch gauge.

(dd) "RMA" means Rubber Manufacturers Association.

(ee) "SAE" means Society of Automotive Engineers.

(ff) "TFI" means The Fertilizer Institute.

(gg) "TSC" means Trailer Standard Code.

(hh) "UL" means Underwriters' Laboratories, Inc.

(ii) "USASI" means United States of America Standards Institute.

(jj) "USC" means United States Code.

(kk) "USCG" means United States Coast Guard.

(ll) "WAC" means Washington Administrative Code.

(mm) "WISHA" means Washington Industrial Safety and Health Act of 1973.

AMENDATORY SECTION (Amending WSR 08-05-012, filed 2/8/08, effective 4/1/08)

WAC 296-27-00105 Partial exemption for private employers in certain industries. (1) Basic requirement.

(a) If your private business establishment is classified in a specific low hazard retail, service, finance, insurance or real estate industry listed in Table 1 you do not need to keep injury and illness records unless WISHA, OSHA, or the BLS asks you to keep the records under WAC 296-27-03105 or 296-27-03107. (Public employers are not included in this exemption, except as indicated in (b) of this subsection.) However, all employers must report to WISHA any workplace incident that results in a fatality or the in-patient hospitalization of any employee (see WAC 296-800-32005).

(b) If you are a public employer in SIC 821 (elementary and secondary schools) and 823 (libraries), you do not need to keep injury and illness records unless WISHA, OSHA or the BLS asks you to keep the records under WAC 296-27-03105 or 296-27-03107. However, all employers must report to WISHA any workplace incident that results in a fatality or the in-patient hospitalization of ~~((two or more))~~ any employee(s) (see WAC 296-800-32005).

(c) If one or more of your company's establishments are classified in a nonexempt industry, you must keep injury and illness records for all of such establishments unless your company is partially exempted because of size under WAC 296-27-00103.

(2) Implementation.

(a) **Does the partial industry classification exemption apply only to business establishments in the retail, services, finance, insurance or real estate industries (SICs 52-89)?** Yes, business establishments classified in agriculture; mining; construction; manufacturing; transportation; communication, electric, gas and sanitary services; or whole-

sale trade are not eligible for the partial industry classification exemption.

(b) **Is the partial industry classification exemption based on the industry classification of my entire company or on the classification of individual business establishments operated by my company?** The partial industry classification exemption applies to individual business establishments. If a company has several business establishments engaged in different classes of business activities, some of the company's establishments may be required to keep records, while others may be exempt.

(c) **How do I determine the Standard Industrial Classification code for my company or for individual establishments?** You determine your Standard Industrial Classification (SIC) code by using the Standard Industrial Classification manual, *Executive Office of the President, Office of Management and Budget*. You may contact your local L&I office for help in determining your SIC or visit Department of Revenue's web site, http://dor.wa.gov/reports/Qbrsearch/sic_list.htm.

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-00109 Nonmandatory appendix to this section—Partially exempt industries. Employers are not required to keep OSHA injury and illness records for any establishment classified in the following Standard Industrial Classification (SIC) codes, unless they are asked in writing to do so by WISHA, OSHA, or the Bureau of Labor Statistics (BLS). All employers, including those partially exempted by reason of company size or industry classification, must report to WISHA any workplace incident that results in a fatality or the in-patient hospitalization of ~~((two or more))~~ any employee(s) (see WAC 296-800-32005).

See Table "I" at the end of this document.

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-031 Reporting fatality, injury, and illness information. (1) Basic requirement. You must report fatalities, injuries and illnesses information as required by WAC 296-800-32005.

(2) Implementation.

(a) **If the local L&I office is closed, how do I report the incident?** If the local office is closed, you must report a fatality or ~~((multiple))~~ in-patient hospitalization incident by calling either the department at 1-800-4BE-SAFE (1-800-423-7233) or by contacting the Occupational Safety and Health Administration (OSHA) by calling its central number at 1-800-321-6742.

(b) **What information do I need to give about the incident?** You must give the following information for each fatality or ~~((multiple))~~ in-patient hospitalization incident:

- Name of the work place;
- Location of the incident;
- Time and date of the incident;
- Number of fatalities or hospitalized employees;
- Names of injured employees;
- Contact person and phone number; and

- Brief description of the incident.

AMENDATORY SECTION (Amending Order 78-18, filed 10/2/78)

WAC 296-37-525 Medical requirements. (1) General.

(a) The employer shall determine that dive team members who are, or are likely to be, exposed to hyperbaric conditions are medically fit to perform assigned tasks in a safe and healthful manner.

(b) The employer shall provide each dive team member who is, or is likely to be, exposed to hyperbaric conditions with all medical examinations required by this standard.

(c) All medical examinations required by this standard shall be performed by, or under the direction of, a physician at no cost to the employee.

(2) Frequency of medical examinations. Medical examinations shall be provided:

(a) Prior to initial hyperbaric exposure with the employer, unless an equivalent medical examination has been given within the preceding 12 months and the employer has obtained the results of the examination and an opinion from the examining physician of the employee's medical fitness to dive or to be otherwise exposed to hyperbaric conditions;

(b) At one year intervals from the date of initial examination or last equivalent examination; and

(c) After an injury or illness requiring in-patient hospitalization ~~((of more than twenty-four hours))~~.

(3) Information provided to examining physician. The employer shall provide the following information to the examining physician:

(a) A copy of the medical requirements of this standard; and

(b) A summary of the nature and extent of hyperbaric conditions to which the dive team member will be exposed, including diving modes and types of work to be assigned.

(4) Content of medical examinations.

(a) Medical examinations conducted initially and annually shall consist of the following:

(i) Medical history;

(ii) Diving-related work history;

(iii) Basic physical examination;

(iv) The tests required by Table I; and

(v) Any additional tests the physician considers necessary.

(b) Medical examinations conducted after an injury or illness requiring in-patient hospitalization ~~((of more than 24 hours))~~ shall be appropriate to the nature and extent of the injury or illness as determined by the examining physician.

TABLE I
TESTS FOR DIVING MEDICAL EXAMINATION

Test	Initial Examination	Annual Reexamination
Chest X ray	x	
Visual acuity	x	x
Color blindness	x	

Test	Initial Examination	Annual Reexamination
EKG: Standard 12L ¹		
Hearing test	x	x
Hematocrit or hemoglobin.	x	x
Sickle cell index	x	
White blood count	x	x
Urinalysis	x	x

¹To be given to the employee once, at age 35 or over.

(5) Physician's written report.

(a) After any medical examination required by this standard, the employer shall obtain a written report prepared by the examining physician containing:

- (i) The results of the medical examination; and
- (ii) The examining physician's opinion of the employee's fitness to be exposed to hyperbaric conditions, including any recommended restrictions or limitations to such exposure (see WAC 296-37-585).

(b) The employer shall provide the employee with a copy of the physician's written report.

(6) Determination of employee fitness.

(a) The employer shall determine the extent and nature of the dive team member's fitness to engage in diving or be otherwise exposed to hyperbaric conditions consistent with the recommendations in the examining physician's report.

(b) If the examining physician has recommended a restriction or limitation on the dive team member's exposure to hyperbaric conditions, and the affected employee does not concur, a second physician selected by the employee shall render a medical opinion on the nature and extent of the restriction or limitation, if any.

(c) If the recommendation of the second opinion differs from that of the examining (first) physician, and if the employer and employee are unable to agree on the nature and extent of the restriction or limitation, an opinion from a third physician selected by the first two physicians shall be obtained. The employer's determination of the dive team member's fitness shall be consistent with the medical opinion of the third physician, unless the employer and employee reach an agreement which is otherwise consistent with the recommendation or opinion of at least two of the physicians involved.

(d) Nothing in this procedure shall be construed to prohibit either a dive team member from accepting, or an employer from offering, an assignment which is otherwise consistent with at least one medical opinion while a final determination on the employee's fitness is pending.

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

WAC 296-305-01503 Accident investigation. (1)

After the emergency actions following accidents that cause serious injuries that have immediate symptoms, a preliminary investigation of the cause of the accident shall be conducted. The investigation shall be conducted by a person designated

by the employer. The fire department shall establish a written procedure and a program for investigating, and evaluating the facts, relating to the cause of accidents. The findings of the investigation shall be documented by the employer for reference at any following formal investigations.

(2) Within eight hours after the fatality or probable fatality of any fire fighter or employee from a work-related incident or the inpatient hospitalization of ~~((two or more))~~ any employee(~~(s)~~) as a result of a work-related incident, the employer of any employees so affected, shall orally report the fatality/~~((multiple))~~ hospitalization by telephone or in person, to the nearest office of the department or by using the OSHA toll-free central telephone number, 1-800-321-6742.

(3) Equipment involved in an accident resulting in an immediate or probable fatality, shall not be moved, until a representative of the consultation and compliance services division investigates the accident and releases such equipment, except where removal is essential to prevent further accident. When necessary to remove the victim, such equipment may be moved only to the extent of making possible such removal.

(4) Upon arrival of the department's investigator, the employer shall assign to assist the investigator such personnel as are deemed necessary by the department to conduct the investigation.

(5) The fire department shall preserve all records, photographic materials, audio, video, recordings, or other documentation concerning an accident.

Reference: WAC 296-24-020 (2), (3).

AMENDATORY SECTION (Amending WSR 08-05-012, filed 2/8/08, effective 4/1/08)

WAC 296-800-320 Summary. Your responsibility:

To report and conduct an investigation of certain types of accidents.

You must:

Report the death, or probable death, of any employee, or the in-patient hospitalization of any employee within 8 hours

WAC 296-800-32005

Make sure that any equipment involved in an accident is not moved.

WAC 296-800-32010

Assign people to assist the department of labor and industries

WAC 296-800-32015

Conduct a preliminary investigation for all serious injuries

WAC 296-800-32020

Document the investigation findings

WAC 296-800-32025

((Note: Call the nearest office of the department of labor and industries at 1-800-4BE SAFE or call Occupational Safety and Health Administration (OSHA) at 1-800-321-6742, to report the death, probable death of any employee or the in-patient hospitalization of 2 or more employees within 8 hours, after handling medical emergencies.))

AMENDATORY SECTION (Amending WSR 03-18-090 [08-18-056], filed 9/2/03 [9/2/08], effective 11/1/03 [11/2/08])

WAC 296-800-370 Definitions.

Abatement Action Plans

Refers to your written plans for correcting a WISHA violation.

Abatement date

The date on the citation when you must comply with specific safety and health standards listed on the citation and notice of assessment or the corrective notice of redetermination.

Acceptable

As used in **Electrical, WAC 296-800-280** means an installation or equipment is acceptable to the director of labor and industries, and approved:

- If it is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory; or
- With respect to an installation or equipment of a kind which no nationally recognized testing laboratory accepts, certifies, lists, labels, or determines to be safe, if it is inspected or tested by another federal agency, or by a state, municipal, or other local authority responsible for enforcing occupational safety provisions of the National Electrical Code, and found in compliance with the provisions of the National Electrical Code as applied in this section;

OR

- With respect to custom-made equipment or related installations which are designed, fabricated for, and intended for use by a particular customer, if it is determined to be safe for its intended use by its manufacturer on the basis of test data which the employer keeps and makes available for inspection to the director and his/her authorized representatives. Refer to federal regulation 29 CFR 1910.7 for definition of nationally recognized testing laboratory.

Accepted

As used in **Electrical, WAC 296-800-280** means an installation is accepted if it has been inspected and found by a nationally recognized testing laboratory to conform to specified plans or to procedures of applicable codes.

Access

As used in material safety data sheets (MSDSs) as Exposure Records, WAC 296-800-180 means the right and opportunity to examine and copy exposure records.

Affected employees

As used in WISHA appeals, penalties and other procedural rules, WAC 296-800-350 means employees exposed to hazards identified as violations in a citation.

Analysis using exposure or medical records

- An analysis using exposure records or medical records can be any collection of data or a statistical study. It can be based on either:
 - Partial or complete information from individual employee exposure or medical records or
 - Information collected from health insurance claim records
- The analysis is not final until it has been:
 - Reported to the employer or
 - Completed by the person responsible for the analysis

ANSI

This is an acronym for the American National Standards Institute.

Approved means:

- Approved by the director of the department of labor and industries or their authorized representative, or by an organization that is specifically named in a rule, such as Underwriters' Laboratories (UL), Mine Safety and Health Administration (MSHA), or the National Institute for Occupational Safety and Health (NIOSH).

- As used in **Electrical, WAC 296-800-280** means acceptable to the authority enforcing this section. The authority enforcing this section is the director of labor and industries. The definition of acceptable indicates what is acceptable to the director and therefore approved.

Assistant director

The assistant director for the WISHA services division at the department of labor and industries or his/her designated representative.

ASTM

This is an acronym for American Society for Testing and Materials.

Attachment plug or plug

As used in the basic electrical rules, WAC 296-800-280 means the attachment at the end of a flexible cord or cable that is part of a piece of electrical equipment. When it is inserted into an outlet or receptacle, it connects the conductors supplying electrical power from the outlet to the flexible cable.

Bare conductor

A conductor that does not have any covering or insulation.

Bathroom

A room maintained within or on the premises of any place of employment, containing toilets that flush for use by employees.

Biological agents

Organisms or their by-products.

Board

As used in WISHA appeals, penalties and other procedural rules, WAC 296-800-350 means the board of industrial insurance appeals.

Ceiling

An exposure limit that must not be exceeded during any part of the employee's workday. The ceiling must be determined over the shortest time period feasible and should not exceed fifteen minutes.

Certification

As used in WISHA appeals, penalties and other procedural rules, WAC 296-800-350 means refers to an employer's written statement describing when and how a citation violation was corrected.

CFR

This is an acronym for Code of Federal Regulations.

Chemical

Any element, chemical compound, or mixture of elements and/or compounds.

Chemical agents (airborne or contact)

A chemical agent is any of the following:

- Airborne chemical agent which is any of the following:

– Dust - solid particles suspended in air, that are created by actions such as:

- Handling.
- Drilling.
- Crushing.
- Grinding.
- Rapid impact.
- Detonation.

• Decrepitation of organic or inorganic materials such as rock, ore, metal, coal, wood, and grain.

– Fume - solid particles suspended in air, that are created by condensation from the gaseous state.

– Gas - a normally formless fluid, such as air, which can be changed to the liquid or solid state by the effect of increased pressure or decreased temperature or both.

– Mist - liquid droplets suspended in air. Mist is created by:

- Condensation from the gaseous to the liquid state;

OR

• Converting a liquid into a dispersed state with actions such as splashing, foaming, spraying or atomizing.

– Vapor - the gaseous form of a substance that is normally in the solid or liquid state.

- Contact chemical agent which is any of the following:

– Corrosive - a substance that, upon contact, causes destruction of living tissue by chemical action, including acids with a pH of 2.5 or below or caustics with a pH of 11.0 or above.

– Irritant - a substance that will induce a local inflammatory reaction upon immediate, prolonged, or repeated contact with normal living tissue.

– Toxicant - a substance that has the inherent capacity to produce personal injury or illness to individuals by absorption through any body surface.

Chemical manufacturer

An employer with a workplace where one or more chemicals are produced for use or distribution.

Chemical name

The scientific designation of a chemical in accordance with one of the following:

- The nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC)
- The Chemical Abstracts Service (CAS) rules of nomenclature
- A name which will clearly identify the chemical for the purpose of conducting a hazard evaluation.

Circuit breaker

• Is a device used to manually open or close a circuit. This device will also open the circuit automatically and without damage to the breaker when a predetermined overcurrent is applied. (600 volts nominal or less)

• Is a switching device capable of making, carrying, and breaking currents under normal circuit conditions, and also making, carrying for a specified time, and breaking currents under specified abnormal circuit conditions, such as those of short circuit. (Over 600 volts nominal)

Citation

Refers to the citation and notice issued to an employer for any violation of WISHA safety and health rules. A cita-

tion and notice may be referred to as a citation and notice of assessment but is more commonly referred to as a citation.

Combustible liquid

A combustible liquid has a flashpoint of at least 100°F (37.8°C) and below 200°F (93.3°C). Mixtures with at least 99% of their components having flashpoints of 200°F (93.3°C) or higher are not considered combustible liquids.

Commercial account

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means an arrangement in which a retail distributor sells hazardous chemical(s) to an employer, generally in large quantities over time, and/or at costs that are below the regular retail price.

Common name

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means any designation or identification such as:

- Code name
- Code number
- Trade name
- Brand name
- Generic name used to identify a chemical other than by its chemical name.

Compressed gas

A gas or mixture of gases that, when in a container, has an absolute pressure exceeding:

- 40 psi at 70°F (21.1°C)

OR

- 104 psi at 130°F (54.4°C) regardless of the pressure at 70°F (21.1°C)

Compressed gas can also mean a liquid with a vapor pressure that exceeds 40 psi at 100°F (37.8°C)

Conductor

A wire that transfers electric power.

Container

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means any container, except for pipes or piping systems, that contains a hazardous chemical. It can be any of the following:

- Bag
- Barrel
- Bottle
- Box
- Can
- Cylinder
- Drum
- Reaction vessel
- Storage tank

Correction date

The date by which a violation must be corrected. Final orders or extensions that give additional time to make corrections establish correction dates. A correction date established by an order of the board of industrial insurance appeals remains in effect during any court appeal unless the court suspends the date.

Corrective notice

Refers to a notice changing a citation and is issued by the department after a citation has been appealed.

Corrosive

A substance that, upon contact, causes destruction of living tissue by chemical action, including acids with a pH of 2.5 or below or caustics with a pH of 11.0 or above.

Covered conductor

A conductor that is covered by something else besides electrical insulation.

Damp location

As used in basic electrical rules, WAC 296-800-280 means partially protected areas that are exposed to moderate moisture. Outdoor examples include roofed open porches and marquees. Interior examples include basements and barns.

Department

Those portions of the department of labor and industries responsible for enforcing the Washington Industrial Safety Act (WISHA).

Designated representative

- Any individual or organization to which an employee gives written authorization.
- A recognized or certified collective bargaining agent without regard to written authorization.
- The legal representative of a deceased or legally incapacitated employee.

Director

The director means the director of the department of labor and industries or their designee.

Distributor

A business, other than a chemical manufacturer or importer, that supplies hazardous chemicals to other distributors or to employers.

Documentation

As used in WISHA appeals, penalties and other procedural rules, WAC 296-800-350 means material that you submit to prove that a correction is completed. Documentation includes, but is not limited to, photographs, receipts for materials and/or labor.

Dry location

As used in basic electrical rules, WAC 296-800-280 means areas not normally subjected to damp or wet conditions. Dry locations may become temporarily damp or wet, such as when constructing a building.

Dust

Solid particles suspended in air that are created by actions such as:

- Handling.
- Drilling.
- Crushing.
- Grinding.
- Rapid impact.
- Detonation.
- Decrepitation of organic or inorganic materials such as rock, ore, metal, coal, wood, and grain.

Emergency washing facilities

Emergency washing facilities are emergency showers, eyewashes, eye/face washes, hand-held drench hoses, or other similar units.

Electrical outlets

Places on an electric circuit where power is supplied to equipment through receptacles, sockets, and outlets for attachment plugs.

Employee

Based on chapter 49.17 RCW, the term employee and other terms of like meaning, unless the context of the provision containing such term indicates otherwise, means an employee of an employer who is employed in the business of his or her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is personal labor for an employer under this standard whether by way of manual labor or otherwise.

Employee exposure record

As used in material safety data sheets (MSDSs) as exposure records, WAC 296-800-180 means a record containing any of the following kinds of information:

- Environmental (workplace) monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;
- Biological monitoring results which directly assess the absorption of a toxic substance or harmful physical agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent or which assess an employee's use of alcohol or drugs;
- Material safety data sheets indicating that the material may pose a hazard to human health;

OR

- In the absence of the above, a chemical inventory or any other record which reveals where and when used and the identity (e.g., chemical, common or trade name) of a toxic substance or harmful physical agent.

Employer

Based on chapter 49.17 RCW, an employer is any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: Provided, That any persons, partnership, or business entity not having employees, and who is covered by the Industrial Insurance Act must be considered both an employer and an employee.

Exit

Provides a way of travel out of the workplace.

Exit route

A continuous and unobstructed path of exit travel from any point within a workplace to safety outside.

Explosive

A chemical that causes a sudden, almost instant release of pressure, gas, and heat when exposed to a sudden shock, pressure, or high temperature.

Exposed live parts

Electrical parts that are:

- Not suitably guarded, isolated, or insulated

AND

- Capable of being accidentally touched or approached closer than a safe distance.

Exposed wiring methods

Involve working with electrical wires that are attached to surfaces or behind panels designed to allow access to the wires.

Exposure or exposed

As used in employer chemical hazard communication, WAC 296-800-170 and material safety data sheets (MSDSs) as exposure records, WAC 296-800-180. An employee has been, or may have possibly been, subjected to a hazardous chemical, toxic substance or harmful physical agent while working. An employee could have been exposed to hazardous chemicals, toxic substances, or harmful physical agents in any of the following ways:

- Inhalation
- Ingestion
- Skin contact
- Absorption
- Related means.

The terms exposure and exposed only cover workplace exposure involving a toxic substance or harmful physical agent in the workplace different from typical nonoccupational situations in the way it is:

- Used
- Handled
- Stored
- Generated
- Present

Exposure record

See definition for employee exposure record.

Extension ladder

A portable ladder with 2 or more sections and is not self-supporting. The 2 or more sections travel in guides or brackets that let you change the length. The size of a portable ladder is determined by adding together the length of each section.

Failure-to-abate

Any violation(s) resulting from not complying with an abatement date.

Final order

Any of the following (unless an employer or other party files a timely appeal):

- Citation and notice;
- Corrective notice;
- Decision and order from the board of industrial insurance appeals;
- Denial of petition for review from the board of industrial insurance appeals; or
- Decision from a Washington State superior court, court of appeals, or the state supreme court.

Final order date

The date a final order is issued.

First aid

The extent of treatment you would expect from a person trained in basic first aid, using supplies from a first-aid kit.

Tests, such as X rays, must not be confused with treatment.

Flammable

A chemical covered by one of the following categories:

- Aerosol flammable means an aerosol that, when tested by the method described in 16 CFR 1500.45 yields either a flame projection more than 18 inches at full valve opening or a flashback (a flame extending back to the valve) at any degree of valve opening;

- Gas, flammable means:

- A gas that, at temperature and pressure of the surrounding area, forms a flammable mixture with air at a concentration of 13% by volume or less or

- A gas that, at temperature and pressure of the surrounding area, forms a range of flammable mixtures with air wider than 12% by volume, regardless of the lower limit.

- Liquid, flammable means any liquid having a flashpoint below 100°F (37.8°C), except any mixture having components with flashpoints of 100°F (37.8°C) or higher, the total of which make up 99% or more of the total volume of the mixture.

- Solid, flammable means a solid, other than a blasting agent or explosive as defined in 29 CFR 1910.109(a), that is likely to cause fire through friction, moisture absorption, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily. Solid, inflammable also means that when the substance is ignited, it burns so powerfully and persistently that it creates a serious hazard. A chemical must be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

Flashpoint

- The minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite when tested by any of the following measurement methods:

- Tagliabue closed tester: (See American National Standard Method of Test for Flash Point by Tag Closed Tester, Z11.24-1979 (ASTM D 56-79)) for liquids with a viscosity of less than 45 Saybolt Universal Seconds (SUS) at 100°F (37.8°C), that do not contain suspended solids and do not have a tendency to form a surface film under test; or

- Pensky-Martens closed tester: (See American National Standard Method of Test for Flash Point by Pensky-Martens Closed Tester, Z11.7-1979 (ASTM D 93-79)) for liquids with a viscosity equal to or greater than 45 SUS at 100°F (37.8°C), or that contain suspended solids, or that have a tendency to form a surface film under test; or

- Setaflash closed tester: (See American National Standard Method of Test for Flash Point by Setaflash Closed Tester (ASTM D 3278-78).)

Note: Organic peroxides, which undergo auto accelerating thermal decomposition, are excluded from any of the flashpoint measurement methods specified above.

Flexible cords and cables

Typically used to connect electrical equipment to an outlet or receptacle. These cords can have an attachment plug to connect to a power source or can be permanently wired into the power source. Flexible cords, extension cords, cables and electrical cords are all examples of flexible cord.

Floor hole

An opening in any floor, platform, pavement, or yard that measures at least one inch but less than 12 inches at its smallest dimension and through which materials and tools (but not people) can fall.

Examples of floor holes are:

- Belt holes
- Pipe openings
- Slot openings

Floor opening

An opening in any floor, platform, pavement, or yard that measures at least 12 inches in its smallest dimension and through which a person can fall.

Examples of floor openings are:

- Hatchways
- Stair or ladder openings
- Pits
- Large manholes

The following are NOT considered floor openings:

- Openings occupied by elevators
- Dumbwaiters
- Conveyors
- Machinery
- Containers

Foreseeable emergency

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means any potential event that could result in an uncontrolled release of a hazardous chemical into the workplace. Examples of foreseeable emergencies include equipment failure, rupture of containers, or failure of control equipment.

Fume

Solid particles suspended in air that are created by condensation from the gaseous state.

Gas

A normally formless fluid, such as air, which can be changed to the liquid or solid state by the effect of increased pressure or decreased temperature or both.

Ground

As used in Electrical, WAC 296-800-280, a connection between an electrical circuit or equipment and the earth or other conducting body besides the earth. This connection can be intentional or accidental.

Grounded

A connection has been made between an electrical circuit or equipment and the earth or another conducting body besides the earth.

Grounded conductor

A system or circuit conductor that is intentionally grounded.

Ground-fault circuit-interrupter

A device whose function is to interrupt the electric circuit to the load when a fault current to ground exceeds some predetermined value that is less than that required to operate the overcurrent protective device of the supply circuit.

Grounding conductor

Is used to connect equipment or the grounded circuit of a wiring system to a grounding electrode or electrodes.

Grounding conductor, equipment

A conductor used to connect noncurrent-carrying metal parts of equipment, raceways, and other enclosures to the system grounded conductor and/or the grounding electrode conductor at the service equipment or at the source of a separately derived system.

Guarded

Covered, shielded, fenced, enclosed, or otherwise protected by means of suitable covers, casings, barriers, rails, screens, mats, or platforms to remove the likelihood of being accidentally touched or approached closer than a safe distance.

Hand-held drench hoses

Hand-held drench hoses are single-headed emergency washing devices connected to a flexible hose that can be used to irrigate and flush the face or other body parts.

Handrail

A single bar or pipe supported on brackets from a wall or partition to provide a continuous handhold for persons using a stair.

Harmful physical agent

Any physical stress such as noise, vibration, repetitive motion, heat, cold, ionizing and nonionizing radiation, and hypo- or hyperbaric pressure which:

- Is listed in the latest edition of the National Institute for Occupational Safety and Health (NIOSH) *Registry of Toxic Effects of Chemical Substances* (RTECS); or
- Has shown positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer;

OR

- Is the subject of a material safety data sheet kept by or known to the employer showing that the material may pose a hazard to human health.

Hazard

Any condition, potential or inherent, which can cause injury, death, or occupational disease.

Hazard warning

As used in Employer Chemical Hazard Communication, WAC 296-800-170 can be a combination of words, pictures, symbols, or combination appearing on a label or other appropriate form of warning which shows the specific physical and health hazard(s), including target organ effects, of the chemical(s) in the container(s).

Note: See definition for physical hazard and health hazard to determine which hazards must be covered.

Hazardous chemical

Any chemical that is a physical or health hazard.

Health hazard

A chemical, mixture, biological agent, or physical agent that may cause health effects in short- or long-term exposed employees. Based on statistically significant evidence from at least one study conducted using established scientific principles. Health hazards include:

- Carcinogens
- Toxic or highly toxic agents
- Reproductive toxins
- Irritants
- Corrosives
- Sensitizers

- Hepatotoxins (liver toxins)
- Nephrotoxins (kidney toxins)
- Neurotoxins (nervous system toxins)
- Substances that act on the hematopoietic system (blood or blood-forming system)
 - Substances that can damage the lungs, skin, eyes, or mucous membranes
 - Hot or cold conditions.

Hospitalization

To be ~~((sent to, to go to, or be))~~ admitted to ~~((;))~~ a hospital or an equivalent medical facility ~~((and receive medical treatment beyond first aid treatment, regardless of the length of stay in the hospital or medical facility))~~ on an emergent in-patient basis requiring an overnight stay.

Identity

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means any chemical or common name listed on the material safety data sheet (MSDS) for the specific chemical. Each identity used must allow cross-references among the:

- Required list of hazardous chemicals
- Chemical label
- MSDSs

Imminent danger violation

Any violation(s) resulting from conditions or practices in any place of employment, which are such that a danger exists which could reasonably be expected to cause death or serious physical harm, immediately or before such danger can be eliminated through the enforcement procedures otherwise provided by the Washington Industrial Safety and Health Act.

Importer

The first business within the Customs Territory of the USA that:

- Receives hazardous chemicals produced in other countries

AND

• Supplies them to distributors or employers within the USA

Insulated

A conductor has been completely covered by a material that is recognized as electrical insulation and is thick enough based on:

- The amount of voltage involved

AND

- The type of covering material

Interim waiver

An order granted by the department allowing an employer to vary from WISHA requirements until the department decides to grant a permanent or temporary waiver.

Irritant

A substance that will induce a local inflammatory reaction upon immediate, prolonged, or repeated contact with normal living tissue.

Ladder

Consists of 2 side rails joined at regular intervals by crosspieces called steps, rungs, or cleats. These steps are used to climb up or down.

Listed

Equipment is listed if it:

- Is listed in a publication by a nationally recognized laboratory (such as UL, underwriters laboratory) that inspects the production of that type of equipment,

AND

- States the equipment meets nationally recognized standards or has been tested and found safe to use in a specific manner.

Material safety data sheet (MSDS)

Written, printed, or electronic information (on paper, microfiche, or on-screen) that informs manufacturers, distributors, employers or employees about a hazardous chemical, its hazards, and protective measures as required by material safety data sheet and label preparation, chapter 296-839 WAC.

Medical treatment

Treatment provided by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first-aid treatment even if provided by a physician or registered professional personnel.

Mist

Liquid droplets suspended in air. Mist is created by:

- Condensation from the gaseous to the liquid state;

OR

- Converting a liquid into a dispersed state with actions such as splashing, foaming, spraying or atomizing.

Mixture

As used in Employer Chemical Hazard Communication, WAC 296-800-170, any combination of 2 or more chemicals (if that combination did not result from a chemical reaction).

Movable equipment

As used in WAC 296-800-35052, a hand-held or non-hand-held machine or device;

- That is powered or nonpowered;

AND

- Can be moved within or between worksites

Must

Must means mandatory.

NEMA

These initials stand for National Electrical Manufacturing Association.

NFPA

This is an acronym for National Fire Protection Association.

Nose

The portion of the stair tread that projects over the face of the riser below it.

Occupational Safety and Health Administration (OSHA)

Created in 1970 when the U.S. Congress passed the Occupational Safety and Health Act, the Occupational Safety and Health Administration (OSHA) provides safety on the job for workers. OSHA oversees state plans (such as WISHA in Washington) that have elected to administer the safety and health program for their state. OSHA requires WISHA rules to be at least as effective as OSHA rules.

Office work environment

An indoor or enclosed occupied space where clerical work, administration, or business is carried out.

In addition, it includes:

- Other workplace spaces controlled by the employer and used by office workers, such as cafeterias, meeting rooms, and washrooms.

- Office areas of manufacturing and production facilities, not including process areas.

- Office areas of businesses such as food and beverage establishments, agricultural operations, construction, commercial trade, services, etc.

Open riser

A stair step with an air space between treads has an open riser.

Organic peroxide

This is an organic compound containing the bivalent-0-0-structure. It may be considered a structural derivative of hydrogen peroxide if one or both of the hydrogen atoms has been replaced by an organic radical.

Outlet

See definition for electrical outlets.

Oxidizer

A chemical other than a blasting agent or explosive as defined in WAC 296-52-60130 or CFR 1910.109(a), that starts or promotes combustion in other materials, causing fire either of itself or through the release of oxygen or other gases.

Permissible exposure limits (PELs)

Permissible exposure limits (PELs) are employee exposures to toxic substances or harmful physical agents that must not be exceeded. PELs are specified in applicable WISHA rules.

Person

Based on chapter 49.17 RCW, one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

Personal eyewash units

Personal eyewash units are portable, supplementary units that support plumbed units or self-contained units, or both, by delivering immediate flushing for less than fifteen minutes.

Personal service room

Used for activities not directly connected with a business' production or service function such as:

- First aid
- Medical services
- Dressing
- Showering
- Bathrooms
- Washing
- Eating

Personnel

See the definition for employees.

Physical hazard

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means a chemical that has scientifically valid evidence to show it is one of the following:

- Combustible liquid
- Compressed gas
- Explosive
- Flammable
- Organic peroxide
- Oxidizer
- Pyrophoric

- Unstable (reactive)

- Water reactive

Platform

Platform means an extended step or landing that breaks a continuous run of stairs.

Plug

See definition for attachment plug.

Potable water

Water that you can safely drink. It meets specific safety standards prescribed by the United States Environmental Protection Agency's National Interim Primary Drinking Water Regulations, published in 40 CFR Part 141, and 40 CFR 147.2400.

Predictable and regular basis

Employee functions such as, but not limited to, inspection, service, repair and maintenance which are performed

- at least once every 2 weeks

OR

- 4 man-hours or more during any sequential 4-week period (to calculate man-hours multiply the number of employees by the number of hours during a 4-week period).

Produce

As used in Employer Chemical Hazard Communication, WAC 296-800-170, any one of the following:

- Manufacture
- Process
- Formulate
- Blend
- Extract
- Generate
- Emit
- Repackage

Purchaser

As used in Employer Chemical Hazard Communication, WAC 296-800-170, an employer who buys one or more hazardous chemicals to use in their workplace.

Pyrophoric

A chemical is pyrophoric if it will ignite spontaneously in the air when the temperature is 130°F (54.4°C) or below.

Qualified person

A person who has successfully demonstrated the ability to solve problems relating to the subject matter, work, or project, either by:

- Possession of a recognized degree, certificate, or professional standing;

OR

- Extensive knowledge, training and experience.

Railing or standard railing

A vertical barrier erected along exposed edges of a floor opening, wall opening, ramp, platform, or runway to prevent falls of persons.

Reassume jurisdiction

The department has decided to take back its control over a citation and notice being appealed.

Receptacle or receptacle outlet

As used in basic electrical rules, WAC 296-800-280 means outlets that accept a plug to supply electric power to equipment through a cord or cable.

Record

A record is any item, collection, or grouping of information. Examples include:

- Paper document
- Microfiche
- Microfilm
- X-ray film
- Computer record

Repeat violation

A violation is a repeat violation if the employer has been cited one or more times previously for a substantially similar hazard.

Responsible party

As used in employer chemical hazard communication, WAC 296-800-170. Someone who can provide appropriate information about the hazardous chemical and emergency procedures.

Rise

The vertical distance from the top of a tread to the top of the next higher tread.

Riser

The vertical part of the step at the back of a tread that rises to the front of the tread above.

Rungs

Rungs are the cross pieces on ladders that are used to climb up and down the ladder.

Runway

An elevated walkway above the surrounding floor or ground level. Examples of runways are footwalks along shafting or walkways between buildings.

Safety factor

The term safety factor means the ratio of when something will break versus the actual working stress or safe load when it is used.

Serious violation

Serious violation must be deemed to exist in a workplace if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such workplace, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

Short-term exposure limit (STEL)

An exposure limit, averaged over a short time period (usually measured for 15 minutes) that must not be exceeded during any part of an employee's workday.

Should

Should means recommended.

Single ladder

A type of portable ladder with one section.

It is distinguished by all of the following:

- It has one section
- It cannot support itself
- Its length cannot be adjusted

Smoking

A person is smoking if they are:

- Lighting up
- Inhaling
- Exhaling

- Carrying a pipe, cigar or cigarette of any kind that is burning

Specific chemical identity

This term applies to chemical substances. It can mean the:

- Chemical name
- Chemical Abstracts Service (CAS) registry number
- Any other information that reveals the precise chemical designation of the substance.

Stair railing

A vertical barrier attached to a stairway with an open side to prevent falls. The top surface of the stair railing is used as a handrail

Stairs or stairway

A series of steps and landings:

- leading from one level or floor to another,
- leading to platforms, pits, boiler rooms, crossovers, or around machinery, tanks, and other equipment
- Used more or less continuously or routinely by employees, or only occasionally by specific individuals.
- With three or more risers

Standard safeguard

Safety devices that prevent hazards by their attachment to:

- Machinery
- Appliances
- Tools
- Buildings
- Equipment

These safeguards must be constructed of:

- Metal
- Wood
- Other suitable materials

The department makes the final determination about whether a safeguard is sufficient for its use.

Step ladder

A portable ladder with:

- Flat steps
- A hinge at the top allowing the ladder to fold out and support itself
- Its length that cannot be adjusted.

Time weighted average (TWA₈)

An exposure limit, averaged over 8 hours, that must not be exceeded during an employee's work shift.

Toeboard

A barrier at floor level along exposed edges of a floor opening, wall opening, platform, runway, or ramp, to prevent falls of materials.

Toxic chemical

As used in first aid, WAC 296-800-150, is a chemical that produces serious injury or illness when absorbed through any body surface.

Toxic substance

Any chemical substance or biological agent, such as bacteria, virus, and fungus, which is any of the following:

- Listed in the latest edition of the National Institute for Occupational Safety and Health (NIOSH) *Registry of Toxic Effects of Chemical Substances* (RTECS)
- Shows positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer

- The subject of a material safety data sheet kept by or known to the employer showing the material may pose a hazard to human health.

Toxicant

A substance that has the inherent capacity to produce personal injury or illness to individuals by absorption through any body surface.

Trade secret

Any confidential:

- Formula
- Pattern
- Process
- Device
- Information
- Collection of information

The trade secret is used in an employer's business and gives an opportunity to gain an advantage over competitors who do not know or use it.

See WAC 296-62-053 for requirements dealing with trade secrets.

Tread

As used in stairs and stair railings, WAC 296-800-250 means the horizontal part of the stair step.

Tread run

As used in stairs and stair railings, WAC 296-800-250 means the distance from the front of one stair tread to the front of an adjacent tread.

Tread width

The distance from front to rear of the same tread including the nose, if used.

UL (Underwriters' Laboratories, Inc.)

You will find these initials on electrical cords and equipment. The initials mean the cord or equipment meets the standards set by the Underwriters' Laboratories, Inc.

Unstable (reactive)

As used in employer chemical hazard communication, WAC 296-800-170. An unstable or reactive chemical is one that in its pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shocks, pressure or temperature.

Use

As used in employer chemical hazard communication, WAC 296-800-170, means to:

- Package
- Handle
- React
- Emit
- Extract
- Generate as a by-product
- Transfer.

Vapor

The gaseous form of a substance that is normally in the solid or liquid state.

Voltage of a circuit

The greatest effective potential difference between any two conductors or between a conductor and ground.

Voltage to ground

The voltage between a conductor and the point or conductor of the grounded circuit. For undergrounded circuits, it

is the greatest voltage between the conductor and any other conductor of the circuit.

Voltage, nominal

Nominal voltage is a value assigned to a circuit or system to designate its voltage class (120/240, 480Y/277, 600, etc.). The actual circuit voltage can vary from the value if it is within a range that permits the equipment to continue operating in a satisfactory manner.

WAC

This is an acronym for **Washington Administrative Code**, which are rules developed to address state law.

Water-reactive

As used in Employer Chemical Hazard Communication, WAC 296-800-170, a water-reactive chemical reacts with water to release a gas that is either flammable or presents a health hazard.

Watertight

Constructed so that moisture will not enter the enclosure or container.

Weatherproof

Constructed or protected so that exposure to the weather will not interfere with successful operation. Rainproof, rain-tight, or watertight equipment can fulfill the requirements for weatherproof where varying weather conditions other than wetness, such as snow, ice, dust, or temperature extremes, are not a factor.

Wet location

As used in basic electrical rules, WAC 296-800-280 means:

- Underground installations or in concrete slabs or masonry that are in direct contact with the earth
- Locations that can be saturated by water or other liquids
- Unprotected locations exposed to the weather (like vehicle washing areas)

WISHA

This is an acronym for the Washington Industrial Safety and Health Act.

Work area

As used in employer chemical hazard communication, WAC 296-800-170, a room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present.

Working days

Means a calendar day, except Saturdays, Sundays, and legal holidays. Legal holidays include:

- New Year's Day - January 1
- Martin Luther King, Jr. Day
- Presidents' Day
- Memorial Day
- Independence Day - July 4
- Labor Day
- Veterans' Day - November 11
- Thanksgiving Day
- The day after Thanksgiving Day; and
- Christmas Day - December 25

The number of working days must be calculated by not counting the first working day and counting the last working day.

Worker

See the definition for employee.

Workplace

• The term workplace means:

– Any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control, and includes, but is not limited to, all workplaces covered by industrial insurance under Title 51 RCW, as now or hereafter amended.

– As used in Employer Chemical Hazard Communication, WAC 296-800-170 means an establishment, job site, or project, at one geographical location containing one or more work areas.

You

See definition of employer.

Your representative

Your representative is the person selected to act in your behalf.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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

WSR 09-01-159
PERMANENT RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Division of Consumer Services)

[Filed December 23, 2008, 9:52 a.m., effective January 23, 2009]

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

Purpose: Amending the rules in chapter 208-620 WAC to implement chapters 78 and 108, Laws of 2008, that amend the Consumer Loan Act, and to generally amend the rules for clarity and consistency.

Citation of Existing Rules Affected by this Order: Amending WAC 208-620-010, 208-620-230, 208-620-235, 208-620-320, 208-620-330, 208-620-511, 208-620-560, 208-620-565, 208-620-611, 208-620-612, 208-620-613, and 208-620-630.

Statutory Authority for Adoption: RCW 43.320.040.

Other Authority: RCW 19.144.070, chapter 78, Laws of 2008.

Adopted under notice filed as WSR 08-21-162 on October 22, 2008.

Changes Other than Editing from Proposed to Adopted Version: WAC 208-620-560(6), the CR-103 version includes a new subsection (6) that describes the circumstances under which a discount fee may be charged.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 2, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 8, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 4, Amended 8, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 23, 2008.

Deborah Bortner, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

"Act" means the Consumer Loan Act, chapter 31.04 RCW.

"Affiliate" means any person who controls, is controlled by, or is under common control with another.

"Annual percentage interest rate" means the rate of interest specified in the note.

"Annual percentage rate" has the same meaning as defined in Regulation Z, 12 C.F.R. Section 226 et seq.

"Bank Secrecy Act" means the Bank Secrecy Act (BSA), 31 U.S.C. 1051 et seq. and 31 C.F.R. Section 103.

"Bond substitute" means unimpaired capital, surplus and qualified long-term subordinated debt.

"Borrower" means any natural person who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan, regardless of whether that person actually obtains such a loan.

"Common ownership" exists if an entity or entities possess an ownership or equity interest of five percent or more in another entity.

"Department" means the department of financial institutions.

"Depository Institutions Deregulatory and Monetary Control Act" means the Depository Institutions Deregulatory and Monetary Control Act of 1980 (DIDMCA), 12 U.S.C. § 1735f-7a.

"Director" means the director of the department of financial institutions or his or her designated representative.

"Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. section 1691 and Regulation B, 12 C.F.R. Section 202.

"Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Section 1681 et seq.

"Fair Debt Collection Practices Act" means the Fair Debt Collection Practices Act, 15 U.S.C. sections 1692 through 1692o.

"Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. section 45(a).

"Filing" means filing, recording, releasing or reconveying mortgages, deeds of trust, security agreements or other documents, or transferring certificates of title to vehicles.

"Gramm-Leach-Bliley Act (GLBA)" means the ~~((Gramm-Leach-Bliley Act (GLBA)))~~ Financial Modernization Act of 1999, 15 U.S.C. ((sections 6801 through 6809 and 6821 through 6827)) Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

"Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. sections 2801 through 2810 and 12 C.F.R. Section 203.

"Insurance" means life insurance, disability insurance, property insurance, insurance covering involuntary unemployment and such other insurance as may be authorized by the insurance commissioner in accordance with Title 48 RCW.

"Lender" means any person that extends money to a borrower with the expectation of being repaid.

"License" means a license issued under the authority of this chapter with respect to a single place of business.

"Licensee" means a person who holds one or more current licenses.

"Live check" means a loan solicited through the mail in the form of a check, which, when endorsed by the payee, binds the payee to the terms of the loan agreement contained on the check.

"Loan" means a sum of money lent at interest or for a fee or other charges and includes both open-end and closed-end transactions.

"Loan originator" means the same as in RCW 19.146.-010.

"Long-term subordinated debt" means for the purposes required in RCW 31.04.045 outstanding promissory notes or other evidence of debt with initial maturity of at least seven years and remaining maturity of at least two years.

"Material litigation" means proceedings that differ from the ordinary routine litigation incidental to the business. Litigation is ordinary routine litigation if it ordinarily results from the business and does not deviate from the normal business litigation. Litigation involving five percent of the licensee's assets or litigation involving the government would constitute material litigation.

"Mortgage broker" means the same as in RCW 19.146.-010 except that for purposes of this chapter, a licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a mortgage broker in the same transaction.

"Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators.

"Out-of-state licensee" means any licensee that does not maintain a physical presence within the state.

"Person" includes individuals, partnerships, associations, trusts, corporations, and all other legal entities.

"Principal" means either (1) any person who controls, directly or indirectly through one or more intermediaries, a ten percent or greater interest in a partnership, company, association or corporation; or (2) the owner of a sole proprietorship.

"Principal amount" means the loan amount advanced to or for the direct benefit of the borrower.

"Principal balance" means the principal amount plus any allowable origination fee.

"RCW" means the *Revised Code of Washington*.

"Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sections 2601 et seq., and Regulation X, 24 C.F.R. Sections 3500 et seq.

"Records" mean books, accounts, papers, records and files, no matter in what format they are kept, which are used in conducting business under the act.

"S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 ("HERA"), Public Law No. 110-289, effective July 30, 2008.

"Senior officer" means an officer of a consumer loan company at the vice-president level or above.

"Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. Each payment shall first be applied to any unpaid penalties, fees, or charges, then to accumulated interest, and last to the unpaid balance of the principal amount until paid in full. In using such method, interest shall not be payable in advance or compounded.

"State" means the state of Washington.

"Subsidiary" means a person that is controlled by another.

"Telemarketing and Consumer Fraud and Abuse Act" means the Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. § 6101 to 6108.

"Telephone Sales Rule" means the rules promulgated in 16 C.F.R. Part 310.

"Third-party service provider" means any person other than the licensee who provides goods or services to the licensee in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

"Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sections 1601 et seq., and Regulation Z, 12 C.F.R. Sections 226 et seq.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-230 Do I need to apply for a consumer loan license if I am lending money in the state of Washington? ~~((In order to make credit available to high-risk borrowers the act authorizes interest rates up to twenty-five percent for certain types of loans, subject to the requirements of the act.))~~ If you are in the business of making secured or unsecured loans of money or credit at rates above those allowed under chapter 19.52 RCW, the Usury Act, and you do not qualify for an exception under RCW 31.04.025, you must hold a license to avoid noncompliance with the Usury Act. The current allowable rate under RCW 19.52.020 is twelve percent or less but that rate may change.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-235 Is there a maximum rate of interest allowed under the act? ~~((The legislature authorized interest rates up to twenty five percent for loans made under the act in order to make credit available to high risk borrowers.))~~ Yes. Interest rates not exceeding twenty-five percent per annum are allowed.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

WAC 208-620-320 What is the amount of the bond required for my consumer loan license? (1) **Loans not secured by real estate.** For licensees making loans not secured by real property, the penal sum of the bond is one hundred thousand dollars for each office up to five locations. For each additional branch office over five, the amount of the bond must be increased by ten thousand dollars.

(2) **Loans secured by real estate.** For a licensee making loans secured by real property, the penal sum of the bond is four hundred thousand dollars ~~((for the first five locations. For each additional branch office over five, the amount of the bond must be increased by ten thousand dollars, up to a maximum bond amount of seven hundred thousand dollars. For example:))~~.

((Number of Offices	Penal Sum of Bond— Licensee making non-real estate loans	Penal Sum of Bond— Licensee making real estate loans
1	\$100,000	\$400,000
2	\$200,000	\$400,000
3	\$300,000	\$400,000
4	\$400,000	\$400,000
5	\$500,000	\$400,000
6	\$510,000	\$410,000
7	\$520,000	\$420,000
8	\$530,000	\$430,000
9	\$540,000	\$440,000
10	\$550,000	\$450,000))

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-330 Does the surety bond need to reflect coverage for licensee and its W-2 employees and independent contractors? Yes. The surety bond ~~((needs to))~~ must cover both the licensee and all ~~((types of))~~ employees and independent contractors working for the licensee. ~~((If a licensee has independent contractors, exclusive or otherwise, the bond needs to cover them, as well as employees of the licensee.))~~

NEW SECTION

WAC 208-620-511 What is the disclosure required under RCW 19.144.020? See WAC 208-600-200.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-560 What restrictions are there for charging fees on junior lien loans other than the loan origination fee when acting as a lender or correspondent lender? (1) **Filing fees.** A licensee cannot charge or collect any funds from the borrower for the cost of filing, as defined in WAC 208-620-010, or for any other fees paid or to be paid to public officials, unless such charges are paid or are to be paid within one hundred eighty days by the licensee to public officials or other third parties for such filing. Any fee a licensee collects for releasing or reconveying the security for the obligation must be paid to an unrelated third party.

(2) **Dishonored check fees.** A licensee may not charge or collect a fee in excess of twenty-five dollars for a check returned unpaid by the bank drawn upon. Only one fee may be collected with respect to a particular check even if it has been redeposited and returned more than once.

(3) **Fees for third-party services.** A licensee may not charge or collect any fee to be paid to a third-party service provider, as defined in WAC 208-620-010, in excess of the actual costs paid or to be paid. A licensee may charge the borrower for costs of allowable third-party services as provided by RCW 31.04.105(3) at the time of application for the loan or at any time thereafter except as prohibited.

(4) **Credit and noncredit insurance.**

(a) Except for the transaction described in (b) of this subsection, a licensee may include the premiums for credit and noncredit insurance in the principal amount of the loan, provided that purchase of the insurance is not required to obtain a loan and that this fact is disclosed to the borrower in writing and the borrower's confirmation is obtained by signature on the disclosure form.

(b) A licensee may not sell single premium credit insurance to a borrower at the inception of coverage unless the sale is in compliance with chapter 48.18 RCW.

(5) **Fees on existing loans.** Unless otherwise preempted under the Depository Institutions Deregulatory and Monetary Control Act, if a licensee makes a new loan or increases a credit line within one hundred twenty days after originating a previous loan or credit line to the same borrower, the origination fee on the new loan or increased credit line shall be limited as follows:

(a) The licensee may charge an origination fee only on that part of the new loan not used to pay the amount due on the previous loan;

(b) The licensee may charge an origination fee only on the difference between the amount of the existing credit line and the increased credit line;

(c) The limits in (a) and (b) of this subsection do not apply if the licensee refunds the origination fee on the existing loan or credit line.

(6) **Discount points.** A licensee may not collect a fee from the borrower for lowering the interest rate unless the interest rate is actually reduced.

(7) **Administrative fees.** A licensee may not collect a document preparation fee, a processing fee or a courier fee unless paid to an unrelated third party and agreed to in advance by the borrower.

~~((7))~~ **(8) Prepayment penalty.** A licensee may not collect a prepayment penalty on the following loans:

(a) Any nonmortgage loan made at rates authorized by the act; or

(b) Any adjustable rate residential mortgage loan, except as allowed by RCW 19.144.040; or

(c) Any junior lien mortgage loan made at rates authorized by the act; or

~~((e))~~ (d) Any loan made by a licensee that is not a "creditor" under DIDMCA.

NEW SECTION

WAC 208-620-565 What fees am I allowed and not allowed to charge or receive when acting as a broker under the act? (1) When acting as a broker under the act, you are allowed to:

(a) Charge and collect a broker's fee pursuant to WAC 208-620-515 (1)(b).

(b) Receive a yield spread premium (YSP). You must disclose the YSP as a dollar amount or dollar amount range on the good faith estimate, and as a dollar amount on the settlement statement.

(c) Charge a processing fee.

(2) When acting as a broker under the act, you are NOT allowed to:

(a) Charge or receive fees on discount points;

(b) Charge or receive a loan origination fee in addition to a broker's fee; or

(c) Charge or receive an underwriting fee.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

WAC 208-620-611 What federal guidance has the director adopted for use by the department in determining if a violation under RCW 31.04.027 has occurred? The director has adopted:

~~((1) The Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators Guidance on Nontraditional Mortgage Product Risks; and~~

~~(2) The Conference of State Bank Supervisors, American Association of Residential Mortgage Regulators, and National Association of Consumer Credit Administrators Statement on Subprime Mortgage Lending.)~~ (1) The Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators "Guidance on Nontraditional Mortgage Product Risks" (released November 14, 2006); and

(2) The Conference of State Bank Supervisors, American Association of Residential Mortgage Regulators, and National Association of Consumer Credit Administrators "Statement on Subprime Mortgage Lending," effective July 10, 2007 (published in the Federal Register at Vol. 72, No. 131).

NEW SECTION

WAC 208-620-612 What must I do to comply with the federal guidelines on nontraditional mortgage loan product risks and statement on subprime lending? You

must adopt written policies and procedures implementing the federal guidelines. The policies and procedures must be maintained as a part of your books and records and must be made available to the department upon request.

NEW SECTION

WAC 208-620-613 When I develop policies and procedures to implement the federal guidelines, what topics must be included? (1) The policies and procedures must include, at a minimum, underwriting standards, risk management, consumer protection, and control systems. If you only broker loans under your CLA license, your policies and procedures must comply with WAC 208-660-XXX. For purposes of this section, the definition of "subprime" and "subprime loans" is taken from the *2001 Interagency Expanded Guidance for Subprime Lending Programs* (an attachment to SR 01-4 (GEN), January 31, 2001, by the Board of Governors of the Federal Reserve System, Division of Banking, Supervision and Regulation).

(a) Underwriting standards. To ensure that underwriting standards are consistent with prudent lending practices, the underwriting standards should include, at a minimum, an analysis of borrower characteristics, loan product attributes, and the borrower's ability to repay the obligation.

(i) Analysis of borrower characteristics. The analysis must include tolerances for combining borrowers with certain characteristics with certain nontraditional loan products.

The criteria or range of reasonable tolerances should consider the characteristics listed in the *2001 Interagency Expanded Guidance for Subprime Lending Programs*.

(ii) Loan product attributes. Products with the following attributes, when combined with the borrower characteristics above result in higher risk. The risks are increased if borrowers are not adequately informed of the product features and risks.

- Low initial payments based on a fixed introductory rate that expires after a short time and then adjusts to a variable index rate plus a margin. Because initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier than scheduled recasting of monthly payments. Loans made to subprime borrowers must not contain any provisions that may lead to negative amortization.

- Very high or no limits on how much the payment amount or the interest rate may increase.

- Limited or no documentation of the borrower's income. Stated income is only acceptable if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. Licensees generally must be able to readily document income using recent W-2 statements, pay stubs, or tax returns. An exception to this is when the loan product underwriting itself contemplates reduced documentation (for example, FHA loans).

- Substantial prepayment penalties or prepayment penalties that extend beyond sixty days prior to the date the interest rate will reset.

- Simultaneous second lien loans. When features are layered, mitigating factors should be present to support the

underwriting decision and the borrower's repayment capacity.

(iii) Ability to repay. For all nontraditional mortgage loan products, the analysis of a borrower's repayment capacity must include an evaluation of their ability to repay the debt by final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule. In addition, for prime borrowers qualifying for loan products that permit negative amortization, the repayment analysis must be based on the initial loan amount plus any balance increase that may accrue from the negative amortization provision. The analysis should avoid over reliance on credit scores as a substitute for income verification. The higher a loan's credit risk, either from borrower characteristics or loan features, the more important it is to verify the borrower's income, assets, and outstanding liabilities.

(b) Risk management. The scope of the risk management activities should be determined by the volume of non-traditional mortgages originated or used as investment. Licensees that target subprime borrowers through tailored marketing, underwriting standards, and risk selection must ensure that such programs do not feature terms that could become predatory or abusive. Policy topics should include, at a minimum:

- (i) Acceptable product attributes;
- (ii) Production, sales and securitization practices;
- (iii) Limits on risk layering. When features are layered, licensees should demonstrate that mitigating factors support the underwriting decision and the borrower's repayment capacity. Mitigating factors could include higher credit scores, lower LTV and DTI ratios, significant liquid assets, mortgage insurance, or other credit enhancements;
- (iv) Growth and volume limits by loan type;
- (v) Performance measures. Incentive programs should not produce high concentrations of nontraditional products. Design performance measures and reporting systems that provide early warning for increased risk;
- (vi) Management reporting and quality control. Focus on the high risk lending activities. Monitor and document compliance with underwriting standards. Quality control should include regular audits of nontraditional loan products. Perform due diligence in establishing and maintaining relationships with third party originators. Third party originations must meet the underwriting standards. Document and respond in writing to all complaints. Take immediate remedial action which could include more thorough application reviews, more frequent reunderwriting, or terminating the third party originator;
- (vii) Secondary market activity. The risk management practices should be commensurate with the nature and volume of activity and should include contingency planning for response to reduced demand in the secondary market. Establish a policy on repurchase practices.

(c) Consumer protection.

Communication with borrowers. Providers must focus on information important to consumer decision making; highlight key information so that it will be noticed; employ a user-friendly and readily navigable format for presenting the information; and use plain language, with concrete and realistic examples. Comparative tables and information describ-

ing key features of available loan products, including reduced documentation programs, also may be useful for consumers. Specifically:

- Promotional materials and other product descriptions must provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions.
- Licensees must apprise borrowers of potential increases in payment obligations. The information should describe when structural payment changes will occur and what the new payment would be or how it was calculated.
- If negative amortization is possible under the terms of a nontraditional mortgage product, borrowers must be advised of the potential for increasing principal balances and decreasing home equity as a consequence of the borrower making minimum payments.
- Borrowers must be alerted to the fact that the loan has a prepayment penalty and the amount of the penalty.
- Borrowers must be made aware of any pricing premium based on reduced documentation.
- Monthly statements must provide information that enables borrowers to make informed payment choices, including an explanation of each payment option available and the impact of that choice on loan balances. For example, the monthly payment statement must contain an explanation, if applicable, next to the minimum payment amount that making this payment would result in an increase to the borrower's principal loan balance.

(d) Control standards.

(i) Actual practices must be consistent with the written policies and procedures. Employees must be trained in the policies and procedures and performance monitored for compliance. Incentive programs should not produce high concentrations of nontraditional products. Performance measures and reporting systems should be designed to provide early warning of increased risk.

(ii) Reporting to DFI. In a separate written document, as prescribed by the director and submitted with the consolidated annual report, every licensee must submit information regarding the offering of nontraditional mortgage loan products as prescribed by rule.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

WAC 208-620-630 What are the advertising restrictions, and what are some examples of those restrictions?

(1) Licensees are prohibited from advertising with envelopes or stationery that contain an official-looking emblem designed to resemble a government mailing or that suggest an affiliation that does not exist. What are some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws? Some examples include, but are not limited to:

(a) Characterizing products as "government loan programs," "government-supported loans," or other words that may mislead a consumer into believing that the government is guaranteeing, endorsing, or supporting the advertised loan product. Using the words "FHA loan," "VA loan," or words

for other products that are in fact endorsed or sponsored by a federal, state, or local government entity is allowed.

(b) An official-looking emblem such as an eagle, the Statue of Liberty, or a crest or seal that resembles one used by any state or federal government agency.

(c) Envelopes designed to resemble official government mailings, such as IRS or U.S. Treasury envelopes, or other government mailers.

(d) Warnings or notices citing government codes or form numbers not required by the U.S. Postmaster to be shown on the mailing.

(e) The use of the term "official business," or similar language implying official or government business, without also including the name of the sender.

(f) Any suggestion or representation that the solicitor is affiliated with any agency, bank, or other entity that it does not actually represent.

(2) When I am advertising interest rates, the act requires me to conspicuously disclose the annual percentage rate (APR) implied by the rate of interest. What does it mean to "conspicuously" disclose the APR? ~~((The type size of the APR must be the same size or larger than any other rates stated in the advertisement.))~~ The required disclosures in your advertisement must be reasonably understandable. Consumers must be able to see, read, or hear, and understand the information. Many factors, including the size, duration, and location of the required disclosures, and the background or other information in the advertisement, can affect whether the information is clear and conspicuous. This requirement applies to all mandatory disclosures. The disclosure of the APR must be at least equivalent to any other rates disclosed in the advertisement.

(3) The act prohibits me from advertising an interest rate unless that rate is actually available at the time of the advertisement. How may I establish that an advertised interest rate was "actually available" at the time it was advertised? Whenever a specific interest rate is advertised, the licensee must retain a copy of supporting rate information, and the APR calculation for the advertised interest rate.

(4) Must I quote the annual percentage rate when discussing rates with a borrower? Yes. You must quote the annual percentage rate and other terms of the loan if you give an oral quote of an interest rate to the borrower. TILA's Regulation Z, 12 C.F.R., part 226.26 provides guidance for using the annual percentage rate in oral disclosures.

(5) May a licensee advertise rates or fees as the "lowest" or "best"? No. Rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. Therefore, they are a false or deceptive statement or representation prohibited by RCW 19.146.0201(7).

(6) May I solicit using advertising that suggests or represents that I am affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, when I am not; or that I am an entity other than who I am? No. It is an unfair and deceptive act or practice and a violation of the act for you to suggest or represent that you are affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan associ-

ation, or other entity you do not actually represent; or to suggest or represent that you are any entity other than who you are.

(7) If I advertise using a borrower's current loan information, what must I disclose about that information? When an advertisement includes information about a borrower's current loan that you did not obtain from a solicitation, application, or loan, you must provide the borrower with the name of the source of the information.

(8) Is it a violation to advertise that third-party services are "free" when the licensee has paid for the services? Yes. Advertising using the term "free," or any other similar term or phrase that implies there is no cost to the applicant is deceptive because you can recover the cost of the purportedly "free" item through the negotiation process. This is a violation of RCW 19.146.0201 (2), (7), and (11). See the Federal Trade Commission's Guide Concerning Use of the Word "Free" and Similar Representations, available at <http://www.ftc.gov/bcp/guides/free.htm>, 16 C.F.R. § 251.1(g) (2003).

WSR 09-01-166

PERMANENT RULES

BOARD OF ACCOUNTANCY

[Filed December 23, 2008, 10:33 a.m., effective January 23, 2009]

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

Purpose: To amend rules containing a reference to a repealed rule.

Citation of Existing Rules Affected by this Order: Amending WAC 4-25-782, 4-25-791, 4-25-792, 4-25-793, and 4-25-795.

Statutory Authority for Adoption: For WAC 4-25-782 is RCW 18.04.183; for WAC 4-25-791 and 4-25-792 is RCW 18.04.215(2); for WAC 4-25-793 is RCW 18.04.215(7); and for WAC 4-25-795 is RCW 18.04.215(2), 18.04.335.

Adopted under notice filed as WSR 08-21-017 on October 6, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: December 23, 2008.

Richard C. Sweeney
Executive Director

AMENDATORY SECTION (Amending WSR 05-01-135, filed 12/16/04, effective 1/31/05)

WAC 4-25-782 How do I apply for an initial Washington state license through foreign reciprocity? Pursuant to RCW 18.04.183 the board may issue a license through foreign reciprocity provided you meet the requirements for application through foreign reciprocity established by the act, WAC 4-25-781 and 4-25-830(7).

To apply for an initial Washington state CPA license, you must use the foreign reciprocity application form(s) provided by the board.

You need to fully complete the form(s), and submit the form(s), all applicable fees, required information, required documentation, or other documentation deemed necessary by the board to the board's office.

An application is not complete and cannot be processed until all fees, required information, required documentation, or other documentation deemed necessary by the board are received by the board. When the processing of your application is complete, your license will be mailed to the last address you provided to the board.

Your Washington state CPA license will expire on June 30 of the third calendar year following initial licensure.

You may not use the title CPA until you have received notice from the board that your Washington state license has been approved. ~~((With the exception of out-of-state sole practicing CPAs holding valid practice privileges in Washington state under WAC 4-25-756, attest services may only be offered or performed in a CPA firm licensed by the board and meeting the requirements of WAC 4-25-750.))~~

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-791 I am a CPA-Inactive certificate-holder—Prior to July 1, 2001, I held a license—How do I apply to return to my previous status as a licensee? CPA-Inactive certificateholders who held a license at any time prior to July 1, 2001, may apply to return to their previous status as a licensee. If you are a CPA-Inactive certificateholder, you may not use the title "CPA" or "Certified Public Accountant" until you return to your previous status as a licensee.

If you hold a valid CPA-Inactive certificate, to apply to return to your previously held status as a licensee, you must use the form provided by the board and satisfy CPE requirements in WAC 4-25-830(5). An application is not complete and cannot be processed until all required information, required documentation, and other documentation deemed necessary by the board are received by the board.

To apply to return to your previous status as a licensee you must submit to the board:

- (1) A complete application form including your certification, under the penalty of perjury, that you have:
 - (a) Not held out in public practice during the time in which you were a CPA-Inactive certificateholder; and
 - (b) Met the CPE requirements of WAC 4-25-830(5);
- (2) Other required documentation, required information, and other documentation deemed necessary by the board.

Upon approval of your application, your license will be mailed to the last address you provided to the board.

You may not use the title CPA until you receive notice from the board that your CPA license has been approved. ~~((With the exception of out-of-state sole practicing CPAs holding valid practice privileges in Washington state under WAC 4-25-756, a licensee may only offer to provide attest services in a licensed CPA firm meeting the requirements of WAC 4-25-750.))~~

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-792 How do I reinstate a lapsed individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner? If your individual license or CPA-Inactive certificate has lapsed, you may not use the title CPA or CPA-Inactive until your individual license or CPA-Inactive certificate is reinstated by the board.

Individuals who held a valid license on June 30, 2001, and individuals obtaining a license after June 30, 2001, are not eligible to reinstate as CPA-Inactive certificateholders.

If your registration as a resident nonlicensee firm owner has lapsed, you may not be an owner of a CPA firm until your registration is reinstated by the board.

To reinstate a lapsed individual license, CPA-Inactive certificate, or registration as a nonlicensee firm owner you must use the form provided by the board and satisfy CPE requirements in WAC 4-25-830(6). An application is not complete and cannot be processed until all fees, required information, required documentation, and other documentation deemed necessary by the board are received by the board.

To reinstate, you must submit to the board:

- (1) A complete reinstatement form including your certification, under the penalty of perjury, that you have:
 - (a) *For those who wish to reinstate a license or CPA-Inactive certificate:* Not used the title CPA or CPA-Inactive during the time in which your individual license or CPA-Inactive certificate was lapsed; or
 - (b) *For those who wish to reinstate a registration as a resident nonlicensee firm owner:* Not participated as an owner in a CPA firm during the time in which your registration as a resident nonlicensee firm owner was suspended or revoked; and
 - (c) Met the CPE requirements for reinstatement in WAC 4-25-830(6); and
 - (d) Met the CPE supporting documentation requirements in WAC 4-25-833;
 - (2) Source documents as evidence of eligibility for CPE credit for all courses claimed in order to meet CPE requirements as defined by WAC 4-25-833;
 - (3) A listing of all states and foreign jurisdictions in which you hold or have applied for a license, certificate, or practice privileges;
 - (4) All applicable fees; and
 - (5) Other required documents, required information, and other documentation deemed necessary by the board.
- Upon approval of your reinstatement, notice that your license, registration as a resident nonlicensee firm owner, or

CPA-Inactive certification has been reinstated will be mailed to the last address you provided to the board. Your license, CPA-Inactive certificate, or registration as a nonlicensee firm owner will expire on June 30th of the third calendar year following approval of the reinstatement. The CPE reporting period for your next renewal begins on January 1 of the calendar year in which the reinstatement of your license, CPA-Inactive certificate, or registration as a nonlicensee firm owner was approved by the board and ends on December 31 of the second calendar year following approval of the reinstatement. CPE credit hours utilized to qualify for reinstatement cannot be utilized for this CPE reporting period.

You may not use the title CPA or CPA-Inactive until your reinstatement application has been approved.

~~((With the exception of out-of-state sole practicing CPAs holding valid practice privileges in Washington state under WAC 4-25-756, attest services may only be performed in a CPA firm licensed by the board and meeting the requirements of WAC 4-25-750.))~~

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-793 If I retire my license or CPA-Inactive certificate, how do I apply to return to my previous status as a licensee or a CPA-Inactive certificateholder? If you notified the board that you wish to retire your license or CPA-Inactive certificate prior to the end of your renewal cycle, pursuant to RCW 18.04.215(7), you may renew your license or CPA-Inactive certificate at a later date and are not subject to the requirements of reinstatement; however, you may not use the title CPA or CPA-Inactive or exercise the privileges related to those titles until you return to your previous status.

To apply to return to your previously held status as either a licensee or a CPA-Inactive certificateholder you must use the form(s) provided by the board and satisfy CPE requirements in WAC 4-25-830(4). An application is not complete and cannot be processed until all fees, required information, required documentation, or other documentation deemed necessary by the board are received by the board.

If you previously held a license, you are not eligible to apply for CPA-Inactive certificateholder status.

To apply to return to your previous status, you must submit to the board:

(1) A complete application form including your certification, under the penalty of perjury, that you have:

(a) Not used the title CPA or CPA-Inactive during the time in which your license or CPA-Inactive certificate was retired; and

(b) Met the CPE requirements to return to your previous status in WAC 4-25-830(4);

(2) All applicable fees; and

(3) Other required documentation, required information, or other documentation deemed necessary by the board.

Upon approval of your application, your license or notification of your status as a CPA-Inactive certificateholder will be mailed to the last address you provided to the board. Your license or CPA-Inactive certificate will expire on June 30th of the third calendar year following approval of the renewal. The CPE reporting period for your next renewal

begins on January 1 of the calendar year in which the renewal of your retired license or CPA-Inactive certificate was approved by the board and ends on December 31 of the second calendar year following approval of the renewal. CPE credit hours utilized to qualify for renewal of a retired license or CPA-Inactive certificate cannot be utilized for this CPE reporting period.

You may not use the title CPA or CPA-Inactive until your renewal application has been approved.

~~((With the exception of out-of-state sole practicing CPAs holding valid practice privileges in Washington state under WAC 4-25-756, attest services may only be performed in a CPA firm licensed by the board and meeting the requirements of WAC 4-25-750.))~~

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-795 How do I reinstate a revoked or suspended license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner? If your license or CPA-Inactive certificate was revoked or suspended by the board pursuant to the act, you may not use the title CPA or CPA-Inactive until your license or CPA-Inactive certificate is reinstated by the board.

If your registration as a resident nonlicensee firm owner was revoked or suspended by the board pursuant to the act, you may not be a firm owner until your registration is reinstated by the board.

You may request that the board modify the suspension or revocation after three years have elapsed from the effective date of the board's order revoking or suspending your license or CPA-Inactive certificate unless the board sets some other period by order. However, if you made a previous request with respect to the same order, no additional request will be considered before the lapse of an additional three years following the board's decision on the last such previous application.

To request reinstatement of a revoked or suspended license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner you must use the form provided by the board and satisfy CPE requirements in WAC 4-25-830(6). A request is not complete and cannot be processed until all fees, required information, required documentation, and other documentation deemed necessary by the board are received by the board.

To request reinstatement, you must submit to the board:

(1) A complete reinstatement form including your certification under the penalty of perjury, that you have:

(a) *For those who wish to reinstate a license or CPA-Inactive certificate:* Not used the title CPA during the time in which your license or CPA-Inactive certificate was suspended or revoked; or

(b) *For those who wish to reinstate a registration as a resident nonlicensee firm owner:* Not participated as an owner in a CPA firm during the time in which your registration as a resident nonlicensee firm owner was suspended or revoked; and

(c) Met the CPE requirements for reinstatement in WAC 4-25-830(6); and

(d) Met the CPE supporting documentation requirements in WAC 4-25-833;

(2) A listing of all states and foreign jurisdictions in which you hold or have applied for a license, CPA-Inactive certificate, permit, or practice privilege under substantial equivalence;

(3) All applicable fees;

(4) Source documents as evidence of eligibility for CPE credit for all courses claimed in order to meet CPE requirements as defined by WAC 4-25-833;

(5) Written substantiation of the reasons constituting good cause for the reinstatement;

(6) Two supporting recommendations, under penalty of perjury, from licensees who have personal knowledge of your activities since the suspension or revocation was imposed; and

(7) Other required documentation, required information, and other documentation deemed necessary by the board.

In considering the reinstatement application, the board may consider all relevant factors, including but not limited to:

(a) The offense for which you were disciplined;

(b) Your activities since the disciplinary penalty was imposed;

(c) Your activities during the time the license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner was in good standing;

(d) Your rehabilitative efforts;

(e) Restitution to damaged parties in the matter for which the penalty was imposed; and

(f) Your general reputation for truth and professional ethics.

If the board decides to consider the merits of your application for reinstatement, in the board's discretion, a hearing may be held following such procedures as the board deems suitable for the particular case. If the board decides that it will not consider the merits of your application for reinstatement, then this constitutes final agency action and there is no further administrative review available to you. As a condition of reinstatement, the board may impose such terms and conditions as it deems suitable.

The board will not consider a request for reinstatement while you are under sentence for any criminal offense, including any period during which you are on court-imposed probation or parole.

Upon approval of your application, your license, notification of your status as a CPA-Inactive certificateholder, or registration as a resident nonlicensee firm owner will be mailed to the last address you provided to the board. Your license, CPA-Inactive certificate, or registration will expire on June 30th of the third calendar year following approval of the reinstatement. The CPE reporting period for your next renewal begins on January 1 of the calendar year in which the reinstatement of your license, CPA-Inactive certificate, or registration was approved by the board and ends on December 31 of the second calendar year following approval of the reinstatement. CPE credit hours utilized to qualify for reinstatement of a license, CPA-Inactive certificate, or registration cannot be utilized for this CPE reporting period.

You may not use the title CPA or CPA-Inactive until your reinstatement application has been approved.

~~((With the exception of out-of-state sole practicing CPAs holding valid practice privileges in Washington state under WAC 4-25-756, attest services may only be performed in a CPA firm licensed by the board and meeting the requirements of WAC 4-25-750.))~~

WSR 09-01-171

PERMANENT RULES

UTILITIES AND TRANSPORTATION

COMMISSION

[Docket A-081419, General Order R-554—Filed December 23, 2008, 11:18 a.m., effective January 23, 2009]

In the matter of amending and adopting several rules in Title 480 WAC, relating to adoption-by-reference date revisions and other minor administrative changes.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 08-20-130 for an expedited rule making, filed with the code reviser on October 1, 2008. The commission brings this proceeding pursuant to RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353.

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts this rule on the date that this order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules as adopted (other than editing changes), a summary of the comments received regarding the proposed rule changes, and state the commission's responses to the comments, reflecting the commission's consideration of them.

5 To avoid unnecessary duplication in the record of this docket, the commission designates the discussion in this order, including Appendix A, as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda preceding the filing of the CR-105 proposal and the adoption order. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

6 REFERENCE TO AFFECTED RULES: This rule amends the following sections of the Washington Administrative Code:

Rule Changes			
Action	WAC No.	Rule Title	Changes
Chapter 480-14 WAC, Motor carriers excluding household goods carriers and common brokers.			
Amend	480-14-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> • North American Standard Out-of Service Criteria (CVSA) April 1, 2008 - No significant change • Title 49 Code of Federal Regulations, April 30, 2008 - Part 171 April 30, 2008 - Part 395
Chapter 480-15 WAC, Household goods carriers.			
Amend	480-15-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> • North American Standard Out-of Service Criteria April 1, 2008 - No significant change • Title 49 Code of Federal Regulations December 31, 2007 - Part 382 December 31, 2007 - Part 383 December 31, 2007 - Part 390 December 31, 2007 - Part 391 December 31, 2007 - Part 392 December 31, 2007 - Part 393 December 31, 2007 - Part 395 December 31, 2007 - Part 396
Chapter 480-30 WAC, Auto transportation companies.			
Amend	480-30-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> • North American Standard Out-of Service Criteria April 1, 2008 - No significant change • Title 49 Code of Federal Regulations June 30, 2008 - Part 40 December 31, 2007 - Part 382 December 31, 2007 - Part 383 December 31, 2007 - Part 390 December 31, 2007 - Part 391 December 31, 2007 - Part 392 December 31, 2007 - Part 393 December 31, 2007 - Part 395 December 31, 2007 - Part 396 December 31, 2007 - Part 397
Chapter 480-31 WAC, Private, nonprofit transportation providers.			
Amend	480-31-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> • North American Standard Out-of Service Criteria April 1, 2008 - No significant change • Title 49 Code of Federal Regulations December 31, 2007 - Part 382 December 31, 2007 - Part 383 December 31, 2007 - Part 391 December 31, 2007 - Part 392 December 31, 2007 - Part 393 December 31, 2007 - Part 395 December 31, 2007 - Part 396 December 31, 2007 - Part 397

Chapter 480-62 WAC, Railroad companies—Operations.			
Amend	480-62-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> • Title 49 Code of Federal Regulations October 1, 2007 - Parts 171, 172, 173, 174, 178, and 179 October 1, 2007 - Part 234 October 1, 2007 - Part 213 October 1, 2007 - Parts 209, 214, 217, 218, 219, 220, 221, 225, 228, 239, and 240 October 1, 2007 - Part 212 October 1, 2007 - Part 570.7 and 570.60
Chapter 480-70 WAC, Solid waste collection companies.			
Amend	480-70-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> • North American Standard Out-of Service Criteria April 1, 2008 - No significant change • Title 40 Code of Federal Regulations June 25, 2008 - No significant change • Title 49 Code of Federal Regulations December 31, 2007 - Part 382 December 31, 2007 - Part 383 December 31, 2007 - Part 390 December 31, 2007 - Part 391 December 31, 2007 - Part 392 December 31, 2007 - Part 393 December 31, 2007 - Part 395 December 31, 2007 - Part 396 December 31, 2007 - Part 397
Chapter 480-73 WAC, Hazardous liquid pipeline companies.			
Amend	480-73-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> • Title 18 Code of Federal Regulations April 1, 2008 - No change to current rule
Chapter 480-75 WAC, Hazardous liquid pipeline companies—Safety.			
Amend	480-75-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> • Title 49 Code of Federal Regulations, except Sections 195.0, 195.1, 199.1, and 199.2 September 2, 2008 - No significant change
Chapter 480-90 WAC, Gas companies—Operations.			
Amend	480-90-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> • Title 18 Code of Federal Regulations April 1, 2008 - No significant change • NARUC1, The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies - as of 1985 No change to current rule
Chapter 480-93 WAC, Gas companies—Safety.			
Amend	480-93-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> • Title 49 Code of Federal Regulations, except Sections 191.1, 192.1(a), 193.2001(a), and 199.1 September 2, 2008 - No significant change

Chapter 480-100 WAC, Electric companies.			
Amend	480-100-999	Adoption by reference.	<p>1. Adoption by reference dates changed as follows:</p> <ul style="list-style-type: none"> • Title 18 Code of Federal Regulations April 1, 2008 - No significant change • NARUC, The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies - as of 1985 No change to current rule • National Electrical Code² - as of 2005 No change to current rule • ANSI C12.1, Code for Electricity Metering, 2001 - as of 2001 No change to current rule
Chapter 480-108 WAC, Electric companies—Interconnection with electric generators.			
Amend	480-108-999	Adoption by reference.	<p>1. Adoption by reference dates changed as follows:</p> <ul style="list-style-type: none"> • Title 29 Code of Federal Regulations July 1, 2008 - No significant change • NARUC, The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies - as of 1985 No change to current rule • National Electrical Code - as of 2005 No change to current rule • ANSI C12.1, Code for Electricity Metering, 2001 - as of 2001 No change to current rule
Chapter 480-120 WAC, Telecommunications companies.			
Amend	480-120-999	Adoption by reference.	<p>1. Adoption by reference dates changed as follows:</p> <ul style="list-style-type: none"> • American National Standards for Telecommunications - "Network Performance Parameters for Dedicated Digital Services - Specifications" - (ANSI T1.510-1999) - as of December 29, 1999 and reaffirmed 2004 - No change to current rule • The Institute of Electrical and Electronic Engineers (IEEE) Standard Telephone Loop Performance Characteristics - as of 2005 No significant change • National Electrical Safety Code January 1, 2002 - No change to current rule • Title 47 Code of Federal Regulations, except Sections 64.2003 through 64.2009 October 1, 1998 - No change to current rule • Title 47 Code of Federal Regulations, Sections 64.2003 through 64.2009 October 1, 2008 - No significant change

Chapter 480-123 WAC, Universal service.			
Amend	480-123-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> The Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service February 5, 2007 - No significant change

¹ National Association of Regulatory Utility Commissioners (NARUC).

² National Fire Protection Association (NFPA).

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: A preproposal statement of inquiry is not required under RCW 34.05.353 Expedited rule making.

8 NOTICE OF EXPEDITED RULE MAKING: The commission filed notice of expedited rule making (CR-105) on October 1, 2008, at WSR 08-20-130. The notice informed interested persons that the rules were being proposed under an expedited rule-making process as required by RCW 34.05.-353. The commission provided notice of its expedited rule making to all persons on the commission's list of persons requesting such information pursuant to RCW 34.05.353, and by sending notice to all companies affected by the adoption-by-reference rule proposal. The notice provided interested persons the opportunity to submit written comments to the commission no later than December 2, 2008. The commission posted the relevant rule-making information on its internet web site at www.utc.wa.gov.

9 COMMENTERS (WRITTEN COMMENTS): No comments were received on the proposed rules.

10 COMMISSION ACTION: After considering all of the information regarding this proposal, the commission finds and concludes that is [it] should amend the rules as proposed in the CR-105 at WSR 08-20-130.

11 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: After reviewing the entire record, the commission determines that WAC 480-14-999, 480-15-999, 480-30-999, 480-31-999, 480-62-999, 480-70-999, 480-73-999, 480-75-999, 480-90-999, 480-93-999, 480-100-999, 480-108-999, 480-120-999, and 480-123-999 should be amended to read as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 14, Repealed 0.

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

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

ORDER

12 THE COMMISSION ORDERS:

13 The commission amends WAC 480-14-999, 480-15-999, 480-30-999, 480-31-999, 480-62-999, 480-70-999, 480-73-999, 480-75-999, 480-90-999, 480-93-999, 480-100-999, 480-108-999, 480-120-999, and 480-123-999 are amended to read as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

14 This order and the rules set out in Appendix A, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01, 34.05 RCW and 1-21 WAC.

DATED at Olympia, Washington, December 15, 2008.

Washington State Utilities and Transportation Commission

Mark H. Sidran, Chairman
Patrick J. Oshie, Commissioner
Philip B. Jones, Commissioner

AMENDATORY SECTION (Amending Docket A-060475, General Order No. R-537, filed 8/14/06, effective 9/14/06)

WAC 480-14-999 Adoption of reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Standard Out-of-Service Criteria (OOSC)** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, 2006.

(b) This publication is referenced in WAC 480-14-360 (Equipment—Inspection—Ordered out-of-service for repairs), WAC 480-14-370 (Equipment—Drivers—Safety), and WAC 480-14-390 (Hazardous materials regulations).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Washington, D.C.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on ~~((October 1, 2005))~~ April 30, 2008, for 49 CFR Parts 171, 172 and 395.

(b) This publication is referenced in ~~((WAC 480-14-040 (Definitions), WAC 480-14-070 (Federal regulations), 49~~

~~CFR, Part 390—General applicability and definitions);) WAC 480-14-250 (Insurance requirements; cause for suspension or cancellation)(, WAC 480-14-370 (Equipment—Drivers—Safety);) and WAC 480-14-380 (Hours of service—On duty—Federal safety regulations)(, WAC 480-14-390 (Hazardous materials regulations), and WAC 480-14-400 (Transportation of radioactive materials—Driving and parking rules)).~~

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending Docket A-060475, General Order No. R-537, filed 8/14/06, effective 9/14/06)

WAC 480-15-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Standard Out-of-Service Criteria** (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, ~~((2006))~~ 2008.

(b) This publication is referenced in WAC 480-15-560 (Equipment safety requirements).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Washington, D.C.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on ~~((October 1, 2005))~~ December 31, 2007.

(b) This publication is referenced in WAC 480-15-560 (Equipment safety requirements) and WAC 480-15-570 (Driver safety requirements).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending General Order No. R-533, Docket No. TC-020497, filed 6/8/06, effective 7/9/06)

WAC 480-30-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Standard Out-of-Service Criteria** (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, ~~((2005))~~ 2008.

(b) This publication is referenced in WAC 480-30-121 (Certificates, applications, charter and excursion) and WAC 480-30-221 (Vehicle and driver safety requirements).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Washington, D.C.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on ~~((October 1, 2004))~~ December 31, 2007.

(b) This publication is referenced in WAC 480-30-221 (Vehicle and driver safety requirements) and WAC 480-30-226 (Intrastate medical waivers).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending Docket T-051915, General Order No. R-532, filed 5/4/06, effective 6/4/06)

WAC 480-31-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Standard Out-of-Service Criteria** (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, ~~((2005))~~ 2008.

(b) This publication is referenced in WAC 480-31-120 (Equipment—Inspection—Ordered for repairs).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Washington, D.C.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on ~~((October 1, 2004))~~ December 31, 2007.

(b) This publication is referenced in WAC 480-31-100 (Equipment—Safety), WAC 480-31-120 (Equipment—Inspection—Ordered for repairs), and WAC 480-31-130 (Operation of motor vehicles).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending Docket No. A-050271, General Order No. R-521, filed 10/10/05, effective 11/10/05)

WAC 480-62-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of reg-

ulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, (~~2004~~) 2007.

(b) This publication is referenced in WAC 480-62-160 (Compliance policy), WAC 480-62-200 (Roadway worker safety and operating rules and statutes), WAC 480-62-205 (Track safety standards), WAC 480-62-210 (Crossing signal circuitry), WAC 480-62-215 (Hazardous materials regulations), WAC 480-62-235 (Flaggers), and WAC 480-62-240 (Passenger carrying vehicles—Equipment).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) **Manual on Uniform Traffic Control Devices**, cited as Manual on Uniform Traffic Control Devices, or MUTCD, is published by the United States Government Printing Office.

(a) The commission adopts the version in effect in November 2004.

(b) This publication is referenced in WAC 480-62-230 (Traffic control devices), WAC 480-62-235 (Flaggers), and WAC 480-62-245 (Passenger carrying vehicles—Operation).

(c) Copies of the MUTCD are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(3) **Washington state department of transportation rules**, cited as chapter 468-95 WAC, are published by the statute law committee.

(a) The commission adopts the version in effect on March 25, 2004.

(b) This publication is referenced in WAC 480-62-230 (Traffic control devices).

(c) Copies of the Washington state department of transportation rules are available from the department of transportation or on the internet web site for the office of the code reviser (slc.leg.wa.gov).

(4) **ANSI Z308.1 - 2003 American National Standard for Minimum Requirements for Workplace First Aid Kits** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on April 29, 2003.

(b) This publication is referenced in WAC 480-62-240 (Passenger carrying vehicles—Equipment).

(c) Copies of ANSI Z308.1 - 2003 American National Standard for Minimum Requirements for Workplace First Aid Kits are available from Global Engineering Documents in Englewood, Colorado.

(5) **ANSI/ISEA 107-2004 - American National Standard for High-Visibility Safety Apparel** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on September 15, 2004.

(b) This publication is referenced in WAC 480-62-235 (Flaggers).

(c) Copies of ANSI/ISEA 107-1999 - American National Standard for High-Visibility Safety Apparel are available from Global Engineering Documents in Englewood, Colorado.

(6) **Title 49 United States Code**, cited as 49 U.S.C., is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on January 2, 2002.

(b) This publication is referenced in WAC 480-62-200 (Roadway worker safety and operating rules and statutes).

(c) Copies of Title 49 United States Code are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending Docket A-060475, General Order No. R-537, filed 8/14/06, effective 9/14/06)

WAC 480-70-999 Adoption by reference. In this chapter, the commission adopts by reference all, or portions of, regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **The North American Standard Out-of-Service Criteria** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, (~~2006~~) 2008.

(b) This publication is referenced in WAC 480-70-201 (Vehicle and driver safety requirements).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Washington, D.C.

(2) **Title 40 Code of Federal Regulations**, cited as 40 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on July 1, 2006.

(b) This publication is referenced in WAC 480-70-041 (Definitions, general).

(c) Copies of Title 40 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(3) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on (~~October 1, 2005~~) December 31, 2007.

(b) This publication is referenced in WAC 480-70-201 (Vehicle and driver safety requirements), WAC 480-70-431 (Biomedical waste, adoption of federal regulations), and WAC 480-70-486 (Hazardous waste, adoption of federal regulations).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore,

<http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending Docket A-060475, General Order No. R-537, filed 8/14/06, effective 9/14/06)

WAC 480-73-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 CFR, is published by the United States Government Printing Office.

(2) The commission adopts the version in effect on April 1, (~~2006~~) 2008.

(3) This publication is referenced in WAC 480-73-130 (Accounting system requirements), WAC 480-73-150 (Retaining and preserving records and reports), and WAC 480-73-160 (Annual reports).

(4) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending Docket PL-070974, General Order R-548, filed 5/30/08, effective 6/30/08)

WAC 480-75-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **Title 49 Code of Federal Regulations**, cited as 49 CFR, Parts 195 and 199 including all appendices and amendments except for 49 CFR Sections 195.0 and 195.1, and 49 CFR Sections 199.1 and 199.2, published by the United States Government Printing Office.

(a) The commission adopts the version in effect on (~~October 1, 2007~~) September 2, 2008.

(b) This publication is referenced in WAC 480-75-370 (Design factor (*F*) for steel pipe), WAC 480-75-630 (Incident reporting), and WAC 480-75-660 (Operations safety plan requirements).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) **The American Society of Mechanical Engineers (ASME) B31.4**, 1998 edition.

(a) This publication is referenced in WAC 480-75-350 (Design specifications for new pipeline projects), WAC 480-75-440 (Pipeline repairs), and WAC 480-75-450 (Construction specifications).

(b) Copies of ASME B31.4 are available from The American Society of Mechanical Engineers, Park Avenue New York, New York.

(3) The 2001 edition of **Section IX of the ASME Boiler and Pressure Vessel Code**.

(a) This publication is referenced in WAC 480-75-430 (Welding procedures).

(b) Copies of *Section IX of the ASME Boiler and Pressure Vessel Code* are available from The American Society of Mechanical Engineers, Park Avenue, New York, New York.

(4) The commission adopts **American Petroleum Institute (API) standard 1104** 19th edition.

(a) This publication is referenced in WAC 480-75-430 (Welding procedures) and WAC 480-75-460 (Welding inspection requirements).

(b) Copies of API standard 1104 19th edition are available from the Office of API Publishing Services in Washington DC.

(5) The commission adopts **API RP standard 1117** Second Edition, August 1996.

(a) This publication is referenced in WAC 480-75-500 (Moving and lowering hazardous liquid pipelines).

(b) Copies of API standard 1117 Second Edition are available from Global Engineering Documents in Englewood, Colorado.

AMENDATORY SECTION (Amending Docket A-060475, General Order No. R-537, filed 8/14/06, effective 9/14/06)

WAC 480-90-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on April 1, (~~2006~~) 2008.

(b) The accounting and reporting for the types of transactions and events covered by the amendment should not be construed as indicative of their treatment by this commission for ratemaking purposes.

(c) This publication is referenced in WAC 480-90-203 (Accounting system requirements), WAC 480-90-244 (Transferring cash or assuming obligation), WAC 480-90-252 (Federal Energy Regulatory Commission (FERC) Form No. 2), and WAC 480-90-268 (Essential utilities services contracts report).

(d) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) **The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies** is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 1985.

(b) This publication is referenced in WAC 480-90-228 (Retention and preservation of records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies* is a copyrighted document. Copies are available from NARUC, in Washington, D.C.

AMENDATORY SECTION (Amending Docket PG-070975, General Order R-549, filed 5/30/08, effective 6/30/08)

WAC 480-93-999 Adoption by reference. In this chapter, the commission adopts by reference each of the regulations and/or standards identified below. Each regulation or standard is listed by publication, publisher, scope of what the commission is adopting, effective date of the regulation or standard, the place within the commission's rules the regulation or standard is referenced, and where to obtain the regulation or standard.

(1) Parts 191, 192, 193, and 199 of Title 49 Code of Federal Regulations, including all appendices and amendments thereto as published by the United States Government Printing Office.

(a) The commission adopts the version of the above regulations that were in effect on (~~October 1, 2007~~) September 2, 2008, except the following sections are not adopted by reference: 191.1, 192.1(a), 193.2001(a), 199.1. In addition, please note that in WAC 480-93-013, the commission includes "new construction" in the definition of "covered task," as defined in 49 CFR § 192.801 (b)(2).

(b) This publication is referenced in WAC 480-93-005, 480-93-080, 480-93-100, 480-93-110, 480-93-124, 480-93-155, 480-93-170, 480-93-180, and 480-93-18601.

(c) The Code of Federal Regulations is published by the federal government. Copies of Title 49 Code of Federal Regulations are available from most Government Printing Offices, including the Seattle office of the Government Printing Office, as well as from various third-party vendors and various libraries, including the branch of the state library located at the commission. It is also available for inspection at the commission.

(2) Section IX of the ASME Boiler and Pressure Vessel Code.

(a) The commission adopts the 2001 edition of Section IX of the ASME Boiler and Pressure Vessel Code.

(b) This publication is referenced in WAC 480-93-080.

(c) Copies of Section IX of the ASME Boiler and Pressure Vessel Code (2001 edition) are available from The American Society of Mechanical Engineers, Park Avenue, New York, New York, and various libraries, including the branch of the state library located at the commission. It is also available for inspection at the commission.

(3) The American Petroleum Institute (API) standard 1104 (19th edition).

(a) The commission adopts the 19th edition of this standard.

(b) This standard is referenced in WAC 480-93-080.

(c) Copies of API standard 1104 (19th edition) are available from the Office of API Publishing Services in Washington DC, and various libraries, including the branch of the state library located at the commission. It is also available for inspection at the commission.

AMENDATORY SECTION (Amending Docket A-060475, General Order No. R-537, filed 8/14/06, effective 9/14/06)

WAC 480-100-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on April 1, (~~2006~~) 2008.

(b) The accounting and reporting for the types of transactions and events covered by the amendment should not be construed as indicative of their treatment by this commission for ratemaking purposes.

(c) This publication is referenced in WAC 480-100-203 (Accounting system requirements), WAC 480-100-244 (Transferring cash or assuming obligation), WAC 480-100-252 (Federal Energy Regulatory Commission (FERC) Form No. 1), and WAC 480-100-268 (Essential utilities services contracts report).

(d) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) The **Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies** is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 1985.

(b) This publication is referenced in WAC 480-100-228 (Retention and preservation of records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies* is a copyrighted document. Copies are available from NARUC in Washington, D.C.

(3) The **National Electrical Code** is published by the National Fire Protection Association (NFPA).

(a) The commission adopts the version published in 2005.

(b) This publication is referenced in WAC 480-100-163 (Service entrance facilities).

(c) The National Electrical Code is a copyrighted document. Copies are available from the NFPA in Quincy, Massachusetts.

(4) The **American National Standard for Electric Meters: Code for Electricity Metering**, ANSI C12.1 is published by the American National Standards Institute.

(a) The commission adopts the version published in 2001.

(b) This publication is referenced in WAC 480-100-318 (Meter readings, multipliers, and test constants), WAC 480-100-338 (Accuracy requirements for electric meters), and WAC 480-100-343 (Statement of meter test procedures).

(c) The ANSI C12.1 is a copyrighted document. Copies are available from Global Engineering Documents in Englewood, Colorado.

AMENDATORY SECTION (Amending Docket UE-060649, General Order 545, filed 9/27/07, effective 10/28/07)

WAC 480-108-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library or as otherwise indicated. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) The National Electrical Code is published by the National Fire Protection Association (NFPA).

(a) The commission adopts the version published in 2005.

(b) This publication is referenced in WAC 480-108-020.

(c) The National Electrical Code is a copyrighted document. Copies are available from the NFPA at 1 Batterymarch Park, Quincy, Massachusetts, 02169 or at internet address <http://www.nfpa.org>.

(2) National Electric Safety Code (NESC).

(a) The commission adopts the version published in 2002.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of the National Electric Safety Code are available from the Institute of Electrical and Electronics Engineers at <http://standards.ieee.org/nesc>.

(3) Institute of Electrical and Electronics Engineers (IEEE) Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems.

(a) The commission adopts the version published in 2003.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard 1547 are available from the Institute of Electrical and Electronics Engineers at <http://www.ieee.org/web/standards/home>.

(4) Institute of Electrical and Electronics Engineers (IEEE) Standard 929, Recommended Practice for Utility Interface of Photovoltaic (PV) Systems.

(a) The commission adopts the version published in 2000.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard 929 are available from the Institute of Electrical and Electronics Engineers at <http://www.ieee.org/web/standards/home>.

(5) American National Standards Institute (ANSI) Standard C37.90, IEEE Standard for Relays and Relay Systems Associated with Electric Power Apparatus.

(a) The commission adopts the version published in 2005.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard C37.90 are available from the Institute of Electrical and Electronics Engineers at <http://www.ieee.org/web/standards/home>.

(6) Institute of Electrical and Electronics Engineers (IEEE) Standard 519, Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems.

(a) The commission adopts the version published in 1992.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard 519 are available from the Institute of Electrical and Electronics Engineers at <http://www.ieee.org/web/standards/home>.

(7) Institute of Electrical and Electronics Engineers (IEEE) Standard 141, Recommended Practice for Electric Power Distribution for Industrial Plants.

(a) The commission adopts the version published in 1994 and reaffirmed in 1999.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard 141 are available from the Institute of Electrical and Electronics Engineers at <http://www.ieee.org/web/standards/home>.

(8) Institute of Electrical and Electronics Engineers (IEEE) Standard 142, Recommended Practice for Grounding of Industrial and Commercial Power Systems.

(a) The commission adopts the version published in 1991.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard 142 are available from the Institute of Electrical and Electronics Engineers at <http://www.ieee.org/web/standards/home>.

(9) Underwriters Laboratories (UL), including UL Standard 1741, Inverters, Converters, and Controllers for Use in Independent Power Systems.

(a) The commission adopts the version published in 2005.

(b) This publication is referenced in WAC 480-108-020.

(c) UL Standard 1741 is available from Underwriters Laboratory at <http://www.ul.com>.

(10) Occupational Safety and Health Administration (OSHA) Standard at 29 CFR 1910.269.

(a) The commission adopts the version published in 1994.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of Title 29 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(11) Washington Industrial Safety and Health Administration (WISHA) Standard, chapter 296-155 WAC.

(a) The commission adopts the version in effect on ~~(March 1, 2006)~~ July 1, 2008.

(b) This publication is referenced in WAC 480-108-020.

(c) The WISHA Standard is available from the Washington Department of Labor and Industries at P.O. Box 44000, Olympia, WA 98504-4000, or at internet address <http://www.lni.wa.gov>.

AMENDATORY SECTION (Amending Docket A-060475, General Order No. R-537, filed 8/14/06, effective 9/14/06)

WAC 480-120-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **American National Standards for Telecommunications** - "Network Performance Parameters for Dedicated

Digital Services - Specifications" (ANSI T1.510-1999) is published by the American National Standards Institute (ANSI).

(a) The commission adopts the version in effect on December 29, 1999, and reaffirmed 2004.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) The American National Standards for Telecommunications "*Network Performance Parameters for Dedicated Digital Services - Specifications*" is a copyrighted document. Copies are available from ANSI in Washington, D.C. and from various third-party vendors.

(2) **The Institute of Electrical And Electronic Engineers (IEEE) Standard Telephone Loop Performance Characteristics** (ANSI/IEEE Std 820-1984) is published by the ANSI and the IEEE.

(a) The commission adopts the version in effect (~~on March 22, 1984, and reaffirmed October 26, 1999~~) as published in 2005.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) *The IEEE Standard Telephone Loop Performance Characteristics* is a copyrighted document. Copies are available from ANSI and IEEE in Washington, D.C. and from various third-party vendors.

(3) **The National Electrical Safety Code** is published by the IEEE.

(a) The commission adopts the version in effect on January 1, 2002.

(b) This publication is referenced in WAC 480-120-402 (Safety).

(c) *The National Electrical Safety Code* is a copyrighted document. Copies are available from IEEE in Washington, D.C. and from various third-party vendors.

(4) **Title 47 Code of Federal Regulations**, cited as 47 CFR, is published by the United States Government Printing Office, except sections 64.2003 through 64.2009.

(a) The commission adopts the version in effect on October 1, 1998.

(b) This publication is referenced in WAC 480-120-359 (Accounting requirements for companies not classified as competitive) and WAC 480-120-349 (Retaining and preserving records and reports).

(c) Copies of Title 47 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(5) Sections 64.2003 through 64.2009 of **Title 47 of the Code of Federal Regulations**, cited as 47 CFR §§ 64.2003 through 64.2009, are published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, ~~(2005)~~ 2008.

(b) This publication is referenced in WAC 480-120-202 (Customer Proprietary Network Information).

(c) Copies of Sections 64.2003 through 64.2009 of Title 47 of the Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from third-party vendors.

AMENDATORY SECTION (Amending Docket No. UT-053021, General Order No. R-534, filed 6/28/06, effective 7/29/06)

WAC 480-123-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) The Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service.

(2) The commission adopts the version in effect on ~~(September 9, 2003)~~ February 5, 2007.

(3) This publication is referenced in WAC ~~((480-123-020))~~ 480-123-030 (contents of petition for eligible telecommunications carriers).

(4) Copies of the CTIA Consumer Code for Wireless Service are available at ~~((http://www.ctia.org/wireless_consumers/consumer_code/))~~ <http://www.ctia.org>.

WSR 09-01-172

PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed December 23, 2008, 12:06 p.m., effective January 23, 2009]

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

Purpose: WAC 392-121-136 was created to specify the limits to counting a student for enrollment purposes. An item that was included in the limitations should have been placed under WAC 392-121-108 which covers the enrollment exclusions. This change is to delete this exception from the list of limitations. A WAC change is being proposed concurrently which adds this item to the exceptions WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-136.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 08-22-025 on October 28, 2008.

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

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

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

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

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

Date Adopted: December 23, 2008.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 08-04-010, filed 1/24/08, effective 2/24/08)

WAC 392-121-136 Limitation on enrollment counts.

Enrollment counts pursuant to WAC 392-121-106 through 392-121-133 are subject to the following limitations:

(1) Except as provided in (a), (b) and (c) of this subsection, no student, including a student enrolled in more than one school district, shall be counted as more than one full-time equivalent student on any count date or more than one annual average full-time equivalent student in any school year.

(a) School districts operating approved vocational skills center programs during the summer vacation months may claim additional full-time equivalent students based upon actual enrollment in such vocational skills centers on the first school day of July of each year. Each district operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 900 hours of planned student enrollment for the summer term based upon the July enrollment data.

(b) Enrollment count limitations apply separately to a student's running start, skills center and high school enrollments.

(c) Subject to (b) of this subsection, a student enrolled in a skill center program during the regular school year may be claimed for up to a combined 1.6 full-time equivalent student.

A student can be claimed for a maximum of a 1.0 full-time equivalent for the skills center enrollment and a maximum of a 1.0 full-time equivalent for the student's high school enrollment.

(2) Running start enrollment counts are limited as provided in chapter 392-169 WAC and specifically as provided in WAC 392-169-060.

(3) The full-time equivalent reported for a five year old preschool student with a disability is limited as provided in WAC 392-121-137.

(4) No kindergarten student, including a student enrolled in more than one school district, shall be counted as more than one-half of an annual average full-time equivalent student in any school year.

~~(5) ((A student reported as full time on Form SPI E-672 pursuant to WAC 392-122-275 for institutional education funding shall not be reported by a school district for basic education funding on that enrollment count date.~~

~~(6))~~ A student reported as part-time on Form SPI E-672 shall not be reported by a school district for more than part-time basic education funding on that enrollment count date and the total enrollment reported by one or more school districts for basic education and on Form SPI E-672 must not exceed one full-time equivalent.

~~((7))~~ (6) Districts providing an approved state-funded full-day kindergarten program as provided in chapter 28A.150 RCW (from E2SSB 5841) may claim up to an addi-

tional 0.50 FTE based upon student enrolled hours in excess of the 0.50 FTE provided under subsection (4) of this section.

WSR 09-01-173
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed December 23, 2008, 12:06 p.m., effective January 23, 2009]

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

Purpose: The rule change allows for student enrollment during the nonstandard school year to be reported based upon enrolled FTE rather than on actual hours served.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-123.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 08-22-044 on October 31, 2008.

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

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

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

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

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

Date Adopted: December 23, 2008.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 95-01-013, filed 12/8/94, effective 1/8/95)

WAC 392-121-123 Nonstandard school year programs. ~~((Notwithstanding the count dates in WAC 392-121-122, a student who is participating in a course of study, other than running start and transition school, on a tuition-free basis and who has not been counted as a full-time equivalent student for all of the first nine months of the school year may be counted in any of the last three months of the school year as long as enrollment counts for such student do not exceed the limitation on enrollment counts set forth in WAC 392-121-136.))~~ A student participating in a program of education occurring during June, July, or August (nonstandard school year) on a tuition-free basis may be claimed for state funding to the extent that the student was not claimed as a 1.0 AAFTE during the regular school year (September through May), subject to the following:

(1) Eligible student FTE in a nonstandard school year program shall be claimed based upon the following:

(a) Enrolled hours based upon the standards in WAC 392-121-122 or 392-121-182.

(b) Credit based for student enrolled in a college program under WAC 392-121-188.

(c) A student enrolled in transition school or a running start program is not eligible for nonstandard school year funding.

(2) A district shall make month by month evaluation of the student to determine if the following conditions were met during the regular school year:

(a) The student was not home schooled or enrolled in a private school.

(b) The student was not claimed as a 1.0 FTE in a regular or institution education program.

(3) For each month in which the conditions of subsection (2) of this section are met, the district shall determine the amount of student FTE claimed for the student. To the extent the enrollment claimed is less than 1.0 FTE for each month, the school district may claim nonstandard school year FTE based upon the student enrollment in the nonstandard school year school program.

WSR 09-01-177

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed December 23, 2008, 2:47 p.m., effective January 23, 2009]

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

Purpose: This rule making modifies WAC 296-15-001 to define the self-insurance electronic data reporting system (SIEDRS) and its function. WAC 296-15-021 is modified to clarify how an employer applying to become self-insured must prepare for participation in SIEDRS. The rule making will also create a new section (WAC 296-15-231) to explain the requirements for each self-insurer for submitting data on an ongoing basis and to establish penalties for violations of the rules.

Citation of Existing Rules Affected by this Order: Amending WAC 296-15-001 Definitions and 296-15-021 Self-insurance certification requirements and application process.

Statutory Authority for Adoption: RCW 51.14.110.

Adopted under notice filed as WSR 08-21-149 on October 21, 2008.

Changes Other than Editing from Proposed to Adopted Version: The department clarified the language in WAC 296-15-231(2). WAC 296-15-231(5) was clarified by moving the last paragraph into a separate subsection (6) to specifically address the assessment of penalties. Subsection (6)(a) has been modified to clarify that for the purposes of WAC 296-15-231, an "occurrence" refers to submission of one data file, regardless of the number of claims contained in that data file.

A final cost-benefit analysis is available by contacting Josh Swanson, P.O. Box 44001, Olympia, WA 98504-4001,

phone (360) 902-6805, fax (360) 902-4202, e-mail SWAJ235@Lni.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 2, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 2, Repealed 0.

Date Adopted: December 23, 2008.

Ernie LaPalm
Deputy Director

AMENDATORY SECTION (Amending WSR 06-06-066, filed 2/28/06, effective 4/1/06)

WAC 296-15-001 Definitions. (1) "Self-insurance electronic data reporting system (SIEDRS)": SIEDRS is a computer system that collects claim data electronically from self-insurers. Effective July 1, 2008, all self-insurers must send timely and accurate claim data to SIEDRS in the required format.

(2) "Substantially similar":

(a) The text of the department's document has not been altered or deleted; and

(b) The self-insurer's document has the text:

(i) In approximately the same font size;

(ii) With the same emphasis (bolding, italics, underlining, etc.); and

(iii) In approximately the same location on the page as the department's document.

~~((2))~~ (3) "Third-party administrator": An entity which contracts to administer workers' compensation claims for a self-insured employer.

~~((3))~~ (4) "Claims management entity": All individuals designated by the self-insured employer to administer workers' compensation claims, including self-administered organizations and third-party administrators.

AMENDATORY SECTION (Amending WSR 06-06-066, filed 2/28/06, effective 4/1/06)

WAC 296-15-021 Self-insurance certification requirements and application process. (1) **What requirements must an employer meet to apply for self-insurance certification?** An employer must meet all the following minimum criteria:

(a) Be in business for three years prior to applying for self-insurance.

(b) Have a written accident prevention program in place in Washington state for at least six months prior to making application.

(c) Have total assets worth at least twenty-five million dollars as verified by audited financial statements prepared by independent certified accountants.

(d) Demonstrate positive earnings in the current year and two out of the last three years. The overall earnings for the last three years must also be positive.

(e) Have a current liquidity ratio of at least 1.3 to 1, and a debt to net worth ratio of not greater than 4 to 1.

(2) **When are applications processed?** The department processes applications for certification the quarter after the application is accepted. Self-insurance certification for approved applicants will be effective the quarter following processing.

(3) **What documentation must be submitted with an application?** The following documentation must be submitted with each self-insurance application:

(a) A completed application form (Form F207-001-000) with a nonrefundable application fee. The application fee is reviewed annually by the department and is based on the administrative costs incurred in processing an application, but in no instance will it be less than two hundred fifty dollars.

(b) Three years of audited financial statements prepared by independent certified accountants. The audited financial statements must be in the name of the applicant.

(c) A list of all of the applicant's physical locations and addresses in Washington state, including all subsidiary operations.

(d) A copy of the written accident prevention program for each of the applicant's operations in Washington. If the applicant or any of its subsidiaries has multiple locations, more than one copy of the accident prevention program may be required.

(e) A completed Self-Insurance Certification Questionnaire (Form 207-176-000).

(f) A completed self-insurance electronic data reporting system (SIEDRS) enrollment form (Form F207-193-000).

(4) **What happens during the application review process?** The department:

(a) Assesses the accident prevention program at department-selected sites.

(b) Analyzes the financial information supplied by the applicant. The department may also consider relevant information obtained from other sources to assess the applicant's financial strength.

(c) Reviews the completed Claims Administration Questionnaire and attachments. Additional information may be requested.

The department determines whether the application is denied or tentatively approved. The department notifies each applicant of its decision. If the department denies an application, it will state the reasons for the denial in its notification.

(5) **If the application is denied, when may the applicant submit a new application?** If an application is denied for deficiencies in its accident prevention program, the applicant may submit a new application for certification after the

corrections to the program are made and have been in place for six months.

If the application is denied for financial reasons, the applicant may submit a new application for certification after the next annual audited financial statement is available.

If the application is denied because the claims administration organization is deficient, the applicant may submit a new application for certification after corrections to the program are made.

(6) **What if the application is tentatively approved?** The applicant must submit the following:

(a) Surety in the amount determined by the department and issued on the department form.

(b) A signed copy of the service agreement with a third-party administrator, if applicable.

(i) The contract copy may delete clause(s) relating to payment of services.

(ii) However, if payment for services is based on the number of claims filed by the self-insurer's workers, this must be explained in detail.

(c) A copy of any excess insurance (reinsurance) policy including Washington state endorsements, if obtained.

(d) A signed copy of the Acknowledgement of Self-Insurance Responsibilities form.

(e) Payment of any outstanding premium of the applicant's state industrial insurance account.

(f) Payment of the applicant's estimated portion of the deficit, if a deficit condition in the state industrial insurance fund exists at the time of application.

(g) Adequate electronic test data to SIEDRS, to demonstrate the ability to submit claim data electronically in the required format. Requirements are defined in the SIEDRS enrollment package (Publication F207-194-000). The department may waive the testing requirement if the applicant has a service agreement with a third-party administrator that already submits data to SIEDRS.

If the required items are not received prior to the end of the quarter, the application may be denied. If the application is denied, the applicant must reapply in order to be considered for self-insurance.

(7) **How is the initial surety requirement established?** The initial surety requirement is established at the highest of the following:

(a) The annual premiums the applicant pays (or would pay) into the state industrial insurance fund; or

(b) The annual average of the last five years of developed incurred costs to the state industrial insurance fund; or

(c) The minimum surety requirement as established annually by the department. The minimum surety requirement is equal to the average total cost of one permanent total disability award.

The applicant has the option of submitting an independent actuarial analysis of its projected liability. The department reserves the right to accept or reject this analysis. In no event will the surety requirement be established at less than the minimum surety in force at that time.

NEW SECTION

WAC 296-15-231 Self-insurance electronic data reporting system (SIEDRS). (1) What is SIEDRS? SIEDRS is a computer system that collects claim data electronically from self-insurers. Effective July 1, 2008, all self-insurers must send timely and accurate claim data to SIEDRS in the required format.

(2) How often must a self-insurer report claim data to SIEDRS? All claims opened during a calendar month, as well as any updates made during that month to claims opened after the self-insurer's enrollment date (postenrollment claims), must be reported to SIEDRS by the tenth calendar day of the following month. Data can be submitted more often, but not more than once per day.

Newly certified self-insurers must begin submitting data by the tenth calendar day of the month following their date of certification. For example, if an employer is certified to self-insure effective January 1st, data must be submitted to SIEDRS by February 10th.

(3) What is the required format? Data submitted to SIEDRS must comply with all requirements outlined in the SIEDRS Enrollment Package (Publication F207-194-000).

(4) When must a self-insurer correct errors? Error corrections must be submitted to SIEDRS within ten calendar days of notification of the error. Notification occurs on the date SIEDRS provides the error report to the self-insurer.

(5) What happens if a self-insurer doesn't comply with SIEDRS requirements?

(a) The department may assess penalties for failure to comply with SIEDRS requirements. The department will consider penalties when a self-insurer:

- (i) Refuses or fails to send data files to SIEDRS.
- (ii) Repeatedly reports late.
- (iii) Repeatedly fails to correct errors on time.

(iv) Demonstrates repeated and uncorrected inaccuracies in reporting format.

(b) Repeated failure to comply with SIEDRS requirements may result in increased sanctions, up to and including withdrawal of self-insurance certification.

(6) How will penalties be assessed?

(a) Penalties are assessed for any occurrences within a twelve-month period, and need not be consecutive. An occurrence is defined as a failure to comply with any part of this section, and is attributed to an individual file regardless of the number of claims it contains. For example, a failure to submit a data file (of any size) for one particular month results in one occurrence.

(b) Penalties are cumulative. For example, failure to send data files for twelve occurrences results in twelve penalties with a cumulative total of seventy-one thousand dollars.

(c) The department has the discretion to consider withdrawal of certification at any time, based on the self-insurer's compliance record.

(d) Penalty table:

Occurrence	Failure to Send Data Files	Late Reporting	Failure to Correct Errors on Time	Uncorrected Reporting Format Inaccuracies
1st	\$500	\$250	\$250	\$500
2nd	\$500	\$250	\$250	\$500
3rd	\$1,000	\$500	\$500	\$1,000
4th	\$2,000	\$1,000	\$1,000	\$2,000
5th	\$4,000	\$1,500	\$1,500	\$4,000
6th	\$6,000	\$2,000	\$2,000	\$6,000
7th	\$7,000	\$3,000	\$3,000	\$7,000
8th	\$8,000	\$4,000	\$4,000	\$8,000
9th	\$9,000	\$5,000	\$5,000	\$9,000
10th	\$10,000	\$6,500	\$6,500	\$10,000
11th	\$11,000	\$8,000	\$8,000	\$11,000
12th	\$12,000	\$10,000	\$10,000	\$12,000

(i) 1st and 2nd occurrences may be waived at the department's discretion for good cause.

(ii) For any waived occurrence, a notification is sent to the employer indicating noncompliance subject to penalty on repeat violation.

(iii) Any occurrence waived counts against the employer's overall SIEDRS compliance record.

(iv) If the department waives two occurrences then the 3rd occurrence results in a penalty equal in amount to the 3rd occurrence.

WSR 09-01-178

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 08-315—Filed December 23, 2008, 3:42 p.m., effective January 23, 2009]

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

Purpose: The purpose of this rule change is to correct a reference to the Code of Federal Regulations (C.F.R.) for highly migratory species. The rule currently refers to C.F.R. Title 50, Part 660, Subpart G. It should be Subpart K.

Citation of Existing Rules Affected by this Order: Amending WAC 220-44-035.

Statutory Authority for Adoption: RCW 77.65.010, 77.12.047, and 77.04.020.

Adopted under notice filed as WSR 08-21-154 [08-21-139] on October 21 [20], 2008.

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

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

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

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

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

Date Adopted: December 23, 2008.

Phil Anderson
Acting Director

AMENDATORY SECTION (Amending Order 07-279, filed 11/7/07, effective 12/8/07)

WAC 220-44-035 Highly migratory species fisheries—Possession and landing requirements—Gear restriction. (1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port, highly migratory species taken in violation of any permit or data collection requirements as published in the Code of Federal Regulations (CFR), Title 50, Part 660, Subpart ((G)) K. These federal regulations provide the requirements for highly migratory species fisheries in the Pacific Ocean. There may be additional regulations listed in the Federal Register, and these override the regulations in the CFR if there are any inconsistencies between the two. Chapter 220-44 WAC incorporates the CFR by reference and is based, in part, on the CFR. Where rules refer to the fishery management area, that area is extended to include Washington state waters coterminous with the Exclusive Economic Zone. A copy of the federal rules may be obtained by contacting Lori Preuss at 360-902-2930, or the internet at www.pcouncil.org. State regulations may apply that are more restrictive than federal regulations.

(2) Except as authorized under the federal rules referenced in this subsection, it is unlawful to use drift gill net gear in state and offshore waters west of the Bonilla-Tatoosh line, north of the Washington-Oregon boundary, and south of the United States-Canada boundary.

(3) Violation of reporting requirements under this section is punishable pursuant to RCW 77.15.280.

(4) Violation of gear requirements under this section is punishable pursuant to RCW 77.15.520.

WSR 09-01-195

PERMANENT RULES

DEPARTMENT OF CORRECTIONS

[Filed December 24, 2008, 10:56 a.m., effective January 24, 2009]

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

Purpose: Amendments to chapter 137-25 WAC, Serious infractions and chapter 137-28 WAC, Prisons discipline. Refine the definitions of general and serious infractions for the purposes of prison discipline.

Citation of Existing Rules Affected by this Order: Amending WAC 137-28-160, 137-28-230, 137-28-270, 137-28-280, 137-25-020, and 137-25-030.

Statutory Authority for Adoption: RCW 72.01.090, 72.65.100, and 72.09.130.

Adopted under notice filed as WSR 08-23-083 on November 18, 2008.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 6, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 24, 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 ((;)) appears to be degraded, humiliated, or appears to willingly engage((;)) 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 inser-

tion 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.

Category A

651 - Inciting others to riot.
882 - Possession or unauthorized use of a cell phone.

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.
884 - <u>Urinating, defecating or placing feces or urine, in any location other than a toilet or authorized receptacle.</u>
886 - <u>Adulteration of any food or drinks.</u>
892 - <u>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.
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 or <u>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.

Category B - Level 3

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.
889 - <u>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.
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.
<u>725 - Any telephonic or written correspondence with any offender in a correctional facility without prior written approval of the superintendent/community corrections supervisor/designee.</u>
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.

Category C - Level 3

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.
<u>890 - Failure to follow a medical directive and/or documented medical recommendations resulting in injury.</u>

(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 con-

finer 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 moti-

vated 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:

- (a) Name, number and housing location of the 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(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~~

~~(c))~~ 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))~~ (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.