

WSR 09-08-003
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed March 19, 2009, 7:09 a.m., effective April 19, 2009]

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

Purpose: The department is clarifying language, updating outdated WAC references, and adding additional provisions relating to expenses an individual can use toward meeting spenddown. The rules allow both paid and unpaid medical expenses incurred by a client during the retroactive eligibility period to be applied towards the client's spenddown in the current eligibility period. Treatment of hospital bills will no longer be singled out, but will mirror the federal rule by eliminating specific references to hospital bills and amending the language regarding the prioritization of expenses.

Citation of Existing Rules Affected by this Order: Amending WAC 388-519-0100 and 388-519-0110.

Statutory Authority for Adoption: RCW 74.04.055, 74.04.050, 74.04.057, 74.08.090, and 74.09.500.

Other Authority: 42 C.F.R. 435.831 (3)(e) and (f).

Adopted under notice filed as WSR 09-01-181 on December 24, 2008; and WSR 09-04-067 on February 2, 2009.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-519-0100 (5)(a), added the words "or family member."

WAC 388-519-0100(14), added the phrase, "beyond the end of the original certification date..."

WAC 388-519-0110(17), substituted the words "used to meet" for "assigned to." Added the phrase, "or accept or retain any additional amount for the covered service from the individual. Any additional amount may be billed to the department."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: March 11, 2009.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-519-0100 Eligibility for the medically needy program. (1) ~~((A person))~~ An individual who meets the following conditions ~~((is considered))~~ may be eligible for medically needy (MN) coverage under the special rules in chapters 388-513 WAC ~~((:))~~ and 388-515 WAC:

(a) ~~((A person who meets the institutional status requirements of WAC 388-513-1320))~~ Meets the institutional status requirements of WAC 388-513-1320; ~~((or))~~

(b) ~~((A person who receives waiver services under chapter 388-515 WAC))~~ Resides in a medical institution as described in WAC 388-513-1395; or

(c) Receives waiver services under a medically needy in-home waiver (MNIW) according to WAC 388-515-1550 or a medically needy residential waiver (MNRW) according to WAC 388-515-1540.

(2) ~~((MN coverage is considered under this chapter when a person:~~

(a) ~~Is not excluded under subsection (1) of this section; and~~

(b) ~~Is not eligible for categorically needy (CN) medical coverage because they have CN countable income which is above the CN income standard))~~ An SSI-related individual who lives in a department contracted alternate living facility may be eligible for MN coverage under the rules described in WAC 388-513-1305.

(3) ~~((MN coverage is available for children, for persons who are pregnant or for persons who are SSI-related. MN coverage is available to an aged, blind, or disabled ineligible spouse of an SSI recipient even though that spouse's countable income is below the CN income standard. Adults with no children must be SSI related in order to be qualified for MN coverage))~~ An individual may be eligible for MN coverage under this chapter when he or she is:

(a) Not covered under subsection (1) and (2) of this section; and

(b) Eligible for categorically needy (CN) medical coverage in all other respects except that his or her CN countable income is above the CN income standard.

(4) ~~((A person not eligible for CN medical and who is applying for MN coverage has the right to income deductions in addition to those used to arrive at CN countable income. The following deductions are used to calculate their countable income for MN. Those deductions to income are applied to each month of the base period and determine MN countable income))~~ MN coverage may be available if the individual is:

(a) ~~((All health insurance premiums expected to be paid by the client during the base period are deducted from their income))~~ A child; ~~((and))~~

(b) ~~((For persons who are SSI-related and who are married, see the income provisions for the nonapplying spouse in WAC 388-450-0210))~~ A pregnant woman; ~~((and))~~

(c) ~~((For persons who are not SSI-related and who are married, an income deduction is allowed for a nonapplying spouse:~~

(i) ~~If the nonapplying spouse is living in the same home as the applying person; and~~

(ii) The nonapplying spouse is receiving community and home based services under chapter 388-515 WAC; then

(iii) The income deduction is equal to the one person MNIL less the nonapplying spouse's actual income)) A refugee;

(d) An SSI-related individual including an aged, blind or disabled individual with countable income under the CN income standard, who is an ineligible spouse of an SSI recipient; or

(e) A hospice client with countable income which is above the special income level (SIL).

(5) ((A person who meets the above conditions is eligible for MN medical coverage if their MN countable income is at or below the medically needy income level (MNIL) in WAC 388-478-0070. They are certified as eligible for up to twelve months of MN medical coverage. Certain SSI or SSI-related clients have a special MNIL. That MNIL exception is described in WAC 388-513-1305)) An individual who is not eligible for CN medical and who is applying for MN coverage has the right to income deductions in addition to, or instead of, those used to arrive at CN countable income. Deductions to income are applied to each month of the base period to determine MN countable income. The following deductions are used to calculate countable income for MN:

(a) All health insurance premiums, with the exception of medicare Part A, Part B, Part C and Part D premiums expected to be paid by the individual or family member during the base period(s);

(b) Any allocations to a spouse or to dependents for an SSI-related individual who is married or who has dependent children. Rules for allocating income are described in WAC 388-475-0900;

(c) For an SSI-related individual who is married and lives in the same home as his or her spouse who receives home and community based waiver services under chapter 388-515 WAC, an income deduction equal to the medically needy income level (MNIL) minus the nonapplying spouse's income; and

(d) A child or pregnant woman who is applying for MN coverage is eligible for income deductions allowed under TANF/SFA rules and not under the rules for CN programs based on the federal poverty level. See WAC 388-450-0210(4) for exceptions to the TANF/SFA rules which apply to medical programs and not to the cash assistance program.

(6) ((A person whose MN countable income exceeds the MNIL may become eligible for MN medical coverage when they have or expect to have medical expenses. Those medical expenses or obligations may be used to offset any portion of their income which is over the MNIL)) The MNIL for individuals who qualify for MN coverage under subsection (1) of this section is based on rules in chapter 388-513 and 388-515 WAC.

(7) ((That portion of a person's MN countable income which is over the department's MNIL standard is called "excess income.") The MNIL for all other individuals is described in WAC 388-478-0070. If an individual has countable income which is at or below the MNIL, he or she is certified as eligible for up to twelve months of MN medical coverage.

(8) ((When a person has or will have "excess income" they are not eligible for MN coverage until they have medical expenses which are equal in amount to that excess income. This is the process of meeting "spenddown")) If an individual has countable income which is over the MNIL, the countable income that exceeds the department's MNIL standards is called "excess income."

(9) When individuals have "excess income" they are not eligible for MN coverage until they provide evidence to the department of medical expenses incurred by themselves, their spouse or family members who live in the home for whom they are financially responsible. See WAC 388-519-0110(8). An expense has been incurred when:

(a) The individual has received the medical treatment or medical supplies, is financially liable for the medical expense but has not yet paid the bill; or

(b) The individual has paid for the expense within the current or retroactive base period described in WAC 388-519-0110.

(10) Incurred medical expenses or obligations may be used to offset any portion of countable income that is over the MNIL. This is the process of meeting "spenddown."

(11) The department calculates the amount of an individual's spenddown by multiplying the monthly excess income amount by the number of months in the certification period as described in WAC 388-519-0110. The qualifying medical expenses must be greater than or equal to the total calculated spenddown amount.

(12) An ~~((person))~~ individual who is considered for MN coverage under this chapter may not spenddown excess resources to become eligible for the MN program. Under this chapter ~~((a person is))~~ individuals are ineligible for MN coverage if their resources exceed the program standard in WAC 388-478-0070. ~~((A person))~~ An individual who is considered for MN coverage under ~~((chapter 388-513))~~ WAC 388-513-1395, 388-505-0250 or 388-505-0255 is allowed to spenddown excess resources.

~~((10))~~ No extensions of coverage or automatic redetermination process applies to MN coverage. A client must submit an application for each eligibility period under the MN program.)

(13) There is no automatic redetermination process for MN coverage. An individual must submit an application for each eligibility period under the MN program.

(14) An individual who requests a timely administrative hearing under WAC 388-458-0040 is not eligible for continued benefits beyond the end of the original certification date under the medically needy program.

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-519-0110 Spenddown of excess income for the medically needy program. (1) ((The person applying for MN medical)) An individual who applies for medical assistance and is eligible for medically needy (MN) coverage with a spenddown may choose((s)) a three month or a six month base period ~~((for spenddown calculation))~~. A base period is a time period used to compute the amount of the spenddown liability. The months must be consecutive calendar months

unless one of the conditions in subsection (4) of this section ~~(apply)~~ applies.

(2) A ~~(person's)~~ base period begins on the first day of the month ~~(of application)~~, in which an individual applies for medical assistance, subject to the exceptions in subsection (4) of this section.

(3) An individual may request a separate base period (may be made for a retroactive period. The retroactive base period is made up of the) to cover the time period up to three calendar months immediately prior to the month of application. This is called a retroactive base period.

(4) A base period may vary from the terms in subsections (1), (2), or (3) of this section if:

(a) A three month base period would overlap a previous eligibility period; or

~~(b) (A client is not or will not be resource eligible for the))~~ The individual has countable resources that are over the applicable standard for any part of the required base period; or

(c) The client is not or will not be able to meet the TANF-related or SSI-related requirement for the required base period; or

(d) The ~~(client)~~ individual is ~~(or will be)~~ eligible for categorically needy (CN) coverage for part of the required base period; or

(e) The client was not otherwise eligible for MN coverage for each of the months of the retroactive base period.

(5) ~~(The amount of a person's ")~~ An individual's spenddown(") liability is calculated by the department. The MN countable income from each month of the base period is compared to the medically needy income level (MNIL). ~~(The excess income from each of the))~~ Income which is over the MNIL (based on the individual's household size) in each month(s) in the base period is added together to determine the total (")spenddown(" for the base period)) amount. The MNIL standard is found at http://www.dshs.wa.gov/pdf/esa/manual/standards_C_MedAsstChart.pdf and is updated annually in January.

(6) If household income varies and ((a person's)) an individual's MN countable income falls below the MNIL for one or more months, the difference is used to offset the excess income in other months of the base period. If this results in a spenddown amount of zero dollars and cents, see WAC ~~((388-519-0100(5)))~~ 388-519-0100(7).

(7) ~~((Once a person's spenddown amount is known, their qualifying medical expenses are subtracted from that spenddown amount to determine the date of eligibility. The following medical expenses are used to meet spenddown:~~

~~(a) First, Medicare and other health insurance deductibles, coinsurance charges, enrollment fees, or copayments;~~

~~(b) Second, medical expenses which would not be covered by the MN program;~~

~~(c) Third, hospital expenses paid by the person during the base period;~~

~~(d) Fourth, hospital expenses, regardless of age, owed by the applying person;~~

~~(e) Fifth, other medical expenses, potentially payable by the MN program, which have been paid by the applying person during the base period; and~~

~~(f) Sixth, other medical expenses, potentially payable by the MN program which are owed by the applying person))~~ If an individual's income decreases, the department approves CN coverage for each month in the base period when the individual's countable income and resources are equal to or below the applicable CN standards. Children under the age of nineteen and pregnant women who become CN eligible in any month of the base period remain continuously eligible for CN coverage for the remainder of the certification even if there is a subsequent increase in income.

~~(8) ((If a person meets the spenddown obligation at the time of application, they are eligible for MN medical coverage for the remainder of the base period. The beginning date of eligibility would be determined as described in WAC 388-416-0020))~~ Once an individual's spenddown amount has been determined, qualifying medical expenses are deducted. To be considered a qualifying medical expense, the expense must:

(a) Be an expense for which the individual is financially liable;

(b) Not have been used to meet another spenddown;

(c) Not be the confirmed responsibility of a third party. The department allows the entire expense if the third party has not confirmed its coverage of the expense within:

(i) Forty-five days of the date of service; or

(ii) Thirty days after the base period ends.

(d) Be an incurred expense for the individual:

(i) The individual's spouse;

(ii) A family member, residing in the home of the individual, for whom the individual is financially responsible; or

(iii) A relative, residing in the home of the individual, who is financially responsible for the individual.

(e) Meet one of the following conditions:

(i) Be an unpaid liability at the beginning of the base period;

(ii) Be for medical services either paid or unpaid and incurred during the base period;

(iii) Be for medical services incurred and paid during the three month retroactive base period if eligibility for medical assistance was not established in that base period. Paid expenses that meet this requirement may be applied towards the current base period; or

(iv) Be for medical services incurred during a previous base period and either unpaid or paid for, if it was necessary for the individual to make a payment due to delays in the certification for that base period.

(9) ~~((If a person's spenddown amount is not met at the time of application, they are not eligible until they present evidence of additional expenses which meets the spenddown amount))~~ An exception to the provisions in subsection (8) of this section exists for qualifying medical expenses that have been paid on behalf of the individual by a publicly administered program during the current or the retroactive base period. The department uses the qualifying medical expenses to meet the spenddown liability. To qualify for this exception the program must:

(a) Not be federally funded or make the payments from federally matched funds;

(b) Not pay the expenses prior to the first day of the retroactive base period; and

(c) Provide proof of the expenses paid on behalf of the individual.

(10) ~~((To be counted toward spenddown, medical expenses must))~~ Once the department has determined that the expenses meet the definition of a qualified expense as defined in subsection (8) or (9) of this section, the expenses are subtracted from the spenddown liability to determine the date the individual is eligible for medical coverage to begin. Qualifying medical expenses are deducted in the following order:

(a) ~~((Not have been used to meet a previous spenddown))~~ First, medicare and other health insurance deductibles, co-insurance charges, enrollment fees, copayments and premiums that are the individual's responsibility under medicare Part A, Part B, Part C and Part D. (Health insurance premiums are income deductions under WAC 388-519-0100(5)); ~~((and))~~

(b) ~~((Not be the confirmed responsibility of a third party. The entire expense will be counted unless the third party confirms its coverage within:~~

- (i) ~~Forty five days of the date of the service; or~~
- (ii) ~~Thirty days after the base period ends; and~~
- (c) ~~Meet one of the following conditions:~~

(i) ~~Be an unpaid liability at the beginning of the base period and be for services for:~~

(A) ~~The applying person; or~~

(B) ~~A family member legally or blood related and living in the same household as the applying person.~~

(ii) ~~Be for medical services either paid or unpaid and incurred during the base period; or~~

(iii) ~~Be for medical services paid and incurred during a previous base period if that client payment was made necessary due to delays in the certification for that base period)~~

Second, medical expenses incurred and paid by the individual during the three month retroactive base period if eligibility for medical assistance was not established in that base period.

(c) ~~Third, current payments on, or unpaid balance of, medical expenses incurred prior to the current base period which have not been used to establish eligibility for medical coverage in any other base period. The department sets no limit on the age of an unpaid expense; however, the expense must still be a current liability and be unpaid at the beginning of the base period.~~

(d) ~~Fourth, other medical expenses that would not be covered by the department's medical programs, minus any third party payments which apply to the charges. The items or services allowed as a medical expense must have been provided or prescribed by a licensed health care provider;~~

(e) ~~Fifth, other medical expenses which have been incurred by the individual during the base period that are potentially payable by the MN program (minus any confirmed third party payments that apply to the charges), even if payment is denied for these services because they exceed the department limits on amount, duration or scope of care. Scope of care is described in WAC 388-501-0060 and 388-501-0065; and~~

(f) ~~Sixth, other medical expenses that have been incurred by the individual during the base period that are potentially payable by the MN program (minus any confirmed third party payments that apply to the charges) and that are within the department limits on amount, duration or scope of care.~~

(11) ~~((An exception to the provisions in subsection (10) of this section exists. Medical expenses the person owes are applied to spenddown even if they were paid by or are subject to payment by a publicly administered program during the base period. To qualify, the program cannot be federally funded or make the payments of a person's medical expenses from federally matched funds. The expenses do not qualify if they were paid by the program before the first day of the base period))~~ If an individual submits verification of qualifying medical expenses with his or her application that meets or exceeds the spenddown liability, he or she is eligible for MN medical coverage for the remainder of the base period unless their circumstances change. See WAC 388-418-0005 to determine which changes must be reported to the department. The beginning of eligibility is determined as described in WAC 388-416-0020.

(12) ~~((The following medical expenses which the person owes are applied to spenddown. Each dollar of an expense or obligation may count once against a spenddown cycle that leads to eligibility for MN coverage:~~

(a) ~~Charges for services which would have been covered by the department's medical programs as described in WAC 388-501-0060 and 388-501-0065, less any confirmed third party payments which apply to the charges; and~~

(b) ~~Charges for some items or services not typically covered by the department's medical programs, less any third party payments which apply to the charges. The allowable items or services must have been provided or prescribed by a licensed health care provider; and~~

(c) ~~Medical insurance and Medicare copayments or co-insurance (premiums are income deductions under WAC 388-519-0100(4)); and~~

(d) ~~Medical insurance deductibles including those Medicare deductibles for a first hospitalization in sixty days))~~ If an individual cannot meet the spenddown amount at the time the application is submitted, the individual is not eligible until he or she provides proof of additional qualifying expenses that meet the spenddown liability.

(13) ~~Each dollar of a qualifying medical expense(s) may ((be used more than once if)) count once against a spenddown period that leads to eligibility for MN coverage. However, medical expenses may be used more than once under the following circumstances:~~

(a) ~~The ((person)) individual did not meet ((their)) his or her total spenddown ((amount)) liability and ((did not)) become eligible in ((that)) a previous base period and the bill remains unpaid; ((and)) or~~

(b) ~~The medical expense was ((applied to that unsuccessful spenddown and remains an unpaid)) a bill incurred and paid within three months of the current application and the department could not establish eligibility for medical assistance for the individual in the retroactive base period.~~

(14) ~~((To be considered toward spenddown, written proof of))~~ The individual must provide the proof of qualifying medical expenses ~~((for services rendered to the client must be presented))~~ to the department. The deadline for ~~((presenting))~~ providing medical expense information is thirty days after the base period ends unless there is a good ~~((cause))~~ reason for delay ~~((can be documented)).~~

~~(15) ((The medical expenses applied to the spenddown amount are the client's financial obligation and are not reimbursed by the department (see WAC 388-502-0100).~~

~~(16)) Once ((a person)) an individual meets ((their)) the spenddown ((and they are issued a medical identification card for MN coverage)) requirement and the certification begin date has been established, newly identified expenses cannot be considered toward that spenddown unless there is a good reason for the delay in submitting the expense or there was a department error in determining the correct begin date. ~~((Once the application is approved and coverage begins the beginning date of the certification period cannot be changed due to a clients failure to identify or list medical expenses.))~~~~

(16) Good reasons for delay in providing medical expense information to the department include, but are not limited to:

(a) The individual did not receive a timely bill from his or her medical provider or insurance company;

(b) The individual has medical issues that prevents him or her from submitting proof in a timely manner; or

(c) The individual meets the criteria for needing a supplemental accommodation under chapter 388-472 WAC.

(17) The department is not responsible to pay for any expense or portion of an expense that has been used to meet an individual's spenddown liability. If an expense is potentially payable under the MN program, and only a portion of the medical expense has been assigned to meet spenddown, the medical provider may not bill the individual for more than the amount which was assigned to the remaining spenddown liability, or accept or retain any additional amount for the covered service from the individual. Any additional amount may be billed to the department. See WAC 388-502-0160 Billing a client.

(18) The department determines whether any payment is due to the medical provider on medical expenses that have been partially assigned to meet a spenddown liability, according to WAC 388-502-0100.

(19) If the medical expense assigned to spenddown was incurred outside of a period of MN eligibility, or if the expense is not the type that is covered by the department's medical assistance programs, the department is not responsible for any portion of the bill.

WSR 09-08-014

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed March 20, 2009, 12:42 p.m., effective April 20, 2009]

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

Purpose: This will create standards of practice for licensed home inspectors to follow.

Statutory Authority for Adoption: RCW 18.280.050.

Other Authority: RCW 18.280.060(6).

Adopted under notice filed as WSR 09-03-103 on January 21, 2009.

Changes Other than Editing from Proposed to Adopted Version: WAC 308-408C-100 Plumbing system, the presence and functionality of sump pumps/ and waste ejector

pumps when visible or confirm the float switch activates the pump when the sump is dry.

WAC 308-408C-130 Air condition systems, (b) Operate the system using normal control devices and ~~determine measure and record~~ temperature differential.

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 18, Amended 0, Repealed 0.

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Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 18, Amended 0, Repealed 0.

Date Adopted: March 19, 2009.

Ralph Osgood

Assistant Director

Business and Professions Division

Chapter 308-408C WAC

STANDARDS OF PRACTICE

NEW SECTION

WAC 308-408C-010 Standards of practice (SOP)—Purpose and scope. Violations of the following SOP and ethics are subject to disciplinary action under RCW 18.235.-130.

The purpose of a home inspection is to assess the condition of the residence at the time of the inspection using visual observations, simple tools and normal homeowner operational controls; and to report deficiencies of specific systems and components. Inspectors must perform all inspections in compliance with the SOP set forth by the Washington state department of licensing.

A home inspection is not technically exhaustive and does not identify concealed conditions or latent defects. This SOP is applicable to buildings with four or fewer dwelling units and their attached garages or carports.

NEW SECTION

WAC 308-408C-020 Ethics—Statement of purpose. In order to ensure the integrity and high standard of skill and practice in the home inspection profession, the following rules of conduct and ethics shall be binding upon the inspector.

The home inspector must:

(1) Provide home inspection services that conform to the Washington state home inspectors' SOP.

(2) Provide full written disclosure of any business or familial relationships or other conflicts of interest between

themselves and any other party to the transaction. The parties may include, but are not limited to, buyers, sellers, appraisers, real estate licensees, mortgage representatives, title companies, vendors and service contractors.

(3) Act as an unbiased party and discharge his or her duties with integrity and fidelity to the client.

(4) Perform services and express opinions based on genuine conviction and only within the inspector's area of education, training, or expertise.

(5) Not conduct a home inspection or prepare a home inspection report that knowingly minimizes, compromises or attempts to balance information about defects for the purpose of garnering future referrals.

(6) Not provide services that constitute the unauthorized practice of any profession that requires a special license when the inspector does not hold that license.

(7) Not accept compensation for a home inspection from more than one party without written disclosure to the inspector's client(s).

(8) Not for one year after completion of the inspection repair, replace, or upgrade for compensation components or systems on any building inspected - this section applies to the inspector's firm and other employees or principals of that firm or affiliated firms.

(9) Not provide compensation, inducement, or reward directly or indirectly, to any person or entity other than the client, for the referral of business, inclusion on a list of recommended inspectors or preferred providers or participate in similar arrangements. The purchase and/or use of low-value advertising or marketing services or products that does not exceed ten dollars per item, is not considered inducement or reward.

(10) Not disclose information contained in the inspection report without client approval or as required by law. However, at their discretion inspectors may disclose when practical observed safety or health hazards to occupants or others that are exposed to such hazards.

(11) Not advertise previous experience in an associated trade as experience in the home inspection profession. An inspector's advertised inspection experience will reflect only the inspector's experience as a home inspector and inspectors shall not advertise, market or promote their home inspection services or qualifications in a fraudulent, false, deceptive or misleading manner.

(12) Not accept a home inspection referral or perform a home inspection when assignment of the inspection is contingent upon the inspector reporting predetermined conditions.

NEW SECTION

WAC 308-408C-030 Exclusions and limitations.

Inspectors are not required to:

(1) Determine the condition of any system or component that is not readily accessible; the remaining service life of any system or component; the strength, adequacy, effectiveness or efficiency of any system or component; causes of any condition or deficiency; methods, materials, or cost of corrections; future conditions including, but not limited to, failure of systems and components.

(2) Comment on the suitability of the structure or property for any specialized use, compliance with codes, regulations, laws or ordinances.

(3) Report the presence of potentially hazardous plants or animals including, but not limited to, wood destroying insects or diseases harmful to humans; the presence of any environmental hazards including, but not limited to mold, toxins, carcinogens, noise, and contaminants in soil, water or air; the effectiveness of any system installed or methods utilized to control or remove suspected hazardous substances.

(4) Determine the operating costs of any systems or components.

(5) Determine the acoustical properties of any systems or components.

(6) Operate any system or component that is shut down, not connected or is otherwise inoperable.

(7) Operate any system or component that does not respond to normal user controls.

(8) Operate any circuit breakers, water, gas or oil shutoff valves.

(9) Offer or perform any act or service contrary to law.

(10) Offer or perform engineering services or work in any trade or professional service other than home inspection.

(11) Offer or provide warranties or guarantees of any kind unless clearly explained and agreed to by both parties in a preinspection agreement.

(12) Determine the existence of or inspect any underground items including, but not limited to, underground storage tanks or sprinkler systems.

(13) Inspect decorative items, or systems or components that are in areas not entered in accordance with the SOP.

(14) Inspect detached structures, common elements and areas of multiunit housing such as condominium properties or cooperative housing.

(15) Perform any procedure or operation that will, in the opinion of the inspector, likely be dangerous to the inspector or others or damage the property, its systems or components.

(16) Move suspended ceiling tiles, personal property, furniture, equipment, plants, soil, snow, ice or debris.

(17) Dismantle any system or component, except as explicitly required by the SOP.

(18) Enter flooded crawlspaces, attics that are not readily accessible, or any area that will, in the opinion of the inspector, likely be dangerous to the inspector or other persons or damage the property, its systems or components.

(19) Inspect or comment on the condition or serviceability of elevators or related equipment.

(20) Inspect or comment on the condition or serviceability of swimming pools, hot tubs, saunas, sports courts or other similar equipment or related equipment.

Inspectors are not limited from examining other systems and components or including other inspection services. Likewise, if the inspector is qualified and willing to do so, an inspector may specify the type of repairs to be made.

An inspector may exclude those systems or components that a client specifically requests not to be included in the scope of the inspection or those areas that, in the opinion of the inspector, are inaccessible due to obstructions or conditions dangerous to the inspector. When systems or compo-

nents designated for inspection under this SOP are excluded, the reason the item was excluded will be reported.

NEW SECTION

WAC 308-408C-040 Recordkeeping. The inspector is required to maintain the following records for a period of three years:

- (1) Preinspection agreements signed by the client and the home inspector for all home inspections.
- (2) Home inspection reports.
- (3) Timesheets or similar documentation used to establish proof of field training, when supervising a home inspector applicant/candidate.

NEW SECTION

WAC 308-408C-050 Contracts. A preinspection agreement is mandatory and as a minimum must contain or state:

- (1) Address of property.
- (2) Home inspector compensation.
- (3) General description of what the home inspector will and will not inspect. That description will include all items that the Washington state SOP requires to be inspected.
- (4) A statement that the inspection does not include investigation of mold, asbestos, lead paint, water, soil, air quality or other environmental issues unless agreed to in writing in the preinspection agreement.

NEW SECTION

WAC 308-408C-060 Procedures. A home inspector must:

- (1) Provide a copy of the preinspection agreement to the client prior to the inspection unless prevented by circumstances from doing so.
- (2) Provide the client a copy of the home inspection report according to the terms of the preinspection agreement.
- (3) Return client's money related to a home inspection report when ordered to do so by a court.

NEW SECTION

WAC 308-408C-070 Structure. An inspection of the structure will include the visible foundation; floor framing; roof framing and decking; other support and substructure/superstructure components; stairs; ventilation (when applicable); and exposed concrete slabs in garages and habitable areas.

- (1) **The inspector will:**
 - **Describe** the type of building materials comprising the major structural components.
 - **Enter** and **traverse** attics and subfloor crawlspaces.
 - **Inspect**
 - (a) The condition and serviceability of visible, exposed foundations and grade slabs, walls, posts, piers, beams, joists, trusses, subfloors, chimney foundations, stairs and the visible roof structure and attic components where readily and safely accessible.

(b) Subfloor crawlspaces and basements for indications of flooding and moisture penetration.

- **Probe** a representative number of structural components where deterioration is suspected or where clear indications of possible deterioration exist. Probing is not required when probing will damage any finished surface or where no deterioration is suspected.

- **Describe** any deficiencies of these systems or components.

- **Report** all wood rot and pest-conducive conditions discovered.

- **Refer** all issues that are suspected to be insect related to a licensed structural pest inspector (SPI) or pest control operator (PCO) for follow up.

(2) **The inspector is not required to:**

- **Enter**

(a) Subfloor crawlspaces that require excavation or have an access opening less than eighteen inches by twenty-four inches or headroom less than eighteen inches beneath floor joists and twelve inches beneath girders (beams).

(b) Any areas that are not readily accessible due to obstructions, inadequate clearances or have conditions which, in the inspector's opinion, are hazardous to the health and safety of the inspector or will cause damage to components of the home.

- **Move** stored items or debris or perform excavation to gain access.

NEW SECTION

WAC 308-408C-080 Exterior. An inspection of the exterior includes the visible wall coverings, trim, protective coatings and sealants, windows and doors, attached porches, decks, steps, balconies, handrails, guardrails, carports, eaves, soffits, fascias and visible exterior portions of chimneys.

(1) **The inspector will:**

- **Describe** the exterior components visible from ground level.

- **Inspect** visible wall coverings, trim, protective coatings and sealants, windows and doors, attached porches, decks, steps, balconies, handrails, guardrails, carports, eaves, soffits, fascias and visible exterior portions of chimneys.

- **Probe** exterior components where deterioration is suspected or where clear indications of possible deterioration exist. Probing is not required when probing will damage any finished surface or where no deterioration is suspected.

- **Describe** any deficiencies of these systems or components.

(2) **The inspector is not required to:**

- **Inspect**

(a) Buildings, decks, patios, fences, retaining walls, and other structures detached from the dwelling.

(b) Safety type glass or the integrity of thermal window seals.

(c) Flues or verify the presence of flue liners beyond what can be safely and readily seen from the roof or the fire-box of a stove or fireplace.

- **Test** or **evaluate** the operation of security locks, devices or systems.

- **Enter** areas beneath decks with less than five feet of clearance from the underside of joists to grade.
- **Evaluate** the function or condition of shutters, awnings, storm doors, storm windows, screens, and similar accessories.

NEW SECTION

WAC 308-408C-090 Roofs. An inspection of the roof includes the roof covering materials; gutters and downspout systems; visible flashings; roof vents; skylights, and any other roof penetrations; and the portions of the chimneys and flues visible from the exterior.

(1) **The inspector will:**

- **Traverse** the roof to inspect it.
- **Inspect** the gutters and downspout systems, visible flashings, soffits and fascias, skylights, and other roof penetrations.
- **Report** the manner in which the roof is ventilated.
- **Describe** the type and general condition of roof coverings.
- **Report** multiple layers of roofing when visible or readily apparent.
- **Describe** any deficiencies of these systems or components.

(2) **The inspector is not required to:**

- **Traverse** a roof where, in the opinion of the inspector, doing so can damage roofing materials or be unsafe. If the roof is not traversed, the method used to inspect the roof must be reported.
- **Remove** snow, ice, debris or other material that obscures the roof surface or prevents access to the roof.
- **Inspect** gutter and downspout systems concealed within the structure; related underground drainage piping; and/or antennas, lightning arresters, or similar attachments.
- **Operate** powered roof ventilators.
- **Predict** remaining life expectancy of roof coverings.

NEW SECTION

WAC 308-408C-100 Plumbing system. An inspection of the plumbing system includes visible water supply lines; visible waste/soil and vent lines; fixtures and faucets; domestic hot water system and fuel source.

(1) **The inspector will:**

- (a) **Describe** the visible water supply and distribution piping materials; drain, waste and vent materials; water-heating equipment.
- (b) **Report**
 - (i) The presence and functionality of sump pumps/waste ejector pumps when visible or confirm the float switch activates the pump when the sump is dry.
 - (ii) The presence and location of a main water shutoff valve and/or fuel shutoff valve(s), or report that they were not found.
 - (iii) The presence of the temperature and pressure relief (TPR) valve and associated piping.
 - (iv) Whether or not the water temperature was tested and state that the generally accepted safe water temperature is one hundred twenty degrees Fahrenheit.

(c) **Inspect** the condition of accessible and visible water supply pipes, drain/waste plumbing and the domestic hot water system when possible.

(d) **Operate** fixtures in order to observe functional flow.

(e) **Check** for functional drainage from fixtures.

(f) **Describe** any deficiencies of these systems or components in the inspection report.

(2) **The inspector is not required to:**

(a) **Operate** any valves, including faucets of freestanding or built-in appliances or fixtures, if the outlet end of the valve or faucet is connected or intended to be connected to an appliance.

(b) **Inspect**

(i) Any system that is shut down or winterized.

(ii) Any plumbing components not readily accessible.

(iii) Floor drains and exterior drain systems, including but not limited to, exterior stairwell drains and driveway drains.

(iv) Fire sprinkler systems.

(v) Water-conditioning equipment, including softeners and filter systems.

(vi) Private water supply systems.

(vii) Gas supply systems.

(viii) Interior components of exterior pumps or sealed sanitary waste lift systems.

(ix) Ancillary systems or components such as, but not limited to, those related to solar water heating and hot water circulation.

(c) **Test**

(i) Pressure or temperature/pressure relief valve.

(ii) Shower pans for leaks or use special equipment to test/scan shower or tub surrounds for moisture in surrounding substrate materials.

(d) **Determine**

(i) The potability of any water supply whether public or private.

(ii) The condition and operation of water wells and related pressure tanks and pumps.

(iii) The quantity of water from on-site water supplies.

(iv) The quality or the condition and operation of on-site sewage disposal systems such as waste ejector pumps, cess-pools, septic tanks, drain fields, related underground piping, conduit, cisterns, and related equipment.

(e) **Ignite** pilot lights.

NEW SECTION

WAC 308-408C-110 Electrical system. The inspection of the electrical system includes the service drop through the main panel; subpanels including feeders; branch circuits, connected devices, and lighting fixtures.

(1) **The inspector will:**

(a) **Describe** in the report the type of primary service, whether overhead or underground, voltage, amperage, over-current protection devices (fuses or breakers) and the type of branch wiring used.

(b) **Report**

(i) The existence of a connected service-grounding conductor and service-grounding electrode when same can be determined.

(ii) When no connection to a service grounding electrode can be confirmed.

(c) **Inspect** the main and branch circuit conductors for proper over-current protection and condition by visual observation after removal of the readily accessible main and sub-electric panel cover(s).

(d) **Report**, if present, solid conductor aluminum branch circuits. Include a statement in the report that solid conductor aluminum wiring may be hazardous and a licensed electrician should inspect the system to ensure it's safe.

(e) **Verify**

(i) The operation of a representative number of accessible switches, receptacles and light fixtures.

(ii) The grounding and polarity of a representative number of receptacles; particularly in close proximity to plumbing fixtures or at the exterior.

(iii) Ground fault circuit interrupter (GFCI) protection and arc-fault circuit interrupter (AFCI) protection where required.

(f) **Report** the location of any inoperative or missing GFCI and/or AFCI devices when they are recommended by industry standards.

(g) **Advise** clients that homes without ground fault protection should have GFCI devices installed where recommended by industry standards.

(h) **Report** on any circuit breaker panel or subpanel known within the home inspection profession to have safety concerns.

(i) **Describe** any deficiencies of these systems or components.

(2) **The inspector is not required to:**

(a) **Insert** any tool, probe or testing device into the main or subpanels.

(b) **Activate** electrical systems or branch circuits that are not energized.

(c) **Operate** circuit breakers, service disconnects or remove fuses.

(d) **Inspect** ancillary systems, including but not limited to:

(i) Timers.

(ii) Security systems.

(iii) Low voltage relays.

(iv) Smoke/heat detectors.

(v) Antennas.

(vi) Intercoms.

(vii) Electrical deicing tapes.

(viii) Lawn sprinkler wiring.

(ix) Swimming pool or spa wiring.

(x) Central vacuum systems.

(xi) Electrical equipment that's not readily accessible.

(e) **Dismantle** any electrical device or control, except for the removal of the deadfront covers from the main service panel and subpanels.

(f) **Move** any objects, furniture, or appliances to gain access to any electrical component.

(g) **Test** every switch, receptacle, and fixture.

(h) **Remove** switch and receptacle cover plates.

(i) **Verify** the continuity of connected service ground(s).

NEW SECTION

WAC 308-408C-120 Heating system. The inspection of the heating system includes the fuel source; heating equipment; heating distribution; operating controls; flue pipes, chimneys and venting; auxiliary heating units.

(1) **The inspector will:**

(a) **Describe** the type of fuel, heating equipment, and heating distribution systems.

(b) **Operate** the system using normal readily accessible control devices.

(c) **Open** readily accessible access panels or covers provided by the manufacturer or installer, if readily detachable.

(d) **Inspect**

(i) The condition of normally operated controls and components of systems.

(ii) The condition and operation of furnaces, boilers, heat pumps, electrical central heating units and distribution systems.

(iii) Visible flue pipes and related components to ensure functional operation and proper clearance from combustibles.

(iv) Each habitable space in the home to determine whether or not there is a functioning heat source present.

(v) Spaces where fossil fuel burning heating devices are located to ensure there is air for combustion.

(vi) Electric baseboard and in-wall heaters to ensure they are functional.

(e) **Report** any evidence that indicates the possible presence of an underground storage tank.

(f) **Describe** any deficiencies of these systems or components.

(2) **The inspector is not required to:**

(a) **Ignite** pilot lights.

(b) **Operate:**

(i) Heating devices or systems that do not respond to normal controls or have been shut down.

(ii) Any heating system when circumstances are not conducive to safe operation or when doing so will damage the equipment.

(c) **Inspect or evaluate**

(i) Heat exchangers concealed inside furnaces and boilers.

(ii) Any heating equipment that is not readily accessible.

(iii) The interior of chimneys and flues.

(iv) Installed heating system accessories, such as humidifiers, air purifiers, motorized dampers, heat reclaimers; solar heating systems; or concealed distribution systems.

(d) **Remove** covers or panels that are not readily accessible or removable.

(e) **Dismantle** any equipment, controls, or gauges except readily identifiable access covers designed to be removed by users.

(f) **Evaluate** whether the type of material used to insulate pipes, ducts, jackets and boilers is a health hazard.

(g) **Determine:**

(i) The capacity, adequacy, or efficiency of a heating system.

(ii) Determine adequacy of combustion air.

(h) **Evaluate** thermostats or controls other than to confirm that they actually turn a system on or off.

NEW SECTION

WAC 308-408C-130 Air conditioning systems. The inspection of the air conditioning system includes the cooling equipment; cooling distribution equipment and the operating controls.

(1) **The inspector will:**

(a) **Describe** the central air conditioning system and energy sources.

(b) **Operate** the system using normal control devices and measure and record temperature differential.

(c) **Open** readily accessible access panels or covers provided by the manufacturer or installer.

(d) **Inspect** the condition of controls and operative components of the complete system; conditions permitting.

(e) **Describe** any deficiencies of these systems or components in the inspection report.

(2) **The inspector is not required to:**

(a) **Activate** cooling systems that have been shut down.

(b) **Inspect**

(i) Gas-fired refrigeration systems.

(ii) Evaporative coolers.

(iii) Wall or window-mounted air-conditioning units.

(iv) The system for refrigerant leaks.

(c) **Check** the coolant pressure/charge.

(d) **Determine** the efficiency, or adequacy of the system.

(e) **Operate** cooling system components if the exterior temperature is below sixty degrees Fahrenheit or when other circumstances are not conducive to safe operation or when doing so might damage the equipment.

(f) **Remove** covers or panels that are not readily accessible.

(g) **Dismantle** any equipment, controls, or gauges except readily identifiable access covers designed to be removed by users.

(h) **Determine** how much current the unit is drawing.

(i) **Evaluate** digital-type thermostats or controls.

NEW SECTION

WAC 308-408C-140 Interiors. The inspection of the interior includes the walls, ceilings, floors, windows, and doors; steps, stairways, balconies and railings.

(1) **The inspector will:**(a) **Verify**

That steps, handrails, guardrails, stairways and landings are installed wherever necessary and **report** when they are missing or in need of repair and **report** when baluster spacing exceeds four inches.

(b) **Inspect**

(i) The overall general condition of cabinets and countertops.

(ii) Caulking and grout at kitchen and bathroom counters.

(iii) The interior walls, ceilings, and floors for indicators of concealed structural deficiencies, water infiltration or major damage.

(iv) The condition and operation of a representative number of windows and doors.

(c) **Comment** on the presence or absence of smoke detectors.

(d) **Describe** any noncosmetic deficiencies of these systems or components.

(2) **The inspector is not required to:**

(a) **Report** on cosmetic conditions related to the condition of interior components.

(b) **Verify** whether all walls, floors, ceilings, doorways, cabinets and window openings are square, straight, level or plumb.

NEW SECTION

WAC 308-408C-150 Insulation and ventilation. The inspection of the insulation and ventilation includes the type and condition of the insulation and ventilation in viewable unfinished attics and subgrade areas as well as the installed mechanical ventilation systems.

(1) **The inspector will:**

• **Inspect** the insulation, ventilation and installed mechanical systems in viewable and accessible attics and unfinished subfloor areas.

• **Describe** the type of insulation in viewable and accessible unconditioned spaces.

• **Report** missing or inadequate vapor barriers in subfloor crawlspaces with earth floors.

• **Report** the absence of insulation at the interface between conditioned and unconditioned spaces where visible.

• **Report** the absence of insulation on heating system ductwork and supply plumbing in unconditioned spaces.

• **Describe** any deficiencies of these systems or components.

(2) **The inspector is not required to:**

• **Determine** the presence, extent, and type of insulation and vapor barriers concealed in the exterior walls.

• **Determine** the thickness or R-value of insulation above the ceiling, in the walls or below the floors.

NEW SECTION

WAC 308-408C-160 Fireplaces and stoves. Includes solid fuel and gas fireplaces, stoves, dampers, fireboxes and hearths.

(1) **The inspector will:**

• **Describe** fireplaces and stoves.

• **Inspect** dampers, fireboxes and hearths.

• **Describe** any deficiencies of these systems or components.

(2) **The inspector is not required to:**

• **Inspect** flues and verify the presence of flue liners beyond what can be safely and readily seen from the roof or the firebox of a stove or fireplace.

• **Ignite** fires in a fireplace or stove.

• **Determine** the adequacy of draft.

• **Perform** a chimney smoke test.

• **Inspect** any solid fuel device being operated at the time of the inspection.

• **Evaluate** the installation or adequacy of fireplace inserts.

• **Evaluate** modifications to a fireplace, stove, or chimney.

- **Dismantle** fireplaces or stoves to inspect fireboxes or remove rain caps to inspect chimney flues.

NEW SECTION

WAC 308-408C-170 Site. The inspection of the site includes the building perimeter, land grade, and water drainage directly adjacent to the foundation; trees and vegetation that adversely affect the structure; walks, grade steps, driveways, patios, and retaining walls contiguous with the structure.

(1) **The inspector will:**

(a) **Describe** the material used for driveways, walkways, patios and other flatwork around the home.

(b) **Inspect**

(i) For serviceability of the driveways, steps, walkways, patios, flatwork and retaining walls contiguous with the structure.

(ii) For proper grading and drainage slope.

(iii) Vegetation in close proximity to the home.

(c) **Describe** any deficiencies of these systems or components.

(2) **The inspector is not required to:**

- **Inspect** fences, privacy walls or retaining walls that are not contiguous with the structure.

- **Report** the condition of soil, trees, shrubs or vegetation unless they adversely affect the structure.

- **Evaluate** hydrological or geological conditions.

- **Determine** the adequacy of bulkheads, seawalls, breakwalls, and docks.

NEW SECTION

WAC 308-408C-180 Attached garages or carports. The inspection of attached garages and carports includes their framing, siding, roof, doors, windows, and installed electrical/mechanical systems pertaining to the operation of the home.

(1) **The inspector will:**

- **Inspect** the condition and function of the overhead garage doors and associated hardware.

- **Test** the function of the garage door openers, their auto-reverse systems and secondary entrapment devices (photo-electric and edge sensors) when present.

- **Inspect** the condition and installation of any pedestrian doors.

- **Inspect** fire separation between the house and garage when applicable.

- **Report** as a fire hazard the presence of any ignition source (gas and electric water heaters, electrical receptacles, electronic air cleaners, motors of installed appliances, etc.) that is within eighteen inches of the garage floor.

- **Describe** any deficiencies of these systems or components.

(2) **The inspector is not required to:**

- **Determine** whether or not a solid core pedestrian door that is not labeled is fire rated.

- **Verify** the functionality of garage door opener remote controls.

- **Move** vehicles or personal property.

- **Operate** any equipment unless otherwise addressed in the SOP.

WSR 09-08-016

PERMANENT RULES

UNIVERSITY OF WASHINGTON

[Filed March 23, 2009, 9:44 a.m., effective April 23, 2009]

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

Purpose: The new chapter 478-128 WAC, Animal control at the University of Washington, removes the animal control rules from their current location as sections in chapter 478-124 WAC, General conduct code for the University of Washington, and creates a stand-alone chapter for this subject matter. The order also updates WAC 478-108-010 Matters subject to brief adjudication, by adding a subject previously missing, amending chapter references pertaining to the new animal control chapter, and removing a subsection that is no longer accurate.

Citation of Existing Rules Affected by this Order: Repealing WAC 478-124-060, 478-124-070, 478-124-080, 478-124-090 and 478-124-100; and amending WAC 478-108-010.

Statutory Authority for Adoption: RCW 28B.20.130 for all sections; in addition, chapter 34.05 RCW for WAC 478-108-010.

Adopted under notice filed as WSR 09-01-121 on December 19, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 1, Repealed 5.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 1, Repealed 5.

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: March 19, 2009.

Rebecca Goodwin Deardorff
Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 02-15-174, filed 7/24/02, effective 8/24/02)

WAC 478-108-010 Matters subject to brief adjudication. This rule is adopted in accordance with RCW 34.05.479 through 34.05.494, the provisions of which are hereby adopted. Brief adjudicative procedures shall be used in all matters related to:

(1) Appeals from residency classifications under RCW 28B.15.013 as established in chapter 478-160 WAC;

(2) Appeals from traffic (~~and~~), parking violations and skateboard impoundment as provided for in chapters 478-116, 478-117 and 478-118 WAC;

(3) Challenges to contents of educational records as provided for in chapter 478-140 WAC;

(4) Proceedings under the animal control policy as detailed in chapter (~~478-124~~) 478-128 WAC;

(5) Requests for reconsideration of admission decisions as provided for in chapter 478-160 WAC;

(6) Appeals of library charges as provided in chapter 478-168 WAC;

(7) Reviews of denials of public records requests as provided in chapter 478-276 WAC;

(8) Federal financial aid appeals as provided for by federal law; and

(9) Collection of outstanding debts owed by students or employees(~~;-and~~

~~(10) Appeals from areas exempt from the rules requirements of chapter 34.05 RCW including standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships (except for all aspects of faculty and librarian employment relationships), and fiscal processes).~~

Chapter 478-128 WAC

ANIMAL CONTROL AT THE UNIVERSITY OF WASHINGTON

NEW SECTION

WAC 478-128-010 Purpose. It is the policy of the University of Washington to secure and maintain a level of animal control that protects human health and safety, prevents animals from hindering university employees, students, and members of the public on university property, prevents property damage, and to the greatest degree practicable, prevents cruelty to animals. It is the purpose of these rules to fulfill the objectives of the above policy.

NEW SECTION

WAC 478-128-020 Definitions. "Animal" means any living creature except human beings, fish, any research animal maintained in university facilities, or natural wildlife inhabiting university property. This definition includes, among other things, pets.

"Imminent danger" means a threat to human and/or animal life or university property that is immediate or reasonably foreseeable under the circumstances.

"Organic debris" means animal feces, urine, vomit, blood, etc.

"Owner" means any person having an interest in or right of possession to an animal, or any person having control, custody, or possession of an animal.

"Running at large" means to be off the owner's residential premises and not under the owner's direct control.

"Service animal" means an animal, including guide dogs, individually trained to do work or perform tasks for the benefit of an individual with a disability, as defined by applicable

state and/or federal laws, which includes but is not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing, providing minimal protection, pulling a wheelchair, or fetching dropped items.

"Service animal in training" means an animal that is being trained for the purpose of assisting or accommodating an individual with a disability as defined by applicable state and/or federal laws.

"University property" means property that the university owns as well as property that the university operates, leases, rents, or otherwise controls.

"Working animal" means an animal that is trained for specific tasks and under the control of police, security or emergency personnel, or other university employees or agents. Examples of working animals include, but are not limited to, patrol, rescue, or sentry dogs and therapy animals.

NEW SECTION

WAC 478-128-030 Animal control. (1) All animals brought onto university property shall be subject to license and leash laws of the applicable city, county, or state jurisdiction.

(2) Except as provided in (a) through (e) of this subsection, no animals shall be allowed in any buildings or structures the university owns, operates, leases, rents, or controls.

(a) "Service animals" and "service animals in training" may be permitted consistent with university policies, and/or state and federal laws.

(b) Working animals under the control of police, security or emergency personnel, or a trained university employee may be permitted for specific functions consistent with the animal's training.

(c) Pets may be permitted in university residences for students, employees, patient's families, and the general public, consistent with housing agreements and policies established for each residence facility.

(d) The recognized university mascot, properly leashed, may be permitted at appropriate university assemblages in auditoria, ballrooms, dining areas, and at athletic events.

(e) Animals included as part of special events may be permitted, subject to guidelines established for specific university facilities and those established by the use of university facilities committee in accordance with chapters 478-136 and 478-137 WAC (for example, hosting a visiting team's animal mascot at Husky football games).

(3) Further restrictions to animals may apply to specific areas of university property, consistent with university policies and/or state and federal laws, including, but not limited to, food preparation areas, animal research facilities and grounds, medically sensitive patient and clinic areas, and biologically sensitive or hazardous research sites.

(4) No animal shall be permitted to run at large on university property. Animals that are tethered in the owner's absence and not under the owner's direct control are also considered to be "running at large."

(5) No animal shall be permitted to enter any pond, fountain, or stream located on university property.

(6) No animal which emits frequent or long-continued noise so as to disturb or disrupt normal administrative or academic routine shall be permitted on university property. Moreover, any animal that places human and/or animal life or university property in imminent danger shall be removed immediately from university property.

(7) Fecal matter or other organic debris deposited by animals must be removed immediately and properly disposed of by the animal's owner.

NEW SECTION

WAC 478-128-040 Enforcement and penalties. (1) Any animal found on university property under conditions violating any provision of this chapter shall be subject to apprehension and impoundment in accordance with the requirements of the applicable university, city, county or state rules, regulations, or laws.

(2) Owners found in violation of any provision of this chapter may be cited, banned from any university property, or otherwise fined or penalized as provided under applicable university, city, county, or state rules, regulations, or laws.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 478-124-060	Animal control policy—Purpose.
WAC 478-124-070	Animal control policy—Definitions.
WAC 478-124-080	Animal control policy—Animal control.
WAC 478-124-090	Animal control policy—Enforcement.
WAC 478-124-100	Animal control policy—Penalties.

**WSR 09-08-061
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY**

[Filed March 26, 2009, 4:17 p.m., effective May 1, 2009]

Effective Date of Rule: May 1, 2009.

Purpose: To add greenhouse gas emissions to the list of air emissions included in the environmental checklist.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Sections 2.02 and 2.06.

Statutory Authority for Adoption: Chapter 70.94 RCW. Adopted under notice filed as WSR 09-05-079 on February 17, 2009.

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

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

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

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

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

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

Date Adopted: March 26, 2009.

Dennis J. McLerran
Executive Director

**AMENDATORY SECTION
REGULATION I SECTION 2.02 ADOPTION BY REFERENCE**

The Agency adopts the following sections of chapter 197-11 WAC by reference:

197-11-040	Definitions.
197-11-050	Lead agency.
197-11-055	Timing of the SEPA process.
197-11-060	Content of environmental review.
197-11-070	Limitations on actions during SEPA process.
197-11-080	Incomplete or unavailable information.
197-11-090	Supporting documents.
197-11-100	Information required of applicants.
197-11-250	SEPA/Model Toxics Control Act integration.
197-11-253	SEPA lead agency for MTCA actions.
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197-11-535	Public hearings and meetings.	197-11-782	Probable.
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197-11-550	Specificity of comments.	197-11-786	Reasonable alternative.
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197-11-630	Adoption - Procedures.	197-11-797	Threshold determination.
197-11-635	Incorporation by reference - Procedures.	197-11-799	Underlying governmental action.
197-11-640	Combining documents.	197-11-800	Categorical exemptions.
197-11-650	Purpose of this part.	197-11-880	Emergencies.
197-11-655	Implementation.	197-11-890	Petitioning DOE to change exemptions.
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197-11-700	Definitions.	197-11-916	Application to ongoing actions.
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197-11-704	Action.	197-11-922	Lead agency rules.
197-11-706	Addendum.	197-11-924	Determining the lead agency.
197-11-708	Adoption.	197-11-926	Lead agency for governmental proposals.
197-11-710	Affected tribe.	197-11-928	Lead agency for public and private proposals.
197-11-712	Affecting.	197-11-930	Lead agency for private projects with one agency with jurisdiction.
197-11-714	Agency.	197-11-932	Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
197-11-716	Applicant.	197-11-934	Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
197-11-718	Built environment.	197-11-936	Lead agency for private projects requiring licenses from more than one state agency.
197-11-720	Categorical exemption.	197-11-938	Lead agencies for specific proposals.
197-11-722	Consolidated appeal.	197-11-940	Transfer of lead agency status to a state agency.
197-11-724	Consulted agency.	197-11-942	Agreements on lead agency status.
197-11-726	Cost-benefit analysis.	197-11-944	Agreements on division of lead agency duties.
197-11-728	County/city.	197-11-946	DOE resolution of lead agency disputes.
197-11-730	Decision maker.	197-11-948	Assumption of lead agency status.
197-11-732	Department.	197-11-960	Environmental checklist.
197-11-734	Determination of nonsignificance (DNS).	197-11-965	Adoption notice.
197-11-736	Determination of significance (DS).	197-11-970	Determination of nonsignificance (DNS).
197-11-738	EIS.		
197-11-740	Environment.		
(197-11-742	Environmental checklist.))		
197-11-744	Environmental document.		
197-11-746	Environmental review.		

197-11-980	Determination of significance and scoping notice (DS).
197-11-985	Notice of assumption of lead agency status.
197-11-990	Notice of action.

AMENDATORY SECTION**REGULATION I SECTION 2.06 ENVIRONMENTAL CHECKLIST**

(a) A completed environmental checklist (or a copy) ~~(in the form provided in WAC 197-11-960;)~~ shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this regulation; except, a checklist is not needed if the Agency and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The environmental checklist shall be in the form provided in WAC 197-11-960, except that Section B.2.a. Air of the checklist shall state: "What types of emissions to the air would result from the proposal (i.e., dust, automobile odors, industrial wood smoke, greenhouse gases) during construction and when the project is completed? If any, generally describe and give approximate quantities, if known." As used throughout this regulation, environmental checklist means the environmental checklist required by this section.

(b) The Agency shall use the environmental checklist to determine the lead agency and, if the Agency is the lead agency, for determining the responsible official and for making the threshold determination.

(c) ~~((b))~~ For private proposals, the Agency will require the applicant to complete the environmental checklist, providing assistance as necessary. For Agency proposals, the Agency shall complete the environmental checklist. The Agency may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

- (1) The Agency has technical information on a question or questions that is unavailable to the private applicant; or
- (2) The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

WSR 09-08-062**PERMANENT RULES****PUGET SOUND****CLEAN AIR AGENCY**

[Filed March 26, 2009, 4:18 p.m., effective May 1, 2009]

Effective Date of Rule: May 1, 2009.

Purpose: (1) To exclude asphalt shingles from the definition of "suspect asbestos-containing material," and to add a separate definition for asphalt shingles.

(2) To delete the provision for submitting multiple asbestos projects on one notification if the structures are located in a contiguous area.

Citation of Existing Rules Affected by this Order: Amending Regulation III, Sections 4.01 and 4.03.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 09-05-081 on February 17, 2009.

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

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

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

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

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

Date Adopted: March 26, 2009.

Dennis J. McLerran
Executive Director

AMENDATORY SECTION**REGULATION III SECTION 4.01 ASBESTOS DEFINITIONS**

(a) **AHERA BUILDING INSPECTOR** means a person who has successfully completed the training requirements for a building inspector established by EPA Asbestos Model Accreditation Plan; Interim Final Rule (40 CFR Part 763, Appendix C) and whose certification is current.

(b) **ASBESTOS** means the asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentinite), crocidolite (riebeckite), or anthophyllite.

(c) **ASBESTOS-CONTAINING MATERIAL** means any material containing more than one percent (1%) asbestos as determined using the method specified in EPA regulations Appendix E, Subpart E, 40 CFR Part 763, Section I, Polarized Light Microscopy.

(d) **ASBESTOS-CONTAINING WASTE MATERIAL** means any waste that contains or is contaminated with friable asbestos-containing material. Asbestos-containing waste material includes asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or HEPA filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

(e) **ASBESTOS PROJECT** means any activity involving the abatement, renovation, demolition, removal, salvage, clean up, or disposal of friable, asbestos-containing material. It includes the removal and disposal of stored, friable, asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released.

(f) **ASBESTOS SURVEY** means a written report describing an inspection using the procedures contained in EPA regula-

tions (40 CFR 763.86), or an alternate method that has received prior written approval from the Control Officer, to determine whether materials or structures to be worked on, renovated, removed, or demolished (including materials on the outside of structures) contain asbestos.

(g) ASPHALT SHINGLES means asphalt roofing in shingle form, composed of glass felt or felts impregnated and coated on both sides with asphalt, and surfaced on the weather side with mineral granules. Some asphalt shingle styles are commonly referred to as three-tab shingles.

(h) ((g)) COMPONENT means any equipment, pipe, structural member, or other item covered or coated with, or manufactured from, asbestos-containing material.

(i) ((h)) DEMOLITION means wrecking, razing, leveling, dismantling, or burning of a structure, making the structure permanently uninhabitable or unusable.

(j) ((i)) FRIABLE, ASBESTOS-CONTAINING MATERIAL means asbestos-containing material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Such materials include, but are not limited to, thermal system insulation, surfacing material, and cement asbestos products.

(k) ((j)) LEAK-TIGHT CONTAINER means a dust-tight and liquid-tight container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

(l) ((k)) NONFRIABLE, ASBESTOS-CONTAINING MATERIAL means asbestos-containing material that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal.

(m) ((l)) RENOVATION means altering a facility or a component in any way, except demolition.

(n) ((m)) SINGLE-FAMILY RESIDENCE means any non-multiple unit building containing space for uses such as living, sleeping, preparation of food, and eating that is used by one family who owns the property as their domicile. This term includes houses, mobile homes, trailers, detached garages, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include rental property or multiple-family units, nor does this term include any mixed-use building, structure, or installation that contains a residential unit.

(o) ((n)) SURFACING MATERIAL means material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fireproofing materials on structural members, or other materials on surfaces for decorative purposes.

(p) ((o)) SUSPECT ASBESTOS-CONTAINING MATERIAL means material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material (excluding asphalt shingles), fire barriers, gaskets, flooring material, and cement siding.

(q) ((p)) THERMAL SYSTEM INSULATION means material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

AMENDATORY SECTION

REGULATION III SECTION 4.03 ASBESTOS NOTIFICATION REQUIREMENTS

(a) General Requirements

It shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the appropriate nonrefundable fee and any additional information requested by the Control Officer, has been submitted to the Agency in accordance with the waiting period and fee requirements in Section 4.03(d) of this regulation. Except for the annual notification requirements in Section ~~((4.03(a)(8)))~~ 4.03 (a)(7) of this regulation, the notification must be submitted on approved forms through the Agency website.

(1) The duration of an asbestos project shall be commensurate with the amount of work involved.

(2) Notification is not required for asbestos projects involving less than 10 linear feet of friable, asbestos-containing material on pipes and/or 48 square feet of friable, asbestos-containing material on other components (per structure, building, or vessel, per calendar year).

(3) Notification is not required for removal and disposal of nonfriable, asbestos-containing material.

(4) Notification is required for all demolitions involving structures with a projected roof area greater than 120 square feet, even if no asbestos-containing material is present.

(5) All demolitions require a 10-day waiting period unless waived under Section 4.03 (c)(1) of this regulation.

(6) A printout of the notification, all amendments to the notification, and the asbestos survey shall be available for inspection at all times at the asbestos project or demolition site.

~~((7) A notification for multiple asbestos projects or demolitions may be submitted on one form if the structures are located in a contiguous area.)~~

(7) ((8)) Annual Notification

A property owner may file one annual notification for asbestos projects to be conducted on one or more structures, vessels, or buildings during each calendar year if all of the following conditions are met:

(A) The annual notification shall be filed with the Agency before commencing work on any asbestos project included in an annual notification;

(B) The total amount of asbestos-containing material for all asbestos projects from each structure, vessel, or building in a calendar year under this section is less than 260 linear feet on pipes and/or less than 160 square feet on other components; and

(C) The property owner submits quarterly written reports to the Control Officer on Agency-approved forms within 15 days after the end of each calendar quarter.

(b) Amendments

(1) An amendment shall be submitted to the Control Officer in a notification through the Agency website for the following changes and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 4.03(d) of this regulation:

(A) Changes between asbestos and demolition project types;

(B) Increases in the job size category that increase the fee;

(C) Changes in the start date; or

(D) Changes in the completion date.

(2) Amendments may not be used to add or change project site addresses listed on a previously submitted notification.

(c) Emergencies

(1) The waiting period may be waived if an asbestos project or demolition must be conducted immediately because of any of the following:

(A) There was a sudden, unexpected event that resulted in a public health or safety hazard;

(B) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;

(C) Asbestos-containing materials were encountered that were not identified during the asbestos survey; or

(D) The project must proceed to avoid imposing an unreasonable burden.

(2) The waiting period and fees may be waived for disposal of abandoned, (without the knowledge or consent of the property owner) friable, asbestos-containing material by written approval of the Control Officer.

(d) Waiting Period and Fees

Project	Waiting Period	Asbestos Fee	Demolition Fee
Single-Family Residence:			
• Asbestos Project	prior written notification	\$30	
• Demolition (with or without asbestos project)	10 days	\$0	\$75
Other than Single-Family Residence:			
• less than 10 linear ft and/or • less than 48 square ft	10 days for demolition	\$0	\$75
• 10 - 259 linear ft and/or 48 - 159 square ft	prior written notification for asbestos	\$75	
	10 days for demolition		\$75
• 260 - 999 linear ft and/or 160 - 4,999 square ft	10 days	\$250	\$75
• 1,000+ linear ft and/or 5,000+ square ft	10 days	\$750	\$100
Emergency - 4.03(c)*	prior written notification	applicable fees + \$50	
Amendment - 4.03(b)	prior written notification	applicable fees + \$25	
Annual Notice of Intent - ((4.03(a)(8))) <u>4.03(a)(7)</u>	prior written notification	\$1,000	

*Single-family residences are exempt from the emergency fee.

WSR 09-08-065

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed March 27, 2009, 8:51 a.m., effective April 27, 2009]

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

Purpose: To modify the current rules to ensure necessity, effectiveness, efficiency, clarity, intent, after coordination with other jurisdictions and agencies, cost benefits and fairness in accordance with governor's Executive Order 97-02.

Citation of Existing Rules Affected by this Order: Amending WAC 308-63-010, 308-63-020, 308-63-040, 308-63-050, 308-63-060, 308-63-070, 308-63-080, 308-63-090,

308-63-100, 308-63-110, 308-63-120, 308-63-130, 308-63-140, and 308-63-160.

Statutory Authority for Adoption: RCW 46.80.140.

Adopted under notice filed as WSR 08-24-096 on December 2, 2008.

Changes Other than Editing from Proposed to Adopted Version: Deleted "Core parts do not need to be identified" in WAC 308-63-090(3).

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 9, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 12, 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 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: February 2, 2009.

Mykel D. Gable
Assistant Director
Vehicles

AMENDATORY SECTION (Amending WSR 01-03-141, filed 1/24/01, effective 2/24/01)

WAC 308-63-010 Definitions—General. (1) Department - means the department of licensing of the state of Washington.

(2) Director - means the director of the department of licensing.

(3) Destroy - means the dismantling, disassembling or wrecking of a vehicle with the intent of never again operating such as a vehicle, or the sustaining of damage to a vehicle either (a) to the extent that the cost of repairing it exceeds its fair market value immediately prior to the accident or occurrence, or (b) to the extent that the cost of repairing it plus its salvage value in its damaged condition exceeds or approximately equals the market value of the vehicle in its repaired or restored condition.

(4) Acquire - (~~shall be construed to~~) means the physical custody together with proof of ownership as provided under WAC 308-63-080.

(5) Custody - means the possession of a vehicle that the wrecker owns but for which ownership documents required in WAC 308-63-080 have not been received, or a vehicle placed for safekeeping by a law enforcement officer or others.

(6) Obscure - means to screen the wrecker activity from public view.

(7) Segregated area - means an area within the wrecking yard, which must be designated by a physical barrier. The physical barrier may be portable, made of substantial posts and connected by rope, chain, cable, or of other equally strong construction.

AMENDATORY SECTION (Amending WSR 05-14-093, filed 6/30/05, effective 7/31/05)

WAC 308-63-020 ((Definitions)) Bill of sale. May I acquire a vehicle ((or a vehicle part)) on a bill of sale?

(1) Bill of sale for acquiring vehicles. A bill of sale (~~shall~~) must include the names and addresses of the seller and purchaser; a description of the vehicle being purchased, including the make, model and identification or serial number; the date of purchase; and the purchase price of the vehicle. Bills of sale are acceptable in lieu of title in the cases of:

(a) Vehicles from nontitle jurisdictions;

(b) When an insurance company or private owner has (~~turned in~~) surrendered the title to a vehicle previously destroyed as provided under WAC 308-56A-460; or

(c) For vehicles of the type to which titles are not issued.

May I acquire a vehicle part on a bill of sale?

(2) In the case of vehicle parts a bill of sale from the seller describing the specific part and giving the full name, address and verification of the seller's identity, plus date of sale. In addition, if a major component part is acquired the vehicle identification number from which it came must also be set forth on the bill of sale. A copy of each bill of sale (~~shall~~) must be maintained on acquired parts for a period of three years.

AMENDATORY SECTION (Amending WSR 01-03-141, filed 1/24/01, effective 2/24/01)

WAC 308-63-040 Wreckers—Application for license. How must I apply for a vehicle wrecker license?

An original or renewal application for a wrecker license (~~shall~~) must be filed with the director on the form provided by the department for this purpose. The application must be endorsed by the chief of police of any city with a population over five thousand; otherwise, by a member of the Washington state patrol. The endorsement certifies that the wrecker has an established place of business at the address shown on the application and that the applicant's vehicle(s) are properly identified in accordance with WAC 308-63-070(5).

Each application (~~shall~~) must specify the number of vehicles owned, leased, rented or otherwise operated by the applicant for towing or transportation of vehicles on public roadways in the conduct of the business. Each endorsement (~~shall~~) must identify the vehicle by make, model, year or other adequate description, and identification number.

AMENDATORY SECTION (Amending WSR 05-14-093, filed 6/30/05, effective 7/31/05)

WAC 308-63-050 Expiration of motor vehicle wrecker's license. When does my vehicle wrecker license expire? (1) A vehicle wrecker's license (~~shall~~) will expire twelve consecutive months from the date of issuance.

(2) Vehicle wrecker license plates (~~shall~~) will expire on the same date as the expiration of the license.

AMENDATORY SECTION (Amending WSR 05-14-093, filed 6/30/05, effective 7/31/05)

WAC 308-63-060 Vehicle wrecker—Special plates. How do I use the special vehicle wrecker license plates?

All vehicles used for towing or transporting vehicles or vehicle parts by a vehicle wrecker on the highways of this state in the conduct of the business (~~shall~~) must bear regular license plates and, in addition, special wrecker's plates. Wrecker's plates may be obtained at a fee of six dollars which includes one dollar for reflectorization under RCW 46.16.237 for the first set, and three dollars including reflectorization for each additional set.

The wrecker may purchase sets of plates equal in number to the number of vehicles reported on the application as

owned, rented, leased and operated by the applicant for towing or transporting of vehicles or vehicle parts in the conduct of the business. Should the wrecker purchase, lease, or rent additional vehicles for towing or transporting of vehicles or vehicle parts, the applicant ~~((shall))~~ must so inform the department and may ~~((at the department's discretion,))~~ obtain additional plates for such vehicles.

Each vehicle used for towing or transporting of vehicles or vehicle parts ~~((shall))~~ must display both wrecker plates of the same number. However, when any vehicle being towed does not have valid license plates, the set of wrecker plates may be split, with one being displayed on the front of the towing vehicle and the other on the rear of the vehicle being towed.

AMENDATORY SECTION (Amending WSR 05-14-093, filed 6/30/05, effective 7/31/05)

WAC 308-63-070 Wreckers—General procedures and requirements. Vehicle wreckers ~~((shall))~~ must comply with all rules ~~((and regulations))~~ set forth in this chapter and the requirements of chapter 46.80 RCW relative to the handling of vehicle parts or vehicles to be dismantled.

(1) Enclosure. The activities of a vehicle wrecker ~~((shall))~~ must be conducted entirely within the established place of business. A physical barrier ~~((shall))~~ must designate the boundary of the wrecking yard. Where necessary to obscure public view of the premises, it ~~((shall))~~ must be enclosed by a sight-obscuring wall or fence at least eight feet high.

(a) Where required, such sight-obscuring wall or fence ~~((shall))~~ must be painted or stained in a neutral shade to blend with the surrounding premises. If the fence is made of chain link, it must have sufficient slats or other construction to obscure public view of the premises.

(b) A living hedge of equal height and sufficient density to prevent view of the premises may be substituted for the wall or fence.

(c) All enclosures and barriers ~~((shall))~~ must be kept in good repair.

(d) Reasonable consideration ~~((shall))~~ will be given to the topography of the land by enforcement personnel when inspecting premises for such fence, enclosure or barrier.

(e) Exceptions to this section must be granted in writing by the department.

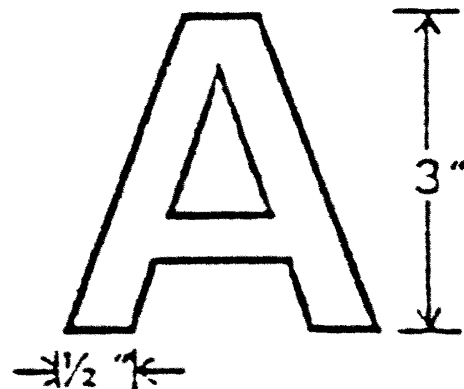
(2) Additional places of business. Each licensed vehicle wrecker may maintain one or more additional places of business within the same county, under the same ~~((permit))~~ license. The vehicle wrecker may maintain as many storage yards or sales outlets as needed so long as each is registered with the department. Each wrecking or storage yard ~~((shall))~~ must comply with local zoning regulations ~~((and with such other requirements as the department may provide, particularly those in subsection (1) of this section)),~~ chapter 46.80 RCW, and the requirements of this chapter. Duplicate vehicle wrecker's licenses will be issued to be posted at each additional place of business.

(3) Change of address. The department ~~((shall))~~ must be notified ~~((immediately))~~ within ten days of any change of

address of any business location or of the addition of any such location.

(4) Display of license certificate. The license certificate ~~((of))~~ issued by the department to a licensed wrecker ~~((shall))~~ must be displayed conspicuously at each business address and ~~((shall))~~ must be available for periodic inspection by law enforcement officers and authorized representatives of the department.

(5) Identification of licensee's vehicles. All vehicles equipped for lifting or transporting vehicles or vehicle parts which are operated on the highways of this state ~~((shall))~~ must display the licensee's name, the city in which the licensee's established place of business is located, and the current business telephone number of the licensee. Such information ~~((shall))~~ must be painted on or permanently affixed to both sides of the vehicle. Each letter and numeral shall be made with at least a half-inch in solid width and ~~((shall))~~ must be at least three inches high. See example.



(6) License plates from vehicles entered into the wrecking yard ~~((shall))~~ must be removed within twenty-four hours. Plates on vehicles in the segregated area may be left on until the vehicle is entered into the wrecking yard. The wrecker ~~((shall))~~ must destroy such plates prior to submitting the monthly report for the month the vehicle was entered into the wrecking yard.

(7) Major component parts. A catalytic converter is a major component part. Under RCW 46.80.010(5) the term "engines, short blocks, transmissions and drive axles" ~~((shall))~~ will not include cores or parts which are limited to value as scrap metal or for remanufacturing only. The term "seat" ~~((shall be interpreted to))~~ will mean bucket seat. The term "drive axle" means a differential assembly.

(8) Vehicles in custody and awaiting approved ownership documents, as provided under WAC 308-63-080, must be placed in a segregated storage area within the wrecking yard which must be designated by a physical barrier. Vehicles may remain in this area after ownership documents have arrived and the vehicle has been properly entered into the wrecking yard inventory. There will be no dismantling or parts removal in this area. The physical barrier may be portable, made of substantial posts and connected by a chain, cable, or of other equally strong construction.

This area can be used for storage of dealer cars or equipment if the vehicle wrecker is both a vehicle wrecker and a dealer however, there will be no storage of vehicle parts.

AMENDATORY SECTION (Amending WSR 05-14-093, filed 6/30/05, effective 7/31/05)

WAC 308-63-080 Vehicle wrecker—Procedures for acquiring vehicles and vehicle parts. ~~(With)~~ What ownership documents may I use to acquire vehicles or vehicle parts? ~~(Supporting acquisition.)~~ The vehicle wrecker may acquire vehicles and vehicle parts if the seller can furnish ownership documents as follows:

- (1) Certificate of title, including salvage certificates, properly endorsed in the case of vehicles from states issuing a title.
- (2) Bills of sale pursuant to WAC 308-63-020(1) for vehicles from nontitle jurisdictions, for vehicles that have had their title surrendered to a state after having been declared a total loss, and for vehicles of the type to which titles are not issued.
- (3) Affidavit of lost or stolen title if executed by the registered and legal owner of record.
- (4) Insurance company bills of sale pursuant to WAC 308-56A-460~~((3))~~ (2).
- (5) Affidavit of sale of an abandoned vehicle pursuant to WAC 308-61-026(1).
- (6) Affidavit of junk vehicle pursuant to RCW 46.55.230.
- (7) A court order.
- (8) A bill of sale for parts pursuant to WAC 308-63-020(2).
- (9) A bill of sale from another licensed vehicle wrecker.
- (10) Bill of sale from a salvage pool auction.

AMENDATORY SECTION (Amending WSR 06-23-038, filed 11/7/06, effective 12/8/06)

WAC 308-63-090 Vehicle wrecker—Records and procedures for monthly reports. What records must I keep and how do I handle the monthly report? (1) Wrecker books and files. The wrecker must maintain books and files that contain the following:

- (a) A record of each vehicle or part acquired giving:
 - (i) A description of the vehicle or part by make, model, year, and for major component parts, except core parts, the vehicle identification number and "yard number" assigned at the time the vehicle or major component part was placed in the wrecking yard;
 - (ii) The date purchased or acquired by the vehicle wrecker, and the name of the person, firm or corporation from which the vehicle or part was obtained;
 - (iii) The certificate of ownership number if registered in a title state, or registration number if a nontitling state; or description of the document used in lieu of title, such as an affidavit of sale, a bill of sale for a vehicle or vehicle part;
 - (iv) The name of the state and license number in the state that a vehicle was last registered; and
 - (v) A statement indicating whether any used car or truck at least six years but not more than twenty years old met the market value threshold amount ~~((immediately before it was))~~ prior to the vehicle being wrecked, destroyed or damaged, as required by RCW 46.12.070 and WAC 308-56A-460(3). If this statement is not provided, when required, the department will treat the vehicle as if the wrecker indicated that the mar-

ket value threshold was met ~~((when))~~ prior to the vehicle being wrecked.

(b) A record of the disposition of the motor, body, and major component parts giving the name of the person purchasing the part(s), if any. Sales to scrap processors must be accompanied by an invoice or bill of sale, listing each vehicle by its yard number. The wrecker must retain a copy of the invoice or bill of sale for purposes of inspection for three years.

These records will be subject to inspection by authorized representatives of the department and law enforcement officials during regular business hours. The information must be entered in the wrecker's records within two business days of the event requiring the entry, such as receipt of a vehicle.

(2) **The vehicle wrecker must furnish written reports.** By the tenth of the month following the month of acquisition of vehicles entered into the wrecking yard inventory, each wrecker must submit a report on the form prescribed by the department documenting that the vehicles were acquired and entered into the wrecking yard inventory during the previous month. Vehicles being held in the segregated storage area awaiting ownership documents, under WAC 308-63-070(8), will not be reported. The report must be made in duplicate. The original must be sent to the department and the duplicate retained for the wrecker's files. If no vehicles were acquired during that month, the monthly report must be sent in stating "none." The report must contain information for vehicles only as the wrecker is required to keep by subsection (1)(a)(i), (ii), (iii), (iv), and (v) of this section. The report must be accompanied by properly endorsed certificates of ownership or other adequate evidence of ownership and registration certificates. Records on acquisitions and sales of vehicle parts need not be included in reports submitted to the department but records must be kept for three years from date of purchase and made available for inspection.

(3) **Identity of vehicles in yard.** A yard number must identify all vehicles placed in the wrecking yard. The number must be assigned in the wrecker's records with numerals marked so as to be clearly visible and legible. If a part of a vehicle is sold which has the number on it, the yard number of the vehicle must be remarked in another location on the vehicle.

AMENDATORY SECTION (Amending WSR 05-14-093, filed 6/30/05, effective 7/31/05)

WAC 308-63-100 Vehicle wrecker—Must furnish bill of sale for parts. What document must I use to sell a vehicle part? No vehicle wrecker may sell a vehicle part unless the vehicle wrecker gives the purchaser a bill of sale for such part. Whenever the vehicle wrecker sells a motor, frame, or other major component part, except for a core part, the bill of sale must describe the part fully, giving make, model, year, and vehicle identification number or yard number of the vehicle from which the part was taken.

No vehicle wrecker may sell vehicles to a scrap processor or to a hulk hauler for transportation to a scrap processor without giving the scrap processor or the hulk hauler an invoice or bill of sale listing each vehicle by yard number.

The vehicle wrecker (~~shall~~) must retain a copy of such invoices for inspection purposes.

AMENDATORY SECTION (Amending WSR 05-14-093, filed 6/30/05, effective 7/31/05)

WAC 308-63-110 Vehicle wrecker—Selling used vehicles. Where do I store inoperable vehicles that I acquire for sale under my vehicle dealer license? (1) All vehicles acquired for sale under a vehicle dealer's license which are inoperable at the time of acquisition (~~shall~~) must be kept inside the wrecking yard and (~~shall~~) must be segregated from the remainder of the operation by a continuous physical barrier.

(2) "Inoperable" as used in this section (~~shall~~) means a vehicle which does not comply with requirements for vehicles used on public streets with regard to brakes, lights, tires, safety glass and other safety equipment. However, for purposes of this section, inoperable (~~shall~~) does not include a requirement to be currently licensed.

AMENDATORY SECTION (Amending WSR 00-13-019, filed 6/12/00, effective 7/13/00)

WAC 308-63-120 Statement of change in business structure, ownership interest or control. When must I report a change? Any person, firm, association, corporation or trust licensed under chapter 46.80 RCW must, within ten days following any change in its business or ownership structure, file a statement with the department, describing with particularity the change in its business structure or the change in ownership interest.

AMENDATORY SECTION (Amending WSR 05-14-093, filed 6/30/05, effective 7/31/05)

WAC 308-63-130 Termination of business. If I terminate my business, must I surrender my vehicle wrecker license? A vehicle wrecker who terminates business (~~shall~~) must, within ten days of such termination return the vehicle wrecker license and special license plates to the department for cancellation.

AMENDATORY SECTION (Amending WSR 00-13-019, filed 6/12/00, effective 7/13/00)

WAC 308-63-140 Sale, transfer or other disposition of noncorporate licensee. What must I do if there is a change of ownership in my noncorporate license? Upon the sale, transfer or other disposition of an ownership interest in a noncorporate licensee:

(1) A new bond or rider to the bond revealing the change in ownership (~~shall~~) must be filed with the department.

(2) A new application for an appropriate license by the purchaser or transferee is required and the fee will be the same as for an original application.

(3) The former owner must surrender to the department the special license plates. The new owners or transferees must purchase new plates in their own name.

AMENDATORY SECTION (Amending WSR 00-13-019, filed 6/12/00, effective 7/13/00)

WAC 308-63-160 Incorporation of licensee while licensed. If my business is not a corporation, what do I do if I incorporate? A licensee which incorporates while licensed:

(1) (~~shall~~) Must file an application for an appropriate license.

(2) (~~shall~~) Must file a new bond with the department.

(3) The firm may request the preincorporation license number upon application.

WSR 09-08-081

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed March 30, 2009, 1:01 p.m., effective April 30, 2009]

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

Purpose: The legislature directed the department to increase compensation for low-wage workers in nursing homes beginning July 1, 2008. Section 206(9), chapter 329, Laws of 2008, states "The department shall provide an add-on per resident day, per facility, based on the total funding divided by the total number of fiscal year 2009 medicaid patient days as forecasted by the caseload forecast council (CFC), not to exceed \$1.57. The department may reduce the level of add-on if necessary to fit within this appropriation if the caseload forecasted days increase from the February 2008 forecast. The department by rule shall implement reporting requirements and a settlement process to ensure that the funds are spent according to this subsection."

Statutory Authority for Adoption: Section 206(9), chapter 329, Laws of 2008.

Adopted under notice filed as WSR 09-04-066 on February 2, 2009.

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 2, 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 2, Amended 0, Repealed 0.

Date Adopted: March 25, 2009.

Stephanie E. Schiller
Rules Coordinator

NEW SECTION**WAC 388-96-758 Add-on for low-wage workers.** (1)

Under section 206, chapter 329, Laws of 2008, effective July 1, 2008, the department will grant a low wage add-on payment not to exceed one dollar and fifty-seven cents per resident day to any nursing home provider that has indicated a desire to receive the add-on by May 30, 2008. A nursing home may use the add-on only for in-house staff and not for allocated, home office, or purchased service increases. A nursing home may use the add on to:

(a) Increase wages, benefits, and/or staffing levels for certified nurse aides;

(b) Increase wages and/or benefits but not staffing levels for dietary aides, housekeepers, laundry aides, or any other category of worker whose statewide average dollars-per-hour wage was less than fifteen dollars in calendar year 2006, according to cost report data. The department has determined that the additional categories of workers qualifying under this standard are:

- (i) Activities directors and assistants;
- (ii) Patient choices coordinators;
- (iii) Central supply/ward clerks;
- (iv) Expanded community service workers; and
- (v) Social workers; and

(c) Address wage compression for related job classes immediately affected by wage increases to low-wage workers.

(2) A nursing home that received effective July 1, 2008 a low-wage add-on under chapter 329, Laws of 2008 shall report to the department its expenditure of that add-on by:

- (a) Completing Cost Report Schedule L 1; and
- (b) Returning it to the department by January 31, 2009.

(3) By examining Cost Report Schedule L 1, the department will determine whether the nursing home complied with the statutory requirements for distribution of the low wage add-on. When the department is unable to determine or unsure that the statutory requirements have been met, it will conduct an on site audit.

(4) When the department determines that the statutory requirements have been met, the low wage add-on will be reconciled at the same time as the regular settlement process but as a separate reconciliation. The reconciliation process will compare gross dollars received in the add-on to gross dollars spent.

(5) When the department determines that the low wage add-on has not been spent in compliance with the statutory requirements, then it will recoup the noncomplying amount as an overpayment.

(6) The department also will require the completing of Cost Report Schedule L 1 for any calendar year in which the low wage add-on is paid for six months or more. Subsections (1) through (5) of this section will apply to all completions of Cost Report Schedule L 1 irrespective of the calendar year in which it is paid.

(7) If the legislature extends the low-wage worker add-on in the state fiscal year 2010 budget, nursing home providers will have the opportunity again to elect whether they wish to receive the add-on in their July 1, 2009 rates.

NEW SECTION**WAC 388-96-759 Standards for low-wage workers**

add-on. (1) In accordance with WAC 388-96-758, the low-wage worker add-on must be used to provide increases in wages or benefits, or to address resulting wage compression beginning on or after the date on which the add-on is first included in the rate. For the first year, that date is July 1, 2008. It may be used to increase staffing levels for certified nurse aides only. The add-on may not be used after July 1 to pay for increases beginning before that date.

(2) Any type of traditional employee benefit is allowable. Such benefits typically fall in one of two categories: retirement, and life or health insurance. However, nontraditional benefits are also allowable (for example, wellness benefits, subsidized meals, or assistance with daycare).

(3) The employer's share of payroll taxes associated with wages and benefits may be covered with the add-on.

(4) For purposes of wage compression, an "immediately affected" job class is one that is related to the low-wage worker category, either in the organizational structure (for example, it supervises the low-wage worker category) or by existing practice (for example, the facility has a benchmark of paying that job class a certain percentage more than the low-wage worker category). Facilities must be able to explain the basis of the relationship if requested. Because the statute refers to "resulting wage compression," a facility must use a portion of the add-on to increase wages or benefits before it may use any of the add-on to address any wage compression caused by such increase.

(5) A facility may use the add-on in relation to any of the job categories listed in WAC 388-96-758, regardless of whether the average wage it pays to its own employees is above fifteen dollars per hour, either before or after including the additional wages funded by the add-on.

(6) Wages or benefits, including employee bonuses, otherwise properly paid with the add on will not be considered as unallowable costs per RCW 74.46.410 (2)(x).

WSR 09-08-085**PERMANENT RULES****DEPARTMENT OF HEALTH**

(Board of Pharmacy)

[Filed March 30, 2009, 1:39 p.m., effective April 30, 2009]

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

Purpose: All Washington licensed pharmacies are required to have on hand an up-to-date copy of the state rules and laws governing the practice of pharmacy. The amended rule will allow on-line access or electronic versions to be acceptable references. The rule previously required a copy of the law book be "maintained in a binder." The board of pharmacy stopped printing the law book after its 2003 edition. The rule also has been made more readable.

Citation of Existing Rules Affected by this Order:
Amending WAC 246-869-180.

Statutory Authority for Adoption: RCW 18.64.005.

Adopted under notice filed as WSR 08-19-024 on September 8, 2008.

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

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

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

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

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

Date Adopted: March 30, 2009.

Gary G. Harris, Chair
Board of Pharmacy

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-869-180 Physical standards for pharmacies—Adequate equipment. (1) All pharmacies shall have in their possession the equipment and supplies necessary to compound, dispense, label, administer and distribute drugs and devices. The equipment shall be in good repair and shall be available in sufficient quantity to meet the needs of the practice of pharmacy conducted therein.

(2) All pharmacies will have in their possession(~~(=~~
~~(a))~~) one up-to-date copy of the state of Washington statutes(~~(s)~~) and rules (~~and regulations~~) governing the practice of pharmacy, the sale and dispensing of drugs, poisons, controlled substances, and medicines (~~(maintained in a binder)~~). Electronic or on-line versions are acceptable.

(3) All pharmacies shall have up-to-date references in order for the pharmacist(s) to furnish patients and practitioners with information concerning drugs.

WSR 09-08-109
PERMANENT RULES
INDETERMINATE SENTENCE
REVIEW BOARD

[Filed March 31, 2009, 1:04 p.m., effective May 1, 2009]

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

Purpose: To create indeterminate sentence review board chapter 381-90 WAC to outline procedures for conducting hearings to make a determination of release to the community in accordance with RCW 9.94A.507 and 9.95.420. To create indeterminate sentence review board chapter 381-100 WAC to outline procedures for conducting community custody violation hearings in accordance with RCW 9.94A.507, 9.95.420, 9.95.430, 9.95.435, 9.95.430 [9.95.440] and 9.95.900.

Statutory Authority for Adoption: RCW 34.05.220 (1)(b).

Adopted under notice filed as WSR 09-03-050 on January 13, 2009.

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 49, 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: March 31, 2009.

Margaret McKinney
Executive Director

Chapter 381-90 WAC

**PROCEDURES FOR CONDUCTING HEARINGS FOR
DETERMINATION OF RELEASE TO COMMUNITY
CUSTODY**

NEW SECTION

WAC 381-90-010 Purpose. The purpose of this chapter is to specify policies and procedures for hearings conducted to determine the release of community custody board inmates sentenced under RCW 9.94A.507. The following regulations set forth procedural guidelines. These guidelines do not create procedural or substantive rights in any person, and should not be interpreted or applied in such a manner as to abridge rights already guaranteed by the United States Constitution or the Washington state Constitution. The regulations should be interpreted to have sufficient flexibility so as to be consistent with law and to permit the indeterminate sentence review board to accomplish its statutory purposes.

NEW SECTION

WAC 381-90-020 Authority. RCW 9.95.420 and 9.94A.507.

NEW SECTION

WAC 381-90-030 Scope. The provisions of this chapter shall apply to offenders sentenced under RCW 9.94A.507 and 9.95.420.

NEW SECTION

WAC 381-90-040 Definitions. For purposes of this chapter, the following words have the following meanings:

"Actuarial risk assessment instruments" means the tools used by the department of corrections to assess an inmate's risk of reoffense.

"Board" means the appointed members of the indeterminate sentence review board created under chapter 9.95 RCW.

"Classification counselor" means an employee of the department of corrections responsible for carrying out specific duties concerning the supervision of sentenced offenders in the prison system.

"Community custody" means that portion of an offender's sentence of confinement served in the community subject to the controls placed on the offender's movement and activities by the court, board and department of corrections.

"Department" means the Washington state department of corrections.

"End of sentence review process" means the review and report issued by the end of sentence review committee in compliance with RCW 72.09.340, 72.09.345 and where appropriate RCW 72.09.370.

"In person" means physical presence, or presence via teleconference or videoconference.

"ISRB" means the indeterminate sentence review board.

"Revocation" means a repeal of community custody and a return to prison.

NEW SECTION

WAC 381-90-050 Release determination. (1) RCW 9.95.420 requires that any convicted person sentenced under the provisions of RCW 9.94A.507 shall be subject to a board hearing to determine releasability. The hearing must be held no later than ninety days before the expiration of the minimum term. However the hearing cannot be held unless the board has received:

(a) The results from the end of sentence review process;
 (b) Recommendations for conditions of community custody from the department.

(2) The end of sentence review committee report may include, but is not limited to:

(a) A prediction based upon the administration of actuarial risk assessment instruments and the sexual and criminal history of the offender, of the likelihood that the offender will commit new sex offenses if released;

(b) The institutional progress report(s) covering the inmate's adjustment, achievement, infractions and program participation during incarceration;

(c) Psychiatric or psychological reports, such as IQ appraisals, personality inventories, actuarial risk assessments and sexual history polygraphs;

(d) Behavioral details of the crime(s) of conviction, such as law enforcement reports, prosecutor's statements, court records, and presentence investigation reports;

(e) Recommendations for conditions of community custody in addition to those set by the sentencing court;

(f) The department's risk management level and the sex offender notification level;

(g) Written confirmation that the inmate has had an opportunity to review the information the department is submitting to the board and an opportunity to make a written statement.

(3) The board shall determine whether it is more likely than not that the offender will engage in sex offenses if released to the community in spite of board-imposed condi-

tions of community custody. The board decision related to an offender's likelihood of sexual reoffense is based upon a preponderance of the evidence.

(4) In making a release decision the board may also consider:

(a) The length of time necessary for the offender to complete treatment and programming;

(b) The offender's failure to participate in required evaluations;

(c) The offender's proposed release plan; and

(d) Other pertinent information.

(5) If the board finds the offender not releasable, the board may add up to sixty months to the minimum term.

(6) If the offender is found not releasable and time is added to the minimum term:

(a) The offender may petition for an earlier review when the offender completes required treatment or programming.

(b) The board retains the authority to schedule an earlier review at its discretion.

NEW SECTION

WAC 381-90-060 Release determination after community custody revocation. The board may set a new minimum term if the offender is returned to prison on a revocation. The new minimum term shall not exceed the remaining portion of the sentence. Subsequent release determinations will be conducted as set out in WAC 381-90-050.

NEW SECTION

WAC 381-90-070 Conditions of community custody. Conditions of community custody include those ordered by the court and the board. The conditions are monitored by the department of corrections and enforced by the board.

NEW SECTION

WAC 381-90-080 Inmate to be served notice. The board will send the hearing notice to the institution superintendent/designee in advance of any hearing. The hearing notice shall specify the reason for the hearing, time, date, and place.

(1) Upon receipt of the hearing notice, the superintendent or designee shall serve the inmate with the document.

(2) The original hearing notice is to be signed by the inmate with date of service noted and returned to the board headquarters. The department should retain a copy in the inmate's institutional file and provide a copy to the inmate.

(3) In cases where the inmate refuses to sign the notice, the superintendent or designee shall note the date of service and obtain the signature of a witness to such service.

(4) The inmate will be allowed to review a copy of the end of sentence review report with supporting documents prior to the hearing. The inmate shall sign an acknowledgment form that the documents have been reviewed, noting the date and amount of time spent in review. If an interpreter assisted the offender, the interpreter shall also sign and date the acknowledgment form.

(5) The inmate shall be given the opportunity to make a written statement to the board.

NEW SECTION**WAC 381-90-090 Inmate shall be advised of rights.**

Each inmate who becomes the subject of a hearing conducted under the provisions of RCW 9.95.420 shall be advised of their rights at the time(s) he/she is served with a notice of the hearing. The written notice provided by the board will advise the inmate of the following rights:

- (1) To participate in a hearing before a panel of the board and to testify under oath. The board may hold the hearing with the inmate in person or via video conferencing;
- (2) To submit letters or statements in support of release;
- (3) To review the ESRC report and supporting documents prior to the hearing; and
- (4) To receive a written decision from the board.

NEW SECTION

WAC 381-90-100 Conducting a hearing. All hearings conducted under the provisions of this chapter shall be held before a panel of at least two members of the indeterminate sentence review board. One member shall be designated, by decision of the panel, as the presiding member.

At the time of the hearing under the provisions of RCW 9.95.420, the presiding member will determine if the inmate was given proper notice of the hearing, was advised of the reason for the hearing, and was properly advised of their rights.

A limited number of observers may be present by prior approval of the panel members conducting the hearing, provided that the superintendent or designee authorizes such observers in the facility.

The board reserves the right to exclude any person from the room during a hearing upon its own motion or the motion of any party to the hearing provided that good cause for such exclusion is articulated on the record.

The presiding member may recess the hearing at any time for consultation with the other panel member(s).

The panel conducting the hearing will submit its recommendation to the full board for final determination.

In the event of a language and/or communication problem, a certified interpreter shall be present to interpret and assist.

The board will accept written information pertaining to the inmate from any interested person.

NEW SECTION

WAC 381-90-110 Continuances. Prior to the hearing, any party may make a written request for continuance. The board may grant continuances of scheduled hearings prior to and during hearings, either in the interest of justice or for good cause.

NEW SECTION

WAC 381-90-120 Inmate to be present. The subject of any hearing conducted under the provisions of this chapter may participate in the hearing. However, in the event the inmate refuses to appear, the board will continue the hearing until the next available docket. The ISRB will notify the

inmate that if they refuse to attend the next scheduled hearing, the hearing will be conducted in absentia and the board's decision will be based on all available evidence.

NEW SECTION

WAC 381-90-130 Oaths and affirmations. The presiding member conducting hearings under the provisions of this chapter shall have the authority to administer oaths and affirmations.

NEW SECTION

WAC 381-90-140 Admissibility of information. All relevant information shall be admissible.

NEW SECTION

WAC 381-90-150 Disposition. The board shall make a finding of whether or not it is more likely than not that the inmate will commit another sex offense if released to the community.

A list of factors that the board may consider includes, but is not limited to:

- (1) Refusal to participate in available programs or resources designed to assist an inmate to reduce the risk of reoffense (e.g., stress and anger management, victim awareness, substance abuse treatment, sex offender treatment).
- (2) Serious and repetitive disciplinary infractions during incarceration.
- (3) Evidence of an inmate's continuing intent or propensity to engage in sex offenses.
- (4) Statements or declarations by the inmate of intent not to comply with conditions of community custody.
- (5) End of sentence review determination based on actuarial assessments identifying risk to sexually reoffend.

NEW SECTION

WAC 381-90-160 Statement of decision and reasons. The board will make a written statement of the decision and reasons in each case heard under the provisions of this chapter.

NEW SECTION

WAC 381-90-170 Hearing record preservation. There will be a recording made of all hearings conducted under the provisions of this chapter. Such recordings shall be preserved at the offices of the ISRB in Olympia in compliance with the current record retention schedule. Parties requesting a copy of any hearing must do so in writing. Parties may be required to reimburse the ISRB for the costs involved in duplication.

Chapter 381-100 WAC

PROCEDURES FOR CONDUCTING COMMUNITY CUSTODY BOARD VIOLATION HEARINGS

NEW SECTION

WAC 381-100-010 Purpose. The purpose of this chapter is to specify policies and procedures relating to community custody board violation hearings. The following regulations set forth procedural guidelines. They do not create procedural or substantive rights in any person, and should not be interpreted or applied in such a manner as to abridge rights already guaranteed by the United States Constitution. The regulations should be interpreted to have sufficient flexibility so as to be consistent with law and to permit the indeterminate sentence review board to accomplish its statutory purposes.

NEW SECTION

WAC 381-100-020 Authority. RCW 9.95.420, 9.95.430, 9.95.435, 9.95.440, and 9.95.900.

NEW SECTION

WAC 381-100-030 Scope. The provisions of this chapter shall apply to adult felony offenders granted community custody from a prison sentence under RCW 9.94A.507 who are alleged to have violated the terms of their order of release.

NEW SECTION

WAC 381-100-040 Definitions. For purposes of this chapter, the following words have the following meanings:

"Appeals panel" means three reviewing officers designated by the chair of the board or their designee with the authority to review decisions made by a board member or hearing officer, and to affirm, reverse, or modify decisions and sanctions in accordance with RCW 9.95.435.

"Board" means the members of the indeterminate sentence review board.

"Community corrections officer (CCO)" means an employee of the department of corrections responsible for carrying out specific duties concerning the supervision of sentenced offenders and monitoring of sentence conditions.

"Community custody" means that portion of an offender's sentence served in the community subject to controls placed on the offender's movement and activities by the board and supervised by the department of corrections. Offenders supervised on "community custody board" placement are those who have been sentenced under RCW 9.94A.712.

"Department" means department of corrections.

"Electronically" when used in reference to submission of documents to the board, means via facsimile, electronic mail or other generally accepted electronic means.

"Graduated sanction system" means structured incremental responses designed to reduce risk to the public, effectively intervene in noncompliant behavior, where possible, repair harm to the community, and make efficient use of limited state resources.

Sanctions may include, but are not limited to, work release; home detention with electronic monitoring; work crew; community restitution; inpatient treatment; daily reporting; curfew; educational or counseling sessions; supervision enhanced through electronic monitoring; or any other sanctions available in the community; or, may include suspension or revocation of the release to community custody.

"Hearing officer" means a member, employee, or designee of the indeterminate sentence review board authorized to preside over community custody board violation hearings.

"Offender" means any person in the custody of or subject to the jurisdiction of the board.

"On-site desk" means the board's designee that receives notice of violations of community custody board conditions and schedules violation hearings.

"Presiding officer" means a member, employee or designee of the board authorized to act as a hearing officer to preside over community custody board violation hearings.

"Probable cause" means a determination, made by a hearing officer, that there is cause to believe a violation has occurred.

"Stipulated agreement" means an agreement between the offender and the board in which the offender admits violations and agrees to comply with intermediate sanctions. For the purposes of this subsection, "intermediate sanction" means board-imposed sanctions that are served in the community rather than total confinement.

"Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, to include, but not be limited to, adult correctional facilities, camp and prerelease facilities or a county or municipal jail.

"Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the criminal conduct of the offender. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

"Working day" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

NEW SECTION

WAC 381-100-050 Intent. (1) The indeterminate sentence review board will exercise its authority over offenders in a manner that:

(a) Places a high priority on public safety;

(b) Imposes only those reasonable and enforceable conditions of community custody necessary to facilitate the safety of previous victims and potential victims, encourage responsibility, and to assist the offender's lawful reintegration into the community; and

(c) Supports the role and responsibility of the community corrections officer to assist offenders to reenter the community in a law abiding manner.

(2) In making a decision on sanctions, community custody revocation or reinstatement, the indeterminate sentence

review board may consider the following factors in addition to factors that are case specific:

- (a) Whether or not the community custody violation behavior also resulted in a criminal conviction;
- (b) The relationship of the community custody violation behavior to the committing offense and the nature of the violation;
- (c) The length of time the offender has been on community custody as well as time previously served on the conviction;
- (d) The perspective and recommendation of victim(s) and/or other concerned citizens;
- (e) The recommendation and supporting reasons offered by the community corrections officer, the offender and attorney, and the assistant attorney general;
- (f) The level of risk to the community posed by the offender;
- (g) The previous board action during the period of community custody;
- (h) The number of previous violation hearings and offender compliance with resulting sanctions; and
- (i) The sanction range under the administrative sanction grid.

NEW SECTION

WAC 381-100-055 Board notification of alleged violations. Whenever the CCO receives notification of an offender's alleged violation behavior, the CCO must notify the ISRB hearing officer of alleged violation(s). Notification may be made via telephone or electronic means.

NEW SECTION

WAC 381-100-060 Notice of arrest by law enforcement officer. Whenever a community corrections officer is notified of an offender's arrest the community corrections officer shall notify the board on-site desk of the arrest within one working day. Notice should be submitted electronically.

NEW SECTION

WAC 381-100-070 Notice of suspension of community custody. When a community corrections officer causes the arrest and detention of an offender, the community corrections officer shall cause a suspension of community custody order to be personally served on the offender within twenty-four hours of arrest, excluding weekends and holidays. The community corrections officer shall electronically submit a copy of the suspension of community custody order to the board and the attorney general within one working day of service of the suspension order.

NEW SECTION

WAC 381-100-080 Board to reinstate. When a community corrections officer suspends, arrests, or detains an offender, such offender shall not be reinstated on community custody or released from custody on bail or personal recognizance, except by the board and the issuance by the board of

an order of reinstatement on community custody to the same or modified conditions of community custody.

NEW SECTION

WAC 381-100-090 Administrative reinstatements.

(1) When a community corrections officer has caused the arrest and detention of an offender and after investigation determines:

- (a) That the alleged violations are unfounded; or
- (b) That the seriousness of the alleged violations is mitigated by new information; or
- (c) That further custody is unwarranted and a community custody board revocation hearing is unnecessary; the officer shall submit a written request for reinstatement or report with recommendations to the ISRB.

(2) The board may exercise the option of administrative reinstatement absent a recommendation of the community corrections officer, when such reinstatement is consistent with criteria identified within WAC 381-100-050 and RCW 9.95.440.

NEW SECTION

WAC 381-100-100 Notice and allegations. (1) **In custody.** When a community corrections officer is notified of the arrest and detention by law enforcement of an alleged community custody violator and/or the community custody is suspended by the community corrections officer, the community corrections officer shall cause the offender to be personally served with a copy of the *Notice of Allegations and Rights and Privileges* form within three working days of the service of suspension of community custody. The CCO shall submit the notice of allegations electronically to the board with a copy to the attorney general within twenty-four hours of service, excluding weekends and holidays.

(2) **Out of custody.** If an out of custody hearing is requested by the community corrections officer and/or ordered by the board, the notice of allegations shall be served on the offender within three working days of written notice of probable cause from the board, but not less than two working days prior to the hearing. The CCO shall submit the notice of allegations electronically to the board with a copy to the attorney general within twenty-four hours of service, excluding weekends and holidays.

(3) **New or amended allegations.** If, after service of alleged violations as set forth above, the CCO brings forth additional alleged violations or changes to existing alleged violations, the CCO shall cause the offender to be personally served with a copy of the new or amended allegations. The offender will have two working days from the date of service of the new or amended allegations before the board will consider the allegations. The offender may waive the two working days notice and proceed with those new or amended allegations at an already scheduled hearing.

The CCO shall submit such new or amended allegations of violation electronically to the board with a copy to the attorney general within one working day of service on the offender.

(4) **Interpreter services.** Community corrections officers shall obtain interpreter services for offenders with known

language or communication barriers when serving documents. For a board hearing, court-certified interpreters shall be used when possible. The CCO shall obtain interpreter services for the offender's board hearing.

(5) **Contents of factual allegations.** The factual allegations of the violations of each condition shall include:

- (a) The circumstances of the alleged violation(s);
- (b) Date of violation or approximation thereof; and
- (c) Location or place where violation occurred.

(6) **Allegations of a new crime.** Whenever an offender is accused of a violation of their community custody that includes the commission of a felony or misdemeanor, the community corrections officer shall advise the board of the status of any pending charge(s). In the case of pending criminal allegations, the board may defer any board hearing pending the outcome or may dismiss without prejudice one or more allegations. If the offender is convicted of a new crime, the CCO shall provide the board with a certified copy of the judgment and sentence.

NEW SECTION

WAC 381-100-110 Probable cause review. A probable cause review shall be conducted by the board's designee within forty-eight hours of the board's receipt of the factual allegation(s) to determine whether probable cause exists to believe the violation or violations occurred. A written probable cause finding will be issued. If the hearing officer finds probable cause, the hearing officer will decide if the offender will be conditionally released or remain in custody pending further action by the board.

NEW SECTION

WAC 381-100-120 Violation report to be submitted by community corrections officer. (1) For community custody board offenders who are being held in total confinement prior to a hearing, the community corrections officer shall cause the offender to be personally served a violation report within five working days after receipt of written notice of probable cause from the board.

(2) For community custody board offenders who are not being held in total confinement prior to the hearing, the community corrections officer shall cause the offender to be personally served a violation report within ten working days after receipt of written notice of probable cause from the board.

(3) The violation report shall be submitted to the board and the attorney general within two business days from the date of service of the notice of violations on the offender.

- (4) The violation report may be submitted electronically.
- (5) The violation report shall contain the following:
 - (a) The specific conditions alleged to have been violated;
 - (b) A summary of facts supporting the allegations;
 - (c) Any mitigating information;
 - (d) The evidence relating to the violations to be introduced at the hearing; and

(e) A preliminary recommendation for disposition.

(6) The violation report should include a list of witnesses whom the community custody officer may wish to have called for testimony.

NEW SECTION

WAC 381-100-130 Administrative review. (1) Following receipt of the violation report, a board hearing officer will conduct an administrative review to determine the next board action.

(2) The offender and/or attorney may submit information in writing that the board shall consider in an administrative review.

NEW SECTION

WAC 381-100-140 Community custody board violation hearings. (1) The board shall schedule all community custody board violation hearings and shall provide notice to the alleged community custody violator of the time and place of the hearing.

(2) Such notice shall also be provided to the department of corrections, the attorney general, and to counsel for the offender, if retained or appointed, no less than two working days prior to the hearing.

(3) The board reserves the right to select and change the place of the community custody board violation hearing.

(4) The CCO will arrange interpreter services for offenders with known language or communication barriers for violation hearings and will provide the information to the board prior to the scheduling of a hearing.

NEW SECTION

WAC 381-100-150 Rights and privileges relating to violation hearings. (1) An alleged community custody violator shall be entitled to a fair and impartial hearing of the charges of the community custody violation within thirty working days, but not less than two working days, after notice of service of violations specified.

(2) The board shall notify the offender of the right to:

(a) Be present during the fact finding and disposition phases of the hearing. If the offender refuses to participate in the hearing, the board may conduct the hearing in the absence of the offender and may impose sanctions that could include loss of liberty of the offender;

(b) Have the assistance of an interpreter if the offender has a language or communications barrier;

(c) Testify or remain silent;

(d) Call witnesses and present documentary evidence, provided, however:

(i) At an in-custody hearing, outside witnesses may be excluded due to institutional or community concerns; or

(ii) The presiding officer may exclude persons from the hearing upon a finding of good cause; or

(iii) The presiding officer may allow a witness to testify outside of the offender's presence when there is substantial likelihood that the witness will not be able to give effective, truthful testimony in the presence of the offender during the hearing. The offender may submit a list of questions to ask such witness and testimony may be limited to evidence relevant to the issues under consideration;

(iv) The presiding officer may allow telephonic testimony of witnesses.

(e) Question witnesses who testify;

(f) Be represented by counsel if revocation of the release to community custody is a probable sanction for the violation;

(g) Receive a copy of the findings and conclusions. This includes the evidence relied upon, a finding of guilty or not guilty, the reasons to support the findings, and any sanction(s) imposed;

(h) Receive notice of the right to appeal the sanction to the board; and

(i) Receive notice of the right to file a personal restraint petition under court rules after the final decision of the board.

(3) The board may not revoke the release to community custody of any offender who was not represented by counsel at the hearing, unless the offender has:

(a) Waived the right to counsel; and/or

(b) Waived their right to appear; and/or

(c) Refused to participate in the hearing.

NEW SECTION

WAC 381-100-160 Acknowledgment of rights. The community corrections officer shall forward to the board and attorney general signed copies of the receipt and acknowledgment of these rights along with copies of the factual allegations. Should the offender refuse to sign either the factual allegations or notification of rights, the community corrections officer shall witness the refusal and note the time and place of service.

NEW SECTION

WAC 381-100-170 Discovery. (1) The community corrections officer shall provide the department's AAG, the offender and/or the offender's defense attorney with a copy of the factual allegations, the violation report, and all evidence relating to the violations charged intended for introduction at the hearing, either as factual evidence or in support of a dispositional recommendation. Such documents, materials, and information should include, but not be limited to, copies of the community custody order and addenda, copies of prior violation reports submitted to the board, and copies of all board actions or hearing findings issued during the current community custody.

(2) The offender or defense counsel shall provide to all parties, including the board, such documents, materials, and information that may be introduced at the hearing.

(3) The community corrections officer and defense shall provide to all parties, including the board, a list of witnesses they may wish to call for testimony.

(4) In addition, the CCO must provide to the offender and/or offender's attorney any material or information within the CCO's knowledge or possession which tends to negate and/or mitigate the offender's guilt as to the violations charged.

NEW SECTION

WAC 381-100-180 Filing with the board. Papers required to be filed with the board shall be deemed filed, upon actual receipt by the board at its offices in Olympia, or

by a member or designee presiding at a hearing at any place within the state.

NEW SECTION

WAC 381-100-190 Subpoenas. (1) The board shall have the authority to issue subpoenas for compulsory attendance of witnesses and production of evidence

(2) Every subpoena, where authorized by law, shall state "indeterminate sentence review board," and the title of the proceeding. The subpoena shall command the person to whom it is directed to attend and/or give testimony or produce designated documents at a specified time and place.

(3) Subpoenas requiring the attendance and/or testimony of witnesses or the production of evidence may be issued upon application of any party, provided that such subpoenas are executed without expense to the board.

NEW SECTION

WAC 381-100-200 Hearing procedures—Presiding officer. All hearings conducted under this chapter will be heard by a minimum of one member of the board or a designee of the board, serving as the presiding officer. It is the duty of the presiding officer to conduct hearings in an impartial and orderly manner. He or she shall have the authority to:

(1) Administer oaths and affirmations;

(2) Rule on all procedural matters, objections, and motions;

(3) Rule on offers of proof and receive relevant evidence;

(4) Question witnesses to develop any facts deemed necessary to fairly and adequately decide the matter;

(5) Render or defer a decision; and

(6) Take any other action necessary and authorized by these rules and the law.

NEW SECTION

WAC 381-100-210 Hearing procedures—Prehearing conference. In any proceeding, the presiding officer, on his or her own motion or on the motion of one of the parties or their representatives, may direct the parties to appear in person or through electronic means at a specified time and place for a prehearing conference. Such conference may be immediately prior to the community custody violation proceeding. A prehearing conference is for the purpose of considering:

(1) Simplification of the issues;

(2) Amendments to any of the papers filed with the board;

(3) Obtaining stipulations, admissions of fact, and documents;

(4) Limitation of the number of witnesses; and

(5) Such other matters as may aid in the disposition of the proceeding.

NEW SECTION

WAC 381-100-220 Hearing procedures—Presentation of state's case. A community corrections officer and/or an assistant attorney general shall present the state's case.

NEW SECTION

WAC 381-100-230 Hearing procedures—Appearance and practice before agency—Who may appear. No person may appear before the board in a representative capacity on behalf of the offender at a community custody board violation hearing other than the following:

- (1) Attorneys at law, qualified and entitled to practice before the supreme court of the state of Washington.
- (2) Law students admitted to practice under admission to practice rule 9 may represent the department of corrections, with the prior permission of the presiding officer.
- (3) Out-of-state attorneys must comply with admission to practice rule 7 (see Washington court rules).

NEW SECTION

WAC 381-100-240 Hearing procedures—Standards of ethical conduct. (1) All persons appearing in community custody violation proceedings before the board shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington.

- (2) The board may decline to permit any person who does not conform to such standards to appear before it or any designee.

NEW SECTION

WAC 381-100-250 Hearing procedures—Witnesses. (1) Either party may call witnesses to testify in-person or electronically.

- (2) The presiding officer may limit the number of witnesses and the scope of the testimony to matters relevant to the allegations and/or disposition.

(3) Witnesses may be excluded from in-person appearance as follows:

- (a) Due to facility concerns; or
- (b) Upon a finding of good cause by the presiding officer.

(4) In addition, the presiding officer may exclude a witness from testifying at a hearing or may require a witness to testify outside of the presence of the offender when there is a substantial likelihood that the witness will not be able to give effective, truthful testimony in the offender's presence during the hearing.

(a) In this circumstance, if the offender is not represented by counsel, the offender shall be provided the opportunity to submit a list of questions for any witness testifying outside of their presence.

(b) If the offender is represented by counsel, the attorney shall be allowed to question the witness on the record, but outside the presence of the offender.

(5) In all cases, the presiding officer shall take reasonable precautions related to the safety concerns of witnesses.

NEW SECTION

WAC 381-100-260 Hearing procedures—Continuances. (1) Any party to a community custody board violation hearing who desires a continuance shall notify the board in writing and state the reasons why the continuance is neces-

sary. If represented by counsel, all continuance requests must come from the representing counsel.

(2) Requests for continuances must arrive at the board offices in Olympia not less than twenty-four hours prior to the scheduled hearing. The presiding officer shall consider whether the request was timely and made for good cause and whether the offender will be substantially prejudiced in the presentation of their defense.

(3) The board may continue a hearing on its own motion if local prosecution is pending or if other circumstances require rescheduling.

(4) The board will notify all parties when continuances are granted.

(5) During a community custody board violation hearing, the presiding officer may, in their discretion or upon motion of counsel, continue the hearing for the introduction of additional evidence, presentation or argument.

NEW SECTION

WAC 381-100-270 Hearing procedures—Persons present. Community custody board violation hearings are open to the public unless the presiding officer, for a specifically stated reason, closes the hearing in whole or in part.

NEW SECTION

WAC 381-100-280 Rules of evidence—Admissibility. (1) All relevant evidence shall be admissible which, in the opinion of the presiding officer, is the best evidence reasonably obtainable, having due regard for its necessity, availability, and trustworthiness. "Relevant evidence" means evidence having a tendency to make the determination of the action more or less probable than it would be without the evidence.

(2) In passing upon admissibility of evidence, the presiding officer shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings, in matters not involving trial by jury, in the superior courts in the state of Washington.

(3) When objection is made to the admissibility of evidence, the evidence may be received subject to a later ruling.

(4) The presiding officer may, in his or her discretion, either with or without objection, exclude inadmissible evidence, or order cumulative evidence discontinued.

(5) Parties objecting to the introduction of evidence shall state the precise grounds of objection at the time such evidence is offered.

(6) A certified laboratory report or a copy of such shall be admissible without further authentication.

NEW SECTION

WAC 381-100-290 Hearing procedures—Findings and conclusions. (1) Alleged violations of the conditions of community custody must be proven by a preponderance of evidence.

(2) No finding of a violation of conditions may be based on hearsay evidence alone.

(3) If the presiding officer concludes that the alleged violations of conditions of community custody have not been

proven by a preponderance of evidence, the offender shall be reinstated on community custody on the same or modified conditions.

(4) If the presiding officer concludes that the alleged violations of conditions of community custody have been proven by a preponderance of the evidence, the presiding officer may impose sanctions in accordance with an adopted graduated sanction grid. If the sanction is revocation of the offender's community custody, the board shall enter an order of community custody revocation and return the offender to prison.

(5) After issuance of a revocation sanction, the board will set a new minimum term in a timely manner.

(6) An offender convicted and sentenced to incarceration on a new criminal charge will have the right to a dispositional violation hearing by the board. The board may:

(a) Revoke the community custody of the offender and enter an order of community custody revocation.

(b) Reinstatement of the offender on community custody supervision under the same or modified conditions.

(7) The presiding officer shall make written findings and conclusions concerning the allegations in a timely manner following the decision.

NEW SECTION

WAC 381-100-310 Hearing record preservation.

There will be a recording made of all hearings conducted under the provisions of this chapter. Such recordings shall be preserved in accordance with the indeterminate sentence review board's records retention policies. Parties requesting duplication of any hearing must submit a request in writing; response to all such requests shall be governed by the applicable public disclosure statutes.

NEW SECTION

WAC 381-100-320 Appeal of community custody violation sanctions. (1) The offender may appeal the sanction of the community custody board violation hearing. Appeals must be filed with the board within seven days after the offender receives the findings and conclusions.

(2) The chair of the board or the chair's designee shall appoint a panel of three reviewing examiners to consider the appeal.

(3) The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to any of the following:

- (a) The crime of conviction;
- (b) The violation committed;
- (c) The offender's risk of reoffending; or
- (d) The safety of the community.

WSR 09-08-116

PERMANENT RULES

STATE BOARD OF HEALTH

[Filed March 31, 2009, 4:50 p.m., effective May 1, 2009]

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

Purpose: Currently, WAC 246-282-005 references the United States Food and Drug Administration (FDA) 2005 NSSP guide, which all shellfish-producing states are required to follow in order to place molluscan shellfish into interstate commerce. FDA has adopted a 2007 version of the NSSP guide, leaving the current rules out-of-date. This rule making amends the section to update the reference to the current code.

Citation of Existing Rules Affected by this Order: Amending WAC 246-282-005.

Statutory Authority for Adoption: RCW 69.30.030.

Adopted under notice filed as WSR 09-04-097 on February 4, 2009.

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 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: March 11, 2009.

Craig McLaughlin
Executive Director

AMENDATORY SECTION (Amending WSR 07-20-014, filed 9/20/07, effective 10/21/07)

WAC 246-282-005 Minimum performance standards. (1) Any person engaged in a shellfish operation or possessing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must comply with and is subject to:

(a) The requirements of the ((2005)) 2007 National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, published by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of food safety and shellfish programs);

(b) The provisions of 21 Code of Federal Regulations (CFR), Part 123 - Fish and Fishery Products, adopted December 18, 1995, by the United States Food and Drug Administration, regarding Hazard Analysis Critical Control Point (HACCP) plans (copies available through the U.S. Food and Drug Administration, Office of Seafood, and the Washington state department of health, office of food safety and shellfish programs); and

(c) All other provisions of this chapter.

(2) If a requirement of the NSSP Guide for the Control of Molluscan Shellfish or a provision of 21 CFR, Part 123, is

inconsistent with a provision otherwise established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.

WSR 09-08-121

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed April 1, 2009, 9:11 a.m., effective May 2, 2009]

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

Purpose: This rule-making action will clarify and streamline the administration for applicants and the trip reduction performance program staff.

Statutory Authority for Adoption: RCW 70.94.996.

Adopted under notice filed as WSR 09-05-085 on February 17, 2009.

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 1, Repealed 0.

Date Adopted: April 1, 2009.

Stephen T. Reinmuth
Chief of Staff

AMENDATORY SECTION (Amending WSR 08-06-079, filed 3/4/08, effective 4/4/08)

WAC 468-60-010 Trip reduction performance program. ~~((The Washington state department of transportation (WSDOT), together with the commute trip reduction (CTR) board, will administer the trip reduction performance program (TRPP). This program is designed to create cost-effective trip reduction projects that reduce the number of commute vehicle trips and commute vehicle miles traveled (VMT). The 2003 legislature created this program to provide financial incentives or compensation to organizations that implement and administer cost-effective projects that increase the capacity of the transportation system by reducing the number of vehicle trips and miles traveled for commute purposes. WSDOT awards funds for cost-effective trip reduction projects, based on a price that the project charges WSDOT to reduce an annualized trip, and the projected number of annual commute vehicle trips and commute VMT reduced during the project period (the project goal). Up to half of the award amount is available through reimbursement for start-up costs. WSDOT will determine the remaining award amount, as well as any bonus funds, based on the~~

~~actual performance of the project in meeting or exceeding the goal. As necessary, WSDOT will revise these rules periodically to create a more efficient, cost-effective, trip reduction program.))~~ The legislature established the trip reduction performance program (TRPP) in 2003 to create cost-effective projects that increase the capacity of the transportation system by providing financial incentives to commuters to reduce the number of vehicle commute trips and commute vehicle miles traveled (VMT). WSDOT awards TRPP funds to cost-effective trip reduction projects based on the projected cost per annualized vehicle commute trip and commute VMT reduced during the project period. WSDOT will provide new projects up to fifty percent of the award amount as start up funds on a reimbursable basis. WSDOT will determine the remaining award amount, as well as any bonus funds, based on the actual number of vehicle commute trips and commute VMT reduced.

(1) What are trip reduction performance projects?

WSDOT awards funds on a competitive basis to organizations that create cost-effective projects designed to reduce vehicle commute ~~((vehicle))~~ trips and commute VMT ~~((based on the morning commute))~~. The organization will receive funds based on the price associated with each vehicle commute trip and commute VMT reduced and overall project performance. The TRPP is available to entrepreneurs, private employers, public agencies, nonprofit organizations, developers, and property managers who ~~((find new (to the area);))~~ implement sustainable ways to reduce the number of vehicle commute trips and ~~((vehicle miles traveled per person for commuting))~~ commute VMT, and who provide financial incentives to their own or other employees for ridesharing, public transportation, nonmotorized transportation, telework, and alternative work schedules.

(2) **Definitions.** For purposes of ~~((this section))~~ the implementation of TRPP projects, the following definitions apply.

(a) A *financial incentive* is defined as a policy, procedure, capital investment or payment intended to provide ~~((employees))~~ commuters a financial gain if they use commute ~~((in ways))~~ options other than by driving alone. ~~((For example,))~~ The eligible incentives may include, but are not limited to: Providing a free or reduced cost of transit pass, ~~((reducing the))~~ free or reduced parking charge for rideshare vehicles~~(;))~~ and initiating parking charges for ~~((employee))~~ commuter vehicles~~(, reducing the cost of a transportation service such as a transit pass))~~ to discourage drive-alone commuting, paying the membership fee for a car sharing program, providing ~~((employees))~~ commuters with alternative work ~~((week))~~ schedules, providing a direct cash payment, reducing the insurance rate for ~~((employees))~~ commuters who reduce the use of their vehicle for commuting, or reducing the distance ~~((an employee))~~ a commuter travels to work by reassigning their work location to a worksite closer to their home.

(b) *Car sharing* means a membership program intended to offer an alternative to car ownership ~~((under which persons or entities that become))~~. An individual or organization member((s are)) is permitted to use vehicles from a fleet on an hourly basis.

(c) *Telework* means a program where ~~((an employee))~~ a commuter performs work functions that are normally performed at a traditional ~~((workplace))~~ worksite, but does so instead at the ~~((employee's))~~ commuter's home, or at a ~~((work))~~ telework center that is located closer to the ~~((employee's))~~ commuter's home than to the ~~((employee's workplace))~~ commuter's worksite, for at least one day a week ~~((with the effect of reducing))~~ in an effort to reduce the number of trips to the ~~((employee's workplace))~~ commuter's worksite.

(d) A *person-trip* is ~~((one))~~ a one-way commute trip made by one person to get to work. A trip avoided because the ~~((employee))~~ commuter teleworks, or because the ~~((employee))~~ commuter works ~~((a compressed work week))~~ an alternative work schedule, is also considered a person-trip.

(e) A *mode* is the means of transportation ~~((an employee))~~ a commuter took to work. Driving alone, carpooling, working an alternative work schedule, teleworking, bicycling, etc., are examples of modes.

(f) A *measurement* records the number of person-trips made by ~~((employees))~~ commuters commuting to work during a period such as a week or month, using each specific transportation mode. A measurement also records the distance each ~~((employee))~~ commuter commutes to work; the type of work schedule or ~~((compressed work week))~~ alternative work schedules that each ~~((employee))~~ commuter works; and the number of persons in the ~~((employee's))~~ commuter's carpool or vanpool if the ~~((employee))~~ commuter uses one of these modes. WSDOT may require that a measurement record additional information necessary to evaluate the project performance.

(g) *Mode share* is the percentage of person-trips made by a population of ~~((employees))~~ commuters commuting to work using specific modes of transportation. For example, if twenty-three percent of the person-trips made in commuting to a worksite are by carpool, the carpool mode share for that worksite is twenty-three percent.

(h) A *mode split* is the set of mode shares for a population of ~~((employees, such as those))~~ commuters commuting to a worksite. The sum of the mode shares for the population is one hundred percent. When calculating mode shares and mode split from measurement data, WSDOT makes adjustments as necessary for missing data, days reported by ~~((employees))~~ commuters as not worked, inconsistency between commute mode and vehicle occupancy data, and reported use of ~~((compressed))~~ alternative work ~~((weeks))~~ schedules. When making these adjustments, WSDOT follows CTR board guidelines when these are available, and makes reasonable adjustments otherwise.

(i) *Vehicle commute* ~~((vehicle))~~ trip(s) is the number of vehicle trips made to bring ~~((employees))~~ commuters to work at a worksite or specified collection of worksites on an average weekday morning, using the mode split from a measurement. WSDOT will provide information to applicants on calculating commute vehicle trips.

Calculation: WSDOT calculates a vehicle commute trip by dividing a person-trip by the number of persons in the vehicle. For passenger cars, trucks, vans, and motorcycles, WSDOT calculates the vehicle occupancy from measurement data using CTR board guidelines, or from equivalent

data as agreed by WSDOT and the applicant. For buses, WSDOT assumes an average occupancy of twenty-five persons. If the CTR board issues guidelines for using bus occupancy, WSDOT will follow the board's guidelines in subsequent projects. A person-trip made by bicycling, walking, or other nonmotorized means of transportation; by riding a train; or avoided either because the ~~((employee))~~ commuter teleworks or because the ~~((employee))~~ commuter works ~~((a compressed))~~ an alternative work ~~((week))~~ schedule, is not considered as using a motor vehicle under this definition. If ~~((employees))~~ commuters at a worksite work at jobs that last less than a full year, WSDOT annualizes the ~~((commute))~~ vehicle commute trip(s). For example, if the jobs at a worksite last for only nine months, then WSDOT will annualize the ~~((commute))~~ vehicle commute trip(s) as three quarters of the ~~((commute))~~ vehicle commute trip(s) that would be calculated if the ~~((employees))~~ commuters worked for a full year. WSDOT then will use the annualized values in determining project performance and payments.

(j) *Reduced* ~~((commute))~~ vehicle commute trip(s) is the reduction in the number of ~~((commute))~~ vehicle commute trips between a baseline measurement and a ~~((subsequent))~~ performance measurement. WSDOT will provide information to applicants on calculating reduced ~~((commute))~~ vehicle commute trips.

Calculation: WSDOT calculates reduced ~~((commute))~~ vehicle commute trips by subtracting the number of ~~((commute))~~ vehicle commute trips made by the ~~((employees))~~ commuters in the ~~((subsequent))~~ performance measurement, from the number of vehicle trips the same number of ~~((employees))~~ commuters would have made if they had commuted using the mode split from the baseline measurement.

(k) *Commute* ~~((vehicle miles traveled))~~ VMT per person ~~((VMT))~~ is the average daily vehicle commute trips each ~~((employee))~~ commuter makes in a motorized vehicle, multiplied by the ~~((employee's))~~ commuter's one-way distance to work, summed for all ~~((employees))~~ commuters, and the sum then divided by the number of ~~((employees))~~ commuters.

(l) *Reduced commute VMT* is the reduction in the number of commute ~~((vehicle miles traveled))~~ VMT per person between a baseline measurement and a ~~((subsequent))~~ performance measurement. WSDOT calculates reduced commute VMT by subtracting the commute ~~((vehicle miles traveled))~~ VMT per person in the ~~((subsequent))~~ performance measurement, from the commute ~~((vehicle miles traveled))~~ VMT in the baseline measurement.

(m) A *project goal* is the total number of ~~((commute))~~ vehicle ~~((trips))~~ commute trips and commute VMT that a ~~((TRPP))~~ project proposes to reduce when it applies for TRPP funding.

(n) ~~((An interim goal is the number of commute vehicle trips that a TRPP project proposes to reduce for specified periods shorter than the project's entire duration. Payments for interim goals are subject to WSDOT approval.~~

~~((e)))~~ *Performance* is defined as ~~((the reduction in the number of commute vehicle trips to work locations in the TRPP project, with credit given for reductions in the commute vehicle miles traveled by employees to those work locations. WSDOT will provide directions for calculating this credit as part of the materials used when applying for TRPP~~

funds)) progress toward meeting the project goal to reduce vehicle commute trips and commute VMT.

((p)) (o) Agent is an organization or individual who represents the private employer, public agency, nonprofit organization, developer, or property manager and is charged with managing the TRPP project or providing the ((employee)) commuter the financial incentive.

((q)) (p) The price per trip (or trip price) is the amount that WSDOT agrees to pay for each annualized vehicle commute ((vehicle)) trip reduced by a TRPP project, up to the number of trips proposed in the project goal. ((WSDOT will set a maximum price per trip that it is willing to pay, that does not exceed the estimated annualized cost of providing new roadway capacity. WSDOT may vary the maximum cost by year. WSDOT will provide the maximum cost per trip as part of the documents for applying for TRPP funds.

((r)) (q) A cost-effective ((application)) project is one that defines a project that will reduce ((commute)) vehicle commute trips and commute ((vehicle miles traveled)) VMT at ((a price equal to or less than WSDOT's maximum price per trip.

((s)) A basic project is a project that lasts up to two years.

((t)) A multi-year project is a project that lasts from three to five years.

((u)) less than the cost of providing new highway capacity and reduce traffic congestion in the project area.

((v)) (r) The award amount for a project is ((equal to the price per trip multiplied by the project goal)) the amount WSDOT awards to a project. It will be based on the proposed cost per vehicle commute trip and commute VMT reduced, as well as program funding levels and the project's scoring in the application process.

((w)) (s) Project partnership is a relationship between two or more organizations that is characterized by mutual cooperation, responsibility for the development and implementation of a project.

(3) Who can apply? TRPP funds are available on a statewide competitive basis for entrepreneurs, private employers, public agencies, nonprofit organizations, developers, and property managers or their agents who create cost-effective trip reduction projects. To be eligible for TRPP funds, the applicant must provide financial incentives to their own or other ((employees)) commuters for ridesharing, using public transportation, car sharing, nonmotorized commuting, telework, and/or ((compressed)) alternative work ((weeks. The statewide funds are available on a competitive basis for private employers, public agencies, nonprofit organizations, developers, and property managers or their agents who create cost-effective trip reduction projects)) schedules.

(4) What kinds of projects will be funded? To receive funds, ((the project must meet the program requirements and rank highly in the competitive review. The applicant determines the actual scope and design of the project. New and existing projects are eligible for selection. The primary focus of the review committee will be to select sustainable, cost-effective trip reduction projects, and if they are new or innovative, they will be given additional consideration.

(5) How are the program funds appropriated? The Revised Code of Washington, RCW 70.94.996 authorizes the legislature to appropriate funding for this program.

((6)) Are any of the TRPP funds set aside for specific use? Any funds appropriated to TRPP beyond the initial program level of seven hundred fifty thousand dollars per year may be used for projects within growth and transportation efficiency centers (GTEC) and for performance of local jurisdictions.

((a)) Up to eighty-five percent of any appropriated funds in excess of the initial program level will be available for GTEC projects.

((b)) GTEC projects will be subject to the same competitive processes and rules as projects funded with initial program funds.

((c)) Fifteen percent of any appropriated funds in excess of the initial program funds will be made available for CTR affected jurisdictions as local jurisdiction performance funds.

((d)) Appropriated funds in excess of the initial program funds will be made available to proposals outside of GTECs if there are funds remaining after all proposals within GTECs that fit the program structure for viable, cost-effective, trip reduction projects have been funded.

((e)) Any appropriated funds in excess of the initial program funds and any initial program funds that remain after start-up funds, performance funds, and performance bonuses are paid will be used for local jurisdiction performance funds.

((f)) WSDOT will determine the jurisdiction performance levels, and payments to the jurisdictions for performance will not exceed the maximum price per trip allowed by WSDOT.

((7)) How will the TRPP funds be distributed? A minimum amount of the TRPP funds is to be available for each of three funding zones: Ten percent of available funds for Central Puget Sound (CPS) (King, Pierce, Snohomish counties); ten percent of available funds for non-Central Puget Sound applications, and ten percent of available funds for statewide applications (applications with worksites in the CPS and outside the CPS). The remaining funds will be awarded based on the project's ranking and available funds. WSDOT is bound to this distribution only if there are applications that fit the program structure and are viable, cost-effective trip reduction projects. This applies to all current and future funds.

((8)) applicants must fully complete a TRPP proposal form provided by WSDOT and submit the form to WSDOT within the timeline set forth in the call for projects.

((5)) How much money will be awarded to individual projects? WSDOT awards funds ((will be allocated)) based on the estimated ((commute)) vehicle commute trip((s)) and ((miles traveled reduced for)) commute VMT that the project proposes to reduce. The applicant will provide an estimate of the anticipated performance ((their goal)) in reducing vehicle commute trips and commute VMT, and the price per trip that the ((project)) applicant will charge WSDOT for reducing a commute vehicle trip. Once the selection committee ranks the projects, WSDOT will award funds based on committee ranking until half of the program funds are awarded in each fiscal year or all cost effective projects are funded. A project for a single worksite may not receive more than one hundred thousand dollars per fiscal year.

((9)) ((6)) How much money can be awarded to ((applications)) projects with multiple partners? Each organization (agency or employer) on the ((application)) proposal may receive up to one hundred thousand dollars with

the total amount not to exceed two hundred fifty thousand dollars per ~~((application))~~ project proposal, per fiscal year ~~((as identified in RCW 70.94.996)).~~ ~~((If additional funds are appropriated by the legislature for this program,))~~ WSDOT may exceed this organization maximum award at their discretion if the legislature appropriates additional funds for this program.

~~((10))~~ **(7) Who can apply for a ~~((2))~~ partnership ~~((2))~~?** An agent ~~((“who will”))~~ or organization on behalf of agencies or employers provides the financial incentive to the ~~((employee))~~ commuter can submit a project partnership ~~((application))~~ proposal and be the prime recipient for the project. Project partnership proposals must include a description of each partner's roles, responsibilities and assurances for the project.

~~((11))~~ **(8) How does the applicant apply for the TRPP funds?** WSDOT will notify eligible applicants of the open period for ~~((applications))~~ proposals. WSDOT may open more than one ~~((application period))~~ call for TRPP proposals per year depending on ~~((whether all funds are awarded))~~ TRPP funding availability. To apply for TRPP funds, applicants (apply by submitting a completed “) must complete a TRPP (“application) proposal form during (an open application) the call for TRPP proposals period. The (“)TRPP (“application) proposal form is available upon request from WSDOT. WSDOT recommends that applicants within a CTR affected area notify the jurisdictional authority, e.g., regional transportation planning organization (RTPO), county, city, or transit agency, ((that they are submitting an application for TRPP funds)) so that they can coordinate the project with local trip reduction strategies and plans. This provides an opportunity for project coordination and potential partnership.

(a) Applicants may submit more than one project ~~((application))~~ proposal for consideration; however, ~~((when))~~ the combined sum of all the project costs ~~((are combined, they))~~ cannot exceed what the applicant is eligible to receive.

(b) ~~((Applicants may submit an application that will cover one or two years (basic project) or apply for projects that cover three to five years (multi-year projects).))~~

~~((c))~~ **(c) All projects must have a baseline measurement and a performance measurement.** All applicants must describe how they will measure performance for their project. ~~((Every project must have a baseline measurement and a final measurement. Additional measurements are required for multi-year projects, and interim measurements are optional for all projects.))~~ Projects may be rated based on the effectiveness and efficiency of the proposed measurement method. WSDOT may require projects to conform to WSDOT-approved measurement tools and methods.

~~((d))~~ **(c) All applicants must ((describe how and when they will implement their project.**

(e) For basic projects, applicants must estimate the number of vehicle trips and VMT reduced for each fiscal year as well as the project total.

(f) In the case of multi-year projects, applicants must estimate the number of vehicle trips and VMT reduced for each year, as well as a project total.

~~((12))~~ **fully and accurately complete a TRPP proposal form provided by WSDOT.**

(9) Can a ~~((basic))~~ project be renewed? ~~((A basic))~~ WSDOT may approve renewal for a project that performs well ~~((may be approved for a renewal));~~ however, the ~~((contractor))~~ applicant must ~~((reapply))~~ complete a TRPP proposal for the project. If the ~~((renewal is approved by the))~~ proposals review and selection committee~~((s))~~ approves the project, WSDOT may require the applicant ~~((may be required))~~ to conduct ~~((another))~~ a new baseline measurement for the project. Renewal ~~((applications))~~ proposals may include a proposed adjustment to the trip price and/or project goal. Adjustments to the trip price or goal are subject to ~~((approval by))~~ WSDOT. All ~~((basic))~~ projects are subject to termination if the project is not performing according to expectations or is not continuing to work towards the reduction of commute trips.

~~((13))~~ **(10) How will the ~~((application))~~ proposal be reviewed?** WSDOT staff will review all proposals and make recommendations to the selection committee comprised of members invited by the chair of the CTR board ~~((will select a committee)).~~ The committee will be comprised of between six and nine members ~~((will review the applications and selection. The project selection committee will)),~~ which include at least one member ~~((of))~~ from the CTR board, ~~((at least))~~ one member from Central Puget Sound ~~((and)),~~ one member from the rest of the state, ~~((at least))~~ one employer representative, ~~((at least))~~ one transit ~~((member and at least))~~ agency representative, one city government representative ~~((The committee will include at least)),~~ one member from the CTR technical advisory group ~~((TAG, a member of WSDOT familiar with performance measurement)),~~ and ~~((an RTPO))~~ one regional transportation planning organization representative. To maintain the integrity of the proposals review and selection process, no project applicants may serve on the proposals review and selection committee. The ((award)) committee will review and select projects based on staff review and the criteria ((as defined in subsection (12) of this section.

~~((14))~~ **What are the review criteria?** The applications will be reviewed based on the following criteria:

(a) **Cost effectiveness:** Does the project have a high likelihood of achieving its benefits at a relatively low expenditure of TRPP funds? Are the projected benefits achievable at a cost less than providing the equivalent roadway capacity?

(b) **Sustainability:** If this project is funded, will its benefits continue after the funding element of the project has been completed? Do the project design and partnerships indicate a high probability for continuing the project after all TRPP funds are used? Can the reduction in trips be sustained over a "multi-year project" timeline?

(c) **Innovation:** Is the proposed project a new idea, or something that's been done before but is new to the area? Does the project propose unique ways to reduce trips?

(d) **Measurability:** The performance of the project must be measurable. If an applicant proposes to use their own measurement approach, a detailed measurement plan must be submitted as a part of the application and must be approved by WSDOT. The measurement approach must be as accurate an estimate of the trips reduced as would be generated if the applicant made use of the WSDOT-developed measurement tool. Deviations from the approved measurement plan will be

subject to review and approval by WSDOT. WSDOT may reject an application or terminate the contract if the measurement deviation is not approved.

(e) **Project implementation:** What is the timeline for implementation of the project? When and how will the project be advertised to the target population? All projects must conduct a baseline measurement of all individual participants as they begin taking part in the project. If a project targets an entire worksite, the project must identify the worksite, and all employees must participate in the measurement, or the total number of employees at the worksite must be indicated in the baseline and performance measurements. The applicant must indicate the implementation timeline, proposed measurement methods (if other than WSDOT measurement tool) and measurement schedule in the application.

(f) **Project predictability:** Are the estimates of employee participation, trip reduction, and VMT reduction likely to be achieved based on the assessment of the review committee?

(g) **Redundancy:** Does the project propose to provide services that are already available to the employees?

(h) **Thoroughness:** Has the project been thoroughly researched and carefully thought out? Are adequate details presented in the application?

(15) **How will the recipient receive the money?** Once the projects have been reviewed, prioritized and selected, the applicant will enter into a contract with the Washington state department of transportation for implementation of the project. This contract will establish the amount of money the award recipient can receive for the project, the timelines, performance expectations, and the project's measurement plan. The recipient must submit a TRPP fund disbursement form provided by WSDOT in order to request funds. On this form the recipient will identify the funds requested and provide documentation of performance or expenditures for reimbursement of start-up costs. Applications for multi-year projects must demonstrate the organization's ability to accept payments for performance, as well as bonus funds, through the end of the project time frame. WSDOT will provide funds to the recipient through three approaches: Start-up, performance and performance bonus.

(a) **Start-up funds:** WSDOT will provide start-up funding on a dollar for dollar, cost-reimbursable basis, but will not exceed fifty percent of the total project award for the duration of the project. The recipient of basic project award may request start-up funds after the baseline measurement has begun. The recipient can request start-up funds throughout the project or until the final performance funds are paid. The recipient of a multi-year project award is eligible for start-up funds through a phased payment approach. To calculate the start-up fund disbursement for multi-year projects, multiply the total project amount by 0.5, then divide that number by the number of years in the project. This is the amount that will be available as start-up funds each year.

(b) **Performance funds:** The remaining award amount will be available to the recipient following performance measurement(s) for the project, based on the project's performance. All basic projects are required to measure at the end of the project and deliver the measurement data to WSDOT by June 1st. Projects that conduct interim measurements will

be eligible to receive a prorated portion of the performance funding following each measurement, with the balance available after the final measurement. Projects that do not conduct interim measurements will receive their remaining performance funds after the final measurement. For multi-year projects, the recipient must measure the project's performance at the end of each biennium (and deliver the measurement data to WSDOT by June 1st) at a minimum, and at the end of the project. The amount of performance funds paid will be calculated from the project's price per trip and performance. Projects must reduce trips to be eligible for any performance funds. The project application must describe the measurement schedule for the project, and the contract for the project will include a measurement schedule.

(c) **Performance bonus funds:** WSDOT will provide performance bonus funds only at the end of the contract period. The recipient will receive the funds for additional performance above the award amount based on the same price per trip reduced, including credit for VMT reduced, as identified in their contract. The recipient will be eligible to receive additional bonus funds up to one hundred twenty percent of the contracted price per trip, or up to the maximum price per trip allowed (whichever is less), for every trip that exceeds the project goal. WSDOT will make performance bonus funds available only if funds are remaining in the TRPP account.

(d)) established by WSDOT and communicated in project application guidance. WSDOT will make the final decision on which projects to fund and at what level.

(11) **Project implementation and penalties:** All ((award recipients)) contractors must implement their projects within three months (first quarter) after signing the contract in order to receive one hundred percent of the awarded funds. If the project is not implemented until the second quarter, only seventy-five percent of the awarded funds will be available; fifty percent if implementation does not occur until the third quarter; and twenty-five percent if implementation does not occur until the fourth quarter. A project is subject to termination if it has not been implemented by the fifth quarter. Project implementation or start of the project is defined as the completion of the project baseline measurement.

((+6)) (12) **What happens if a project does not perform?** All projects are subject to termination at WSDOT's discretion if the project is not performing or demonstrating progress toward achieving its goals.

(13) **What is the ((measurement)) performance payment schedule?** Every project must have a baseline measurement, and the baseline measurement must begin before ((WSDOT will make payments to reimburse start-up costs. Interim measurements can be conducted monthly or quarterly, and must be completed in order to request interim payments. Submission of interim measurements to receive interim payments is subject to prior WSDOT approval. Every project)) the contractors can receive reimbursement for start-up costs. The contractor must submit a project final performance measurement ((at the end of the project)) by the date specified by WSDOT in order to receive ((final)) performance payment. ((WSDOT must receive the final perfor-

mance measurements and request for funds by June 1st of the contract closure year.

(17) ~~What are interim measurements and payments?~~

When applicable and when approved in advance by WSDOT, recipients may request monthly and/or quarterly payments for trip and VMT reductions. WSDOT will prorate payments based on the project timeline and the interim performance measurement. The sum of all performance payments will not exceed the total funds awarded to the project. Recipients will also be able to receive start-up funds that are phased throughout the life of the project (see subsection (15)(a) of this section for details on start-up fund disbursement).

(18) ~~Can the price per trip be adjusted?~~ Multi-year projects and basic projects seeking a renewal may apply for an adjustment to the trip price and/or their goal at the end of each biennium. Adjustments to trip price and goal for the project will be subject to review and approval by WSDOT. Payments for multi-year projects are contingent upon the provision of legislative funding in future biennia.

(19) ~~What happens if a project does not perform?~~ All projects are subject to termination if the project is not performing according to expectations or is not continuing to work towards the reduction of commute trips. Projects must reduce trips to be eligible for any performance funds.

(20)) (14) ~~How are projects that overlap treated?~~ No applicant may claim full reduction in ((employee commute vehicle trips)) commuter vehicle commute trip or commute VMT that are claimed as part of another project. WSDOT will make an initial screening of awarded projects to determine whether projects overlap. If WSDOT finds that projects being considered for selection are likely to overlap, WSDOT will notify the applicants, and ((will provide them with the opportunity to adjust their trip prices and goals. If projects are selected that overlap, WSDOT will ask the applicants to propose a solution to the overlap. If a solution cannot be agreed upon by the applicants, WSDOT will adjust the payments for areas where it can determine overlap occurs, by dividing the amount per trip by the number of TRPP projects involved in the overlap. WSDOT will use the lower price per trip in the overlapped projects to calculate payment.

(21) ~~Performance documentation:~~ The applicant must, as part of the TRPP application, describe how the project will measure performance. WSDOT will make measurement instruments available to the project. The applicant may propose alternative ways to measure the project, but must provide a description of the alternative as part of the application. Use of any measurement instrument is subject to approval by WSDOT. WSDOT will incorporate language describing the project's measurement into the contract documents for the project. WSDOT will calculate the reduction in commute vehicle trips for the project, along with any credit for reduction in vehicle miles traveled. At its discretion, WSDOT may make software available to TRPP recipients to calculate the reductions directly.) provide them with the opportunity to form partnerships to be considered as one project for funding, or adjust their projects to avoid overlap. WSDOT will require funded overlapping projects to use the WSDOT-approved measurement tool that helps to eliminate the potential of paying for overlap. WSDOT may reject proposals that insufficiently address overlap.

WSR 09-08-122

PERMANENT RULES

STATE BOARD OF HEALTH

[Filed April 1, 2009, 9:28 a.m., effective May 2, 2009]

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

Purpose: The purpose of the control plan is to protect public health by revising the state-specific control plan to reduce the incidence of vibrio parahaemolyticus-related illness (vibriosis). The control plan consists of time-to-temperature controls, training, illness response, record-keeping requirements, and modified hazard analysis critical control points and harvest plans.

Citation of Existing Rules Affected by this Order: Amending WAC 246-282-006.

Statutory Authority for Adoption: RCW 69.30.030.

Adopted under notice filed as WSR 09-04-096 on February 4, 2009.

A final cost-benefit analysis is available by contacting Jessie J. DeLoach, Department of Health, Office of Shellfish and Water Protection, P.O. Box 47824, Olympia, WA 98504-7824, phone (360) 236-3302, fax (360) 236-2257, e-mail Jessie.DeLoach@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 1, Repealed 0.

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

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

Date Adopted: March 11, 2009.

Craig McLaughlin
Executive Director

AMENDATORY SECTION (Amending WSR 08-11-051, filed 5/15/08, effective 5/19/08)

WAC 246-282-006 Washington state *Vibrio parahaemolyticus* control plan. (1) The Washington state *Vibrio parahaemolyticus* control plan, also known as the control plan, establishes harvest, temperature control, and ((transport)) transportation requirements for oysters intended for raw consumption during the months of May through September. This section does not apply to shucked oyster meats labeled "for cooking only." The requirements of this section are in addition to Chapter VIII of the ((2005)) 2007 National Shellfish Sanitation Program Model Ordinance (NSSP), Requirements for Harvesters, .03 Shellfish Temperature, Control Option 2; and consists of:

(a) Time((-) of harvest to((-) temperature control((s)) based on the growing area and month of the year;

(b) Harvest record requirements;

- (c) Vibrio illness response requirements;
- (d) Training requirements; and
- (e) Hazard Analysis Critical Control Point (HACCP) plan and harvest checklist requirements.

(2) All Puget Sound growing areas, including the Strait of Juan de Fuca, are subject to the requirements of this section. Growing areas in Grays Harbor and Willapa Bay where oysters have been epidemiologically associated (~~((linked))~~) as the source of any *Vibrio parahaemolyticus* (~~((associated))~~) illness are also subject to the requirements of this section.

(3) The department may grant an annual exemption to the control plan for Puget Sound growing areas, including the Strait of Juan de Fuca, where there has been no epidemiologically associated (~~((linked))~~) *Vibrio parahaemolyticus* (~~((associated))~~) illness ((if the licensed harvester or dealer can demonstrate safe and effective harvest and transportation methods, as developed in a written agreement)) after review and approval of a written exemption request.

(a) The written exemption request must include the following information:

- (i) Name of the growing area;
- (ii) Description of the harvesting methods;
- (iii) Description of the temperature control methods; and
- (iv) Description of the transportation methods.

(b) The department shall review the exemption request within five business days of submittal.

(c) If approved, the licensed harvester or dealer shall comply with the department-approved exemption.

(d) The department-approved exemption expires October 1 of the calendar year for which it is approved. If the growing area is epidemiologically associated as the source of a *Vibrio parahaemolyticus* illness at any time after approval of the exemption, the department shall issue an order revoking the exemption.

(4) Time((-) of harvest to((-) temperature controls are:

**Table 1
Puget Sound Growing Areas
(including the Strait of Juan de Fuca):**

Months of Control	Time((-) of harvest to((-) Temperature Control
May	Twelve hours
June and September	Five hours
July and August	Four hours

**Table 2
Coastal Growing Areas:**

Months of Control	Time((-) of harvest to((-) Temperature Control
July and August	Ten hours

(5) Licensed dealers and harvesters shall maintain harvest records showing the time of harvest (~~((to assure compliance with the control plan))~~) and the time oysters are placed under temperature control to demonstrate compliance with the control plan. If ownership of oysters is transferred prior to the time that time of harvest to temperature control requirements must be met, the licensed dealer or harvester shall

include in the harvest record date, time, and person or entity to whom the oysters were transferred. If the new owner is a licensed dealer, the dealer shall meet the time of harvest to temperature control requirements established in this section. The harvest times begin as follows:

(a) Intertidal (exposed) time of harvest~~((Time must))~~ begins after the first oysters to be harvested are exposed to the air by the receding tide.

(b) Submerged time of harvest~~((Time must))~~ begins after the first oysters harvested are exposed to the air and have been placed onto a conveyance, such as a barge or boat. Submerged harvest includes dredge harvesting or retrieval of harvest tubs, bags, baskets, or other containers of oysters previously filled which have been under water for a minimum of one hour for coastal areas and four hours for Puget Sound growing areas.

(c) Temperature control is achieved when harvested oysters are placed in a controlled environment with an ambient temperature of 45°F (7.2°C) or less.

~~((In the event of two sporadic *Vibrio parahaemolyticus* associated illnesses within thirty days where oysters from a single growing area are epidemiologically associated (linked) as the source, all licensed harvesters and dealers in the implicated growing area shall reduce the time to temperature control by one hour. The implicated growing area shall remain under the reduced time to temperature control throughout the control months for that area as defined in Table 1 or 2 of subsection (4) of this section.~~

~~((7) In the event of two additional sporadic *Vibrio parahaemolyticus* associated illnesses within thirty days under the one hour reduced time to temperature control where oysters from a single growing area are epidemiologically associated (linked) as the source, the growing area shall be closed to harvest and shipment of oysters intended for raw consumption throughout the control months as defined in Table 1 or 2 of subsection (4) of this section. If the two additional *Vibrio parahaemolyticus* associated illnesses are attributed to the same licensed harvester or dealer as the first two illnesses, the department shall conduct an investigation in accordance with the requirements as stated in the 2005 NSSP, Chapter II, Risk Assessment and Risk Management, to determine if the illnesses resulted from dealer practices or the growing area.~~

~~((8) An exemption to closure identified in subsection (7) of this section may be granted if the licensed harvester or dealer can demonstrate to the department, as developed in a written agreement, that an additional one hour reduction in time to temperature controls can be successfully implemented. If approved, the licensed harvester or dealer shall remain under the reduced time to temperature control throughout the control months for that area as defined in Table 1 or 2 of subsection (4) of this section.~~

~~((9)) All licensed harvesters and dealers in a growing area shall reduce the time of harvest to temperature control as defined in Table 1 or 2 of subsection (4) of this section by one hour if oysters from the growing area:~~

(a) Are epidemiologically associated as the probable source of two sporadic *Vibrio parahaemolyticus* illnesses; and

(b) Were harvested within thirty days of each other.

(7) A growing area shall be closed to harvest and shipment of oysters intended for raw consumption throughout the remainder of the control months for the calendar year when the following conditions are met:

(a) Oysters from the growing area are epidemiologically associated as the probable source of two additional sporadic *Vibrio parahaemolyticus* illnesses;

(b) Oysters from the growing area were harvested in compliance with the reduced time of harvest to temperature control provisions of subsection (6) of this section; and

(c) Oysters from the growing area were harvested within thirty days of the previous illnesses.

(8) If the two additional *Vibrio parahaemolyticus* illnesses specified in subsection (7) of this section are attributed to the same licensed harvester or dealer as the first two illnesses, the department shall conduct an investigation in accordance with the requirements as stated in the 2007 NSSP, Chapter II, Risk Assessment and Risk Management, to determine if the illnesses are the result of harvester or dealer practices or are linked to the growing area as the probable source. If the harvester or dealer practices are reasonably likely to have caused the illnesses:

(a) The harvester or dealer shall retake the training identified in subsection (12) of this section prior to renewal of their next year's license;

(b) The department may take disciplinary action against the harvester or dealer license; and

(c) The department will evaluate whether to associate the illnesses with the growing area.

(9)(a) The department may grant an exemption to closure identified in subsection (7) of this section if the licensed harvester or dealer can demonstrate in a written exemption request that an additional one hour reduction in the time of harvest to temperature control as identified in subsection (6) of this section can be successfully implemented. The written exemption request must include the following information:

(i) Name of the growing area;

(ii) Description of the harvesting methods;

(iii) Description of the temperature control methods; and

(iv) Description of the transportation methods.

(b) The department shall review the request within five business days of submittal.

(c) If approved, the licensed harvester or dealer shall comply with the requirements of the department-approved exemption throughout the remainder of the applicable control months for the particular growing area.

(10)(a) If the required time of harvest to temperature control period is not met, the licensed harvester or dealer shall either:

(i) Destroy the oysters; or

(ii) Remove all oysters from containers, disperse them within the original growing area, and allow a minimum of twenty-four hours for purging before reharvesting.

(b) If the required time of harvest to temperature control period is not met, the licensed harvester or dealer shall record the disposition of the oysters on the harvest record.

(11) In the event of a *Vibrio parahaemolyticus* illness outbreak where oysters from a particular growing area are epidemiologically associated as

the source, the requirements as stated in the 2007 NSSP, Chapter II, Risk Assessment and Risk Management, shall apply.

(12) All licensed harvesters and dealers shall complete an initial department-approved training specific to the requirements of this section prior to harvesting or shipping oysters intended for raw consumption during the months of May through September. All licensed harvesters and dealers shall complete department-approved refresher training following any revision of this section considered significant under RCW 34.05.328. Licensed harvesters and dealers who complete the training shall provide the training to those responsible for the on-site management of harvest activities for their operation, and document the training for responsible employees in their operational records.

(13) Following completion of the training required in subsection (12) of this section:

(a) All licensed harvesters planning to harvest oysters intended for raw consumption from May through September shall develop a harvest plan that describes the harvest, temperature control, and transportation methods that meet the requirements of subsections (4) and (6) of this section. Licensed harvesters shall obtain department approval of the harvest plan prior to harvesting oysters for raw consumption.

(b) All licensed dealers planning to harvest oysters intended for raw consumption from May through September shall amend their Hazard Analysis Critical Control Point (HACCP) plans to define the harvest, temperature control, and transportation methods that meet the requirements of subsections (4) and (6) of this section. Licensed dealers shall obtain department approval of the amended HACCP plan prior to harvesting oysters for raw consumption.