**WSR 09-13-028**
**PROPOSED RULES**
**SPOKANE REGIONAL CLEAN AIR AGENCY**
[Filed June 8, 2009, 2:46 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: SRCAA Regulation I, Article IX—Asbestos Control Standards: Section 9.02 Definitions, Section 9.03 Asbestos Survey Requirements, Section 9.04 Notification Requirements, Section 9.07 Procedures for Nonfriable Asbestos-Containing Roofing Material, Section 9.08 Alternate Means of Compliance, Section 9.09 Disposal of Asbetos [Asbestos]-Containing Waste Material, and Section 9.10 Compliance with Other Rules; SRCAA Regulation I, Article X, Section 10.09—Asbestos Project and Demolition Notification Waiting Period and Fees.

Hearing Location(s): Spokane Regional Clean Air Agency, 3104 East Augusta Avenue, Spokane, WA 99207, on August 6, 2009, at 9:00 a.m.

Date of Intended Adoption: August 6, 2009.

Submit Written Comments to: Matt Holmquist, 3104 East Augusta Avenue, Spokane, WA 99207, e-mail mholmquist@spokanecleanair.org, fax (509) 477-6828, by 4:30 p.m. on August 4, 2009.

Assistance for Persons with Disabilities: Contact Barbara Nelson by 4:30 p.m. on July 30, 2009, (509) 477-4727.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Add "moving a facility" to the definition of demolition. Define "facility." When someone presumes a material is asbestos-containing material (ACM) and it's not associated with an asbestos survey, the person making the determination must include a description, approximate quantity, and location of presumed ACM. Clarify that the notification waiting period shall not begin for incomplete notifications. Clarify the section on multiple asbestos projects/demolitions. Require that asbestos removal contractors submit a notification prior to removing ten or more linear feet of ACM, or forty-eight or more square feet of ACM, from an owner-occupied, single-family residence. Add a provision that allows the control officer to temporarily waive notification fees if a state of emergency is declared by an authorized local, state, or federal governmental agency. Clarify what constitutes the last completion date on record for purposes of filing an amendment. Limit the number of structures that can be filed on a single notification to five. Allow nonfriable roofing removal under the exception for hazardous conditions. Make alternative means of compliance work plans available to landfill owners/operators.

Reasons Supporting Proposal: Asbestos is a known human carcinogen. The goal is to prevent and minimize asbestos fiber release in order to protect public health.

Statutory Authority for Adoption: RCW 70.94.141(1), 70.94.380(2).

Statute Being Implemented: Chapter 70.94 RCW and 42 U.S.C. 7401 et seq., 42 U.S.C. 7412.

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

Name of Proponent: SRCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Matt Holmquist, SRCAA, 3104 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local clean air agency rule and as such, chapter 19.85 RCW does not apply.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule.

June 8, 2009
Matt Holmquist
Compliance Administrator

**AMENDATORY SECTION**
**REGULATION I, SECTION 9.02 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 to Subpart E) and whose certification is current.

B. AHERA Project Designer means a person who has successfully completed the training requirements for an abatement project designer established by EPA Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

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

D. Asbestos-Containing Material means any material containing more than one percent (1%) asbestos as determined using the method specified in the EPA publication, Method for the Determination of Asbestos in Building Materials, EPA/600/R-93/116, July 1993 or a more effective method as approved by EPA. It includes any material presumed to be asbestos-containing.

E. Asbestos-Containing Waste Material means any waste that contains or is contaminated with asbestos-containing material, except for nonfriable asbestos-containing roofing that remains nonfriable. Asbestos-containing waste material includes asbestos-containing material that has been removed from a structure, disturbed, or deteriorated in a way that it is no longer an integral part of the structure or component, 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 high efficiency particulate air (HEPA) filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

F. Asbestos Project means any activity involving the abatement, renovation, demolition, removal, salvage, cleanup or disposal of asbestos-containing material, or any other action or inaction that disturbs or is likely to disturb any

asbestos-containing material. It includes the removal and disposal of 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 nor does it include nonfriable asbestos-containing roofing material that will not be rendered friable.

G. Asbestos Survey means a written report resulting from a thorough inspection performed pursuant to Section 9.03 of this Regulation.

H. Competent Person means a person who is capable of identifying asbestos hazards and selecting the appropriate asbestos control strategy, has the authority to take prompt corrective measures to eliminate the hazards, and has been trained and is currently certified in accordance with the standards established by the Washington State Department of Labor and Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction).

I. Contiguous means touching or adjoining ((~~properties adjoining one another or in close proximity (e.g., structures separated only by a public roadway) that have the same property owner~~)).

J. Component means any equipment, pipe, structural member, or other item or material.

K. Controlled Area means an area to which only certified asbestos workers, representatives of the Agency, or other persons authorized by the Washington Industrial Safety and Health Act (WISHA), have access.

L. Demolition means wrecking, razing, leveling, dismantling, or burning of a structure, making the structure permanently uninhabitable or unusable in part or whole. Pursuant to the EPA asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, Subpart M, it includes wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations and includes moving a facility.

M. Disposal Container means a carton, bag, drum, box, or crate designed for the purpose of safely transporting and disposing of asbestos-containing waste material.

N. Facility means an institutional, commercial, public, industrial or residential structure, installation or building (including any structure, installation or building containing condominiums, or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; or any active or inactive waste disposal site. The term includes any structure, installation or building that was previously subject to the Asbestos NESHAP, regardless of its current function, apartments which are an integral part of a commercial facility, and mobile structures used for non-residential purposes. It also includes homes that are demolished or renovated to build non-residential structures (e.g., homes demolished for highway construction projects).

((~~N~~)) O. 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. Each of these descriptions is separate and distinct, meaning the term includes asbestos-containing material that, when dry, can be:

1. Crumbled by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal;

2. Pulverized by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal; or

3. Reduced to powder by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal).

Such materials include, but are not limited to, thermal system insulation, surfacing material, Nicolet roofing paper, and cement asbestos products.

((~~O~~)) P. 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.

((~~P~~)) Q. Nonfriable Asbestos-Containing Material means asbestos-containing material that is not friable (e.g., 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).

((~~Q~~)) R. Nonfriable Asbestos-Containing Roofing means an asbestos-containing roofing material where all of the following apply:

1. The roofing is a nonfriable asbestos-containing material;

2. The roofing is in good condition and is not peeling, cracking, or crumbling;

3. The roofing binder is petroleum-based and asbestos fibers are suspended in that base with individual fibers still encapsulated; and

4. The roofing binder exhibits enough plasticity to prevent the release of asbestos fibers in the process of removing and disposing of it.

((~~R~~)) S. Owner-Occupied, 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 (permanent and primary residence) both prior to and after renovation or demolition, and can demonstrate such to the Agency upon request (e.g., utility bills). This term includes houses, mobile homes, trailers, detached garages, outbuildings, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include rental property, multiple unit buildings (e.g., duplexes and condominiums with two or more units) or multiple-family units, nor does this term include any mixed-use building (e.g., a business being operated out of a residence), structure, or installation that contains a residential unit. This term does not include structures used for structural fire training exercises (Regulation I, Article VI, Section 6.01 and 40 CFR Part 61, Subpart M).

((~~S~~)) T. Owner's Agent means any person who leases, operates, controls, or is responsible for an asbestos project, renovation, demolition, or property subject to Article IX of this Regulation. It also includes the person(s) submitting a

notification pursuant to Section 9.04 of this Regulation and/or performing the asbestos survey.

((~~T~~)) U. Person means any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

((~~U~~)) V. Renovation means altering a structure or component in any way, other than demolition.

((~~V~~)) W. Structure means something built or constructed, in part or in whole. Examples include, but are not limited to, the following in part or in whole: houses, garages, commercial buildings, mobile homes, bridges, "smoke" stacks, pole-buildings, canopies, lean-twos, foundations, equipment, and other parts and miscellaneous components. This term does not include normally mobile equipment (e.g., cars, recreational vehicles, boats, etc.).

((~~W~~)) X. 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 material on structural members, or other material on surfaces for decorative purposes.

((~~X~~)) Y. Suspect Asbestos-Containing Material means material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material, fire barriers, gaskets, flooring material, and cement siding. Suspect asbestos-containing material must be presumed to be asbestos-containing material unless demonstrated otherwise (e.g., as determined using the method specified in the EPA publication, Method for the Determination of Asbestos in Building Materials, EPA/600/R-93/116, July 1993).

((~~Y~~)) Z. Thermal System Insulation means material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

((~~Z~~)) AA. Visible Emissions means any emissions that are visually detectable without the aid of instruments. The term does not include condensed uncombined water vapor.

((~~AA~~)) BB. Wallboard System means joint compound and tape specifically applied to cover nail holes, joints and wall corners. It does not mean "add on materials" such as sprayed on materials, paints, textured ceilings or wall coverings. Wallboard systems where joint compound and tape have become an integral system (40 CFR Part 61 FRL4821-7) may be analyzed as a composite sample for determining if it is an asbestos-containing material.

((~~BB~~)) CC. Waste Generator means any owner or owner's agent that generates, produces, or is in part or whole, responsible for an activity that results in asbestos-containing waste material.

((~~CC~~)) DD. Workday means Monday through Friday 8:00 a.m. to 4:30 p.m. excluding legal holidays observed by the Agency.

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION**

**REGULATION I, SECTION 9.03 ASBESTOS SURVEY REQUIREMENTS**

A. Except as provided for in Section 9.03.F of this Regulation, it shall be unlawful for any person to cause or allow any renovation, demolition, or asbestos project unless the property owner or the owner's agent first obtains an asbestos survey, performed by an AHERA building inspector.

B. Asbestos Survey Procedures.

1. An asbestos survey must consist of a written report resulting from a thorough inspection performed by an AHERA building inspector. The AHERA building inspector must use the procedures in EPA regulations 40 CFR 763.86 or an alternate asbestos survey method pursuant to Section 9.03.F of this Regulation. The inspection, and resulting asbestos survey report, must be performed to determine whether materials, components, or structures to be worked on, renovated, removed, disturbed, impacted, or demolished (including materials on the outside of structures) contain asbestos.

2. Except as provided for in Section 9.03.F of this Regulation, only an AHERA building inspector may determine, by performing an asbestos survey, that a suspect asbestos-containing material does not contain asbestos. Per the sampling procedures detailed in EPA regulations 40 CFR Part 763.86, the required number of bulk asbestos samples must be collected and analyzed pursuant to Section 9.02.D of this Regulation to determine that material does not contain asbestos.

3. Bulk samples must be analyzed for asbestos pursuant to Section 9.02.D of this Regulation by laboratories accredited by the National Voluntary Laboratory Accreditation Program (NVLAP).

C. Asbestos Survey Report.

These requirements apply to asbestos surveys, regardless of when they were performed. Except where additional information is required pursuant to EPA Regulation 40 CFR Part 763.85, asbestos surveys shall contain, at a minimum, all of the following information:

1. General Information.

a. Date that the inspection was performed;

b. AHERA Building Inspector signature, certification number, date certification expires, and name and address of entity providing AHERA Building Inspector certification;

c. Site address(es)/location(s) where the inspection was performed;

d. Description of the structure(s)/area(s) inspected (e.g., use, approximate age and approximate outside dimensions);

e. The purpose of the inspection (e.g., pre-demolition asbestos survey, renovation of 2nd floor, removal of acoustical ceiling texturing due to water damage, etc.), if known;

f. Detailed description of any limitations of the asbestos survey (e.g., inaccessible areas not inspected, survey limited to renovation area, etc.);

g. Identify all suspect-asbestos containing materials and their locations, except where limitations of the asbestos survey identified in Section 9.03.C.1.f (above) prevented such identification;

h. Identify materials presumed to be asbestos-containing material;

i. Exact location where each bulk asbestos sample was taken (e.g., schematic and/or other description);

j. Complete copy of the laboratory report for bulk asbestos samples analyzed, which includes all of the following:

1) Laboratory name, address and NVLAP certification number;

2) Bulk sample numbers;

3) Bulk sample descriptions;

4) Bulk sample results showing asbestos content; and

5) Name of the person at the laboratory that performed the analysis.

2. Information Regarding Asbestos-Containing Materials (including those presumed to contain asbestos).

a. Describe the color of each asbestos-containing material;

b. Identify the location of each asbestos-containing material (e.g., schematic and/or other description); and

c. Provide the approximate quantity of each asbestos-containing material (generally in square feet or linear feet).

D. Asbestos Survey Posting.

Except as provided for in Section 9.03.F of this Regulation, a complete copy of an asbestos survey shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site. If an AHERA Building Inspector determines there are no suspect asbestos-containing materials in the work area, this determination shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site.

E. Asbestos Survey Retention.

The property owner or owner's agent, and the AHERA building inspector that performed the asbestos survey (when the asbestos survey has been performed by an AHERA building inspector), shall retain a complete copy of the asbestos survey for at least 24 months from the date the inspection was performed and make it available to the Agency upon request.

F. Exceptions.

1. Owner-Occupied, Single-Family Residence Renovation Performed by the Owner-Occupant.

For renovation of an owner-occupied, single-family residence performed by the owner-occupant, an asbestos survey is not required. An owner-occupant's assessment for the presence of asbestos-containing material prior to renovation of an owner-occupied, single-family residence is adequate. A written report is not required.

2. Presuming Suspect Asbestos-Containing Materials are Asbestos-Containing Materials.

It is not required that an AHERA building inspector evaluate (e.g., sample and test) any material presumed to be asbestos-containing material. If material is presumed to be asbestos-containing material, this determination shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site. The determination shall include a description, approximate quantity, and location of presumed asbestos-asbestos containing material. The property owner or owner's agent and the person that determined that material would be presumed to be asbestos-containing material, shall retain a complete copy of the written determination for at least 24 months from the date it was made and shall make it available to the Agency upon request. Except for Section 9.03.A-E, ((~~A~~))all other requirements of this Regulation remain in effect.

3. Alternate Asbestos Survey

A written alternate asbestos survey method shall be prepared and used on occasions when conventional sampling methods required in EPA regulations 40 CFR 763.86 can not be exclusively performed (all other asbestos survey requirements in Section 9.03 of this Regulation apply). For example, conventional sampling methods may not be possible on fire damaged buildings or portions thereof, rubble or debris piles, and ash or soil, because they are not structures with intact materials and identifiable homogeneous areas. Alternate asbestos survey methodology may be used alone or, when possible, in combination with conventional survey methodology. An alternate asbestos survey methodology typically includes random sampling according to a grid pattern (e.g., random composite bulk samples at incremental 1((~~"~~))' depths from 10' x 10' squares of a debris pile), but is not limited to such. An illustration of how the principles of such sampling techniques are applied can be found in the EPA publication, Preparation of Soil Sampling Protocols: Sampling Techniques & Strategies, EPA/600/R-92/128, July 1992.

4. Demolition by Fire Fighting Instruction Fires.

Pursuant to RCW 52.12.150(6), asbestos surveys need not be performed by an AHERA Building Inspector. However, pursuant to Section 9.04.A.6 of this Regulation, the project fee in Section 10.09 is waived for any demolition performed in accordance with RCW 52.12.150(6), where the good faith inspection referred to in RCW 52.12.150(6) is an asbestos survey performed by an AHERA Building Inspector, as required in Section 9.03.A-E of this Regulation.

5. Underground Storage Tanks.

An asbestos survey is not required prior to renovation or demolition of an underground storage tank. However, if suspect asbestos-containing material is identified during the renovation or demolition of an underground storage tank, work shall cease until it is determined pursuant to Section 9.03.B and C of this Regulation whether or not the suspect asbestos-containing material is asbestos-containing material. All other requirements of this Regulation remain in effect.

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION**

**REGULATION I, SECTION 9.04 NOTIFICATION REQUIREMENTS**

A. General Requirements.

Except as provided for in Section 9.04.A.6.c, it(~~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 required fee and any additional information requested by the Control Officer or his/her authorized representative, has been submitted to the Agency, in accordance with the notification waiting period requirements in Article X, Section 10.09 of this Regulation. The notification must be submitted by the property owner or owner's agent on approved forms through the Agency's website, submitted at the Agency's place of business in person or via U.S. mail, or for those contractors using the Agency's prepayment account, notifications may be submitted via facsimile. Prepayment accounts will no longer be offered and notifications submitted via facsimile will no longer be accepted once the Agency begins accepting notifications via its website.

1. When the Notification Waiting Period Begins

The notification waiting period shall begin on the workday a complete notification is received by the Agency and shall end after the notification waiting period in Section 10.09 has passed (e.g., The notification waiting period for a notification submitted after 4:30 p.m. on a Friday shall not begin until the following Monday, provided Monday is not a holiday observed by the Agency. A 10-day notification period means work on an asbestos project or demolition can begin on day 11.). A notification is considered complete when all information requested on the notification, including the required fee and any additional information requested by the Control Officer or his/her authorized representative, is received by the Agency. The notification waiting period shall not begin for incomplete notifications (e.g., unpaid fees, notifications where the asbestos project start date and/or completion date and/or demolition start date is listed as "To Be Determined", when types and quantities of asbestos are unknown, etc.).

2. ((~~Asbestos~~)) Project Duration

The duration of an asbestos project shall be commensurate with the amount of work involved. The duration of the project may take into account applicable scheduling limitations (e.g., asbestos removal that needs to be done in phases, based on scheduling limitations determined by the property owner) provided scheduling limitations can be provided in writing to the Control Officer or his/her authorized representative upon request.

3. Multiple Asbestos Projects or Demolitions.

Notification for ((~~multiple asbestos projects or demolitions~~)) 5 or fewer structures may be filed by a property owner or owner's agent on one form if all the following criteria are met:

a. The notification applies only to asbestos projects or demolitions on contiguous real properties having the same owner or real properties with the same owner separated only by a public right-of-way (e.g., alley or roadway).

b. The work will be performed by the same abatement and/or demolition contractor.

c. The notification includes the specific site address for each structure. Where a specific site address isn't available for each structure (e.g., at a large commercial facility with multiple structures), provide a detailed description/location for each structure.

d. The notification includes the amount and type of asbestos-containing material ((~~in~~)) associated with each structure and indicates which structures will be demolished.

4. Notification Expiration.

Notifications are valid for no more than 365 days from the earliest original notification start date. A new notification shall be submitted to the Agency for work to be performed beginning or continuing more than 365 days from the earliest original notification start date and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09 of this Regulation.

5. Record Keeping.

a. A copy or printout of the notification, all amendments to the notification, and the complete asbestos survey shall be made available for inspection at all times at the asbestos project or demolition site.

b. The property owner or owner's agent shall retain a copy of all asbestos notification records for at least 2 years and make them available to the Agency upon request.

6. Notification Exceptions.

a. Asbestos Project Thresholds.

Notification is not required for asbestos projects involving less than 10 linear feet or 48 square feet (per structure, per calendar year) of any asbestos-containing material. Owners and/or owner's agents must file notification once the 10 linear feet or 48 square feet has been reached on any asbestos project or multiple asbestos project (per structure, per calendar year).

b. Nonfriable Asbestos-Containing Materials: Caulking, Window-Glazing, Roofing.

Notification is not required for removal and disposal of the following nonfriable asbestos-containing materials: caulking, window-glazing, or roofing. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

c. Owner-Occupied, Single-Family Residences.

((~~Notification is not required for renovations involving owner-occupied, single-family residences.~~)) For an asbestos project involving an owner-occupied, single-family residence performed by someone other than the resident owner (e.g., an asbestos removal contractor), it shall be the responsibility of the person performing the asbestos project to submit a complete notification, including the required fee and any additional information requested by the Control Officer or his/her authorized representative, to the Agency, in accordance with the notification waiting period requirements in Article X, Section 10.09 of this Regulation. The notification must be submitted by the owner's agent on approved forms. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

d. Underground Storage Tanks.

Notification is not required for demolition of underground storage tanks with no asbestos. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

e. Demolition of Structures With a Projected Roof Area ≤ 120 Square Feet.

Notification is not required for demolition of structures with a projected roof area less than or equal to 120 square feet, unless asbestos-containing material is present. If asbestos-containing material is present, asbestos project notification requirements apply. All other requirements remain in effect except as provided by Article IX.

f. Demolition by Fire Fighting Instruction Fires.

The project fee in Section 10.09 is waived for any demolition performed in accordance with RCW 52.12.150(6), where the good faith inspection referred to in RCW 52.12.-150(6) is an asbestos survey performed by an AHERA Building Inspector, as required in Section 9.03.A-E of this Regulation.

g. Abandoned Asbestos-Containing Material.

The Control Officer may waive part or all of the notification period and project fee, by written authorization, for disposal of abandoned (without the knowledge or consent of the property owner) asbestos-containing materials. All other requirements remain in effect.

h. Emergencies.

The advance notification period may be waived if an asbestos project or demolition must be conducted immediately because of any of the following:

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

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

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

4) The project must proceed to avoid imposing an unreasonable financial burden.

i. State of Emergency.

If a state of emergency is declared by an authorized local, state, or federal governmental official due to a storm, flooding, or other disaster, the Control Officer may temporarily waive part or all of the project fee(s) by written authorization. The written authorization shall reference the applicable state of emergency, what fee(s) will be waived, to what extend the fee(s) will be waived, and the effective date(s) of the fee(s) waiver.

B. Amendments.

1. Mandatory Amendments.

Amendments must be submitted by the person or party that originally submitted the notification ((~~or, if applicable, submitted the most recent notification amendment on file with the Agency,~~)) unless that person or party explicitly names another person or party that is authorized to file an amendment to the original notification or most recent amendment filed with the Agency. An amendment shall be submitted to the Agency for any of the following changes in notification, must be submitted in accordance with the advance notification requirements in Section 10.09 of this Regulation (e.g., In order to change the asbestos project start date or place a project "on hold", an amendment must be submitted prior to the asbestos project start date listed on the original notification or, if applicable, prior to the start date submitted on the most recent notification amendment on file with the Agency.), and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09 of this Regulation:

a. Project Type.

Changes in the project type (e.g., from asbestos removal only to asbestos removal and demolition) or cancellation of a project filed under a notification.

b. Job Size.

Increases in the job size category, which increase the fee or changes the advance notification period. For an amendment where the project type or job size category is associated with a higher fee, a fee equal to the difference between the fee associated with the most recently submitted notification and the fee associated with the increased project type or job size category shall be submitted.

c. Type of Asbestos.

Changes in the type of asbestos-containing material that will be removed.

d. Start Date.

Changes in the asbestos project start date or earliest demolition start date including placing a project "on hold" or "off hold" (e.g., an asbestos project is temporarily delayed and a new start date has not been confirmed) or canceling a notification altogether.

e. Completion Date.

Changes in the asbestos project ((~~or demolition~~)) completion date including placing a project "on hold" or "off hold" (e.g., an asbestos project is temporarily delayed and a new end date has not been confirmed).

2. Opportunity for Amendment.

a. Last ((~~Asbestos Removal~~)) Completion Date on Record.

In no case shall an amendment be accepted by the Agency if it is filed after the last completion date on record. Where the notification project type indicates asbestos removal only, the last completion date on record refers to the last asbestos project completion date on record. Where the notification project type indicates asbestos removal and demolition or demolition with no asbestos removal, the last completion date on record is 365 days from the earliest original notification start date. In the case of additional work to be performed after the last completion date on record, a new notification shall be submitted to the Agency and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09 of Article X of this Regulation.

b. Canceled Notification.

Once a property owner or owner's agent cancels a notification, it shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a new, complete notification, including the required fee and any additional information requested by the Control Officer, has been submitted to the Agency on approved forms through the Agency's website or in person at the Agency's place of business by the property owner or owner's agent, in accordance with the advance notification period requirements contained in Article X, Section 9.04.A and 10.09 of this Regulation).

c. Adding Structures or Changing Project Sites.

Amendments may not be used to add structures ((~~or change project site addresses listed on~~)) to a previously submitted notification if the structure(s) meet(s) the definition of a facility in Section 9.02.

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION**

**REGULATION I, SECTION 9.07 PROCEDURES FOR NONFRIABLE ASBESTOS-CONTAINING ROOFING MATERIAL**

A. Method of Removal for Nonfriable Asbestos-Containing Roofing Material.

All of the following asbestos removal methods shall be employed for nonfriable asbestos-containing roofing material as defined in Section 9.02 of this Regulation:

1. The nonfriable asbestos-containing roofing material shall be removed using methods, such as spud bar and knife, which do not render the material friable. Removal methods such as sanding, grinding, abrading, or sawing shall not be employed ((~~unless the material that is disturbed is handled in accordance with Section 9.06.B of this Regulation~~)).

2. After being removed, nonfriable asbestos-containing roofing material shall be transferred to a disposal container as soon as possible after removal. In no case shall the transfer occur later than the end of each work shift.

3. Each disposal container shall have a sign identifying the material as nonfriable asbestos-containing roofing material and shall be transported to, and disposed of at, an approved waste disposal site in compliance with applicable local, state, and federal regulations.

4. Appropriate dust control methods as provided in Article VI, Section 6.05 of this Regulation shall be used to control fugitive dust emissions.

**AMENDATORY SECTION**

**REGULATION I, SECTION 9.08 ALTERNATE MEANS OF COMPLIANCE**

A. Alternate Asbestos Project Work Practices for Removing Asbestos-Containing Material Prior to Demolition.

Where standard asbestos project work practices in Section 9.06.B can not be utilized to remove asbestos-containing material (financial considerations aside) prior to demolition, when demolition has already occurred, or a similar situation exists (typically leaving a pile/area of debris, rubble, ash, and/or soil), an alternate asbestos removal method may be employed provided it complies with all of the following:

1. Qualifications of Person Preparing an Alternate Work Plan (AWP).

An AHERA Project Designer who is also a Certified Industrial Hygienist or an AHERA Project Designer who is also a Licensed Professional Engineer must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an AWP that ensures the planned control methods will be as effective as the work practices in Section 9.06.B of this Regulation.

2. AWP Contents.

The AWP must contain all of the following information:

a. Reason(s) why standard work practices can not be utilized;

b. Date the work area was evaluated by the AHERA Project Designer that prepared the AWP;

c. Site address(es)/location(s) where the inspection was performed;

d. The purpose of the evaluation (e.g., asbestos removal from an electrical structure or component where standard wet methods cannot be utilized, removal and disposal of a debris pile resulting from a fire-damaged structure, etc.);

e. If an asbestos survey was performed, incorporate it by reference;

f. All procedures that will be followed for controlling asbestos emissions during the asbestos project;

g. Procedures that will be followed for the final inspection of the property to ensure that asbestos-containing material has been removed and disposed of in accordance with applicable regulations;

h. The AHERA Project Designer that prepares the AWP must state in the AWP, that in his/her professional opinion, the control methods identified in the AWP will be as effective as the work practices in Section 9.06.B; and

i. Signature of the AHERA Project Designer that prepared the AWP, AHERA Project Designer certification number, and date certification expires.

3. Asbestos Survey.

If an asbestos survey is not performed pursuant to Section 9.03 of this Regulation, it must be presumed that the asbestos project involves friable and nonfriable asbestos-containing material.

4. AWP Procedures.

The AWP must identify in detail all procedures that will be followed for controlling asbestos emissions during the asbestos project (e.g., during asbestos removal, when workers are off-site, etc.). Unless alternate procedures are specified in the AWP by an AHERA Project Designer who is also a Certified Industrial Hygienist or an AHERA Project Designer who is also a Licensed Professional Engineer, the AWP shall include all of the following requirements in Section 9.08.A.4.a-f of this Regulation:

a. Controlled Area.

The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only. The controlled area shall protect persons outside the controlled area from potential exposure to airborne asbestos.

b. Wetting.

All materials and debris shall be handled in a wet condition.

1) Absorbent materials shall be saturated with a liquid wetting agent prior to removal. Wetting shall continue until all the material is permeated with the wetting agent. Any unsaturated surfaces exposed during removal shall be wetted immediately.

2) Nonabsorbent materials shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during the removal. They shall be wetted after removal, as necessary, to assure they are wet when sealed in leak-tight containers. Any dry surfaces exposed during removal shall be wetted immediately.

c. Asbestos-Containing Waste Materials.

1) All asbestos-containing waste material and/or asbestos contaminated waste material shall be kept wet and shall be sealed in leak-tight containers while still wet, as soon as possible after removal but no later than the end of each work shift.

2) The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

3) Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be readable without opening the container.

4) Leak-tight containers shall be kept leak-tight.

5) The asbestos-containing waste material shall be stored in a controlled area until transported to an approved waste disposal site.

d. Air Monitoring.

Procedures that shall be followed for air monitoring at the outside perimeter of the controlled area, both upwind and downwind, to ensure that the asbestos fiber concentrations do not exceed a net difference (between concurrent upwind and downwind monitoring results) of 0.01 fibers per cubic centimeter (f/cc) as determined by the NIOSH Manual of Analytical Methods, Method 7400 (asbestos and other fibers by PCM).

1) The procedures shall require that any air sampling cassette(s) that become(s) overloaded with dust be immediately replaced. Work shall stop until an AHERA Project Designer (who is also a Certified Industrial Hygienist or a Licensed Professional Engineer) has re-evaluated the engineering controls for dust control, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

2) The Agency shall immediately be notified by the owner or owner's agent if the airborne fiber concentrations exceed a net difference of 0.01 f/cc and work shall stop until an AHERA Project Designer (who is also a Certified Industrial Hygienist or a Licensed Professional Engineer) has re-evaluated the engineering controls, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

e. Competent Person.

1) A competent person shall be present for the duration of the asbestos project (includes demolition) and shall observe work activities at the site.

2) The competent person shall stop work at the site to ensure that friable asbestos-containing material found in the debris, which can readily be separated, is removed from the main waste stream and is placed and maintained in leak-tight containers for disposal.

3) The competent person shall stop work if AWP procedures are not be followed and shall ensure that work does not resume until procedures in the AWP are followed.

f. Separation of Materials.

If the project involves separation of clean(ed) materials from debris piles (e.g., rubble, ash, soil, etc.) that contain or are contaminated with asbestos-containing materials, the material separation procedures shall be included in the AWP. In addition to these procedures, the following requirements apply:

1) The AWP shall identify what materials will be separated from the asbestos-containing material waste stream and shall describe the procedures that will be used for separating and cleaning the materials. All materials removed from the asbestos-containing waste material stream shall be free of asbestos-containing material.

2) A competent person shall ensure that materials being diverted from the asbestos-containing waste material stream are free of asbestos-containing material.

5. Visible Emissions.

No visible emissions shall result from an asbestos project.

6. Record Keeping.

a. The AWP shall be kept at the work site for the duration of the project and made available to the Agency upon request. The property owner or owner's agent and AHERA Project Designer that prepared the AWP shall retain a complete copy of the AWP for at least 24 months from the date it was prepared and make it available to the Agency upon request.

b. Complete copies of other asbestos-related test plans and reports (e.g., testing soil for asbestos, air monitoring for asbestos, etc.) associated with the project shall also be retained by the property owner or owner's agent for at least 24 months from the date it was performed and ((~~make it~~)) made available to the Agency upon request. The person(s) preparing and performing such tests shall also retain a complete copy of these records for at least 24 months from the date it was prepared and make it available to the Agency upon request.

7. Other Requirements.

All applicable local, state, and federal regulations must be complied with.

B. Leaving Nonfriable Asbestos-Containing Roofing Material in Place During Demolition.

Nonfriable asbestos-containing roofing material as defined in Section 9.02 of this Regulation may be left in place during demolition, except for demolition by burning, if all of the following are met:

1. A signed and dated written determination was made by an AHERA Project Designer that includes all of the following:

a. A summary of the evaluation performed within the past 12 months, including a description of the type and current condition of asbestos-containing roofing materials;

b. A summary of the work practices and engineering controls that will be used;

c. A determination that nonfriable asbestos-containing roofing material will remain nonfriable during all demolition activities and subsequent disposal of the debris; and

d. The property owner or owner's agent and the AHERA Project Designer that performed the determination shall retain a complete copy of the determination for at least 24 months from the date it was performed and make it available to the Agency upon request.

2. Appropriate dust control methods as provided in Article VI, Section 6.05 of this Regulation shall be used to control fugitive dust emissions.

3. Each disposal container shall have a sign identifying the material as nonfriable asbestos-containing roofing material and shall be transported to, and disposed of at, an approved waste disposal site in compliance with applicable local, state, and federal regulations.

C. Exception for Hazardous Conditions (Leaving Friable and/or Nonfriable Asbestos-Containing Material (((~~(Other than Nonfriable Roofing)~~))) in Place During Demolition).

Friable and nonfriable asbestos-containing material need not be removed prior to demolition, if it is not accessible (e.g., asbestos cannot be removed prior to demolition) because of hazardous conditions such as structures or buildings that are structurally unsound, structures or buildings that are in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. At a minimum, the owner and owner's agent must comply with all of the following:

1. Qualifications of Person Preparing an Alternate Work Plan (AWP).

An AHERA Project Designer who is also a Certified Industrial Hygienist or an AHERA Project Designer who is also a Licensed Professional Engineer must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an Alternative Work Plan (AWP) that ensures the planned control methods will be protective of public health.

2. Determination of a Hazardous Condition.

An authorized government official or a licensed structural engineer must determine in writing that a hazard exists, which makes removal of asbestos-containing material dangerous to life or health.

3. AWP Contents.

The AWP must contain all of the following information:

a. Date the work area was evaluated by the AHERA Project Designer that prepared the AWP;

b. Site address(es)/location(s) where the inspection was performed;

c. A copy of the hazardous conditions determination from a government official or licensed structural engineer;

d. If an asbestos survey was performed, incorporate it by reference;

e. All procedures that will be followed for controlling asbestos emissions during the asbestos project;

f. The AHERA Project Designer that prepares the AWP must state in the AWP, that in his/her professional opinion, the control methods identified in the AWP will be protective of public health; and

g. Signature of the AHERA Project Designer that prepared the AWP, AHERA Project Designer certification number, and date certification expires.

4. AWP Procedures.

The requirements of Section 9.08.A.3-7 of this Regulation shall be complied with.

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION**

**REGULATION I, SECTION 9.09 DISPOSAL OF ASBESTOS-CONTAINING WASTE MATERIAL**

A. Disposal Within 10 Days of Removal.

Except as provided in Section 9.09.C (Temporary Storage Site) of this Regulation, it shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless it is deposited within 10 calendar days of removal at a waste disposal site authorized to accept such waste.

B. Waste Tracking Requirements.

It shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless all of the following requirements are met:

1. Maintain waste shipment records, beginning prior to transport, using a separate form for each waste generator that includes all of the following information:

a. The name, address, and telephone number of the waste generator.

b. The approximate quantity in cubic meters or cubic yards.

c. The name and telephone number of the disposal site operator.

d. The name and physical site location of the disposal site.

e. The date transported.

f. The name, address, and telephone number of the transporter.

g. A certification that the contents of the consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition to transport by highway according to applicable waste transport regulations.

2. Provide a copy of the waste shipment record to the disposal site owner or operator at the same time the asbestos-containing waste material is delivered. If requested by the disposal site operator, a copy of the Alternate Work Plan or written determination as specified pursuant to Sections 9.08.A-C of this Regulation shall also be provided to the disposal site owner or operator at the same time the asbestos-containing waste material is delivered.

3. If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 35 calendar days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the disposal site to determine the status of the waste shipment.

4. If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 45 calendar days of the date the waste was accepted by the initial transporter, report in writing to the Control Officer. Include in the report, a copy of the waste shipment record and cover letter signed by the waste generator, explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

5. Retain a copy of all waste shipment records for at least 24 months from the date it was generated, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site. A copy of waste shipment records shall be provided to the Agency upon request.

C. Temporary Storage Site.

A person may establish a facility for the purpose of collecting and temporarily storing asbestos-containing waste material if the facility is approved by the Control Officer and all of the following conditions are met:

1. A complete application for Temporary Storage of asbestos containing waste material is submitted to and approved by the Agency.

2. The application must be accompanied by a non-refundable fee as set in the fee schedule.

3. Accumulated asbestos-containing waste material shall be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons.

4. All asbestos-containing waste material shall be stored in leak-tight containers which are maintained in leak-tight condition.

5. The storage area must be locked except during transfer of asbestos-containing waste material.

6. Storage, transportation, disposal, and return of the waste shipment record to the waste generator shall not exceed 90 calendar days.

7. Asbestos-Containing Waste Material Temporary Storage Permits approved by the Agency are valid for one calendar year unless a different time frame is specified in the permit.

D. Disposal of Asbestos Cement Pipe.

Asbestos cement pipe used on public right-of-ways, public easements, or other places receiving the prior written approval of the Control Officer may be buried in place if the pipe is left intact (e.g., not moved, broken or disturbed) and covered with at least 3 feet or more of non-asbestos fill material. All asbestos cement pipe fragments that are 1 linear foot or less and other asbestos-containing waste material shall be disposed of at a waste disposal site authorized to accept such waste.

**AMENDATORY SECTION**

**REGULATION I, SECTION 9.10 COMPLIANCE WITH OTHER RULES**

((~~A. Other Requirements.~~

~~1.~~)) Other government agencies have adopted rules that may apply to asbestos regulated under these rules including, but not limited to, the U.S Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, and the Washington State Department of Labor and Industries. Nothing in the Agency's rules shall be construed as excusing any person from complying with any other applicable local, state, or federal requirement.

((~~2. The Agency implements and enforces the requirements of 40 CFR Part 61 Subpart M (except for asbestos on roadways, asbestos demolition or renovation activities subject to 40 CFR 61.145).~~))

**AMENDATORY SECTION**

**REGULATION I, SECTION 10.09 ASBESTOS PROJECT AND DEMOLITION NOTIFICATION WAITING PERIOD AND FEES**

A. Written notification, as required in Article IX, Section 9.04, shall be in accordance with the waiting period in the tables that follow and shall be accompanied by the appropriate nonrefundable fee, as specified in the fee schedule.

| Owner-occupied, single-family residence | Waiting Period |
|---|---|
| ((≥)) ≥ 0 In ft and/or ((≥)) ≥ 0 sq ft asbestos performed by residing owner | Notification Not Required |
| < 10 In Ft and/or < 48 sq ft asbestos not performed by residing owner | Notification Not Required |
| ≥ 10 In ft and/or ≥ 48 sq ft asbestos not performed by residing owner | Prior Notice |
| All Demolition | 3 Days |

| Not owner-occupied, single-family residence | Waiting Period |
|---|---|
| ((≤)) ≤ 10 In ft and/or ((≤)) ≤ 48 sq ft asbestos | Notification Not Required |
| 10-259 In ft and/or 48-159 sq ft asbestos | 3 Days |
| 260-999 In ft and/or 160-4,999 sq ft asbestos | 10 Days |
| ≥ 1,000 In ft and/or ≥ 5,000 sq ft asbestos | 10 Days |
| All Demolition | 10 Days |

| Additional categories | Waiting Period | Reference |
|---|---|---|
| Emergency | Prior Notice | Sect.((~~ion~~)) 9.04.A.6.h |
| Amendment | Prior Notice | Section 9.04.B |
| Alternate Asbestos Project Work Practices | 10 days | Section 9.08.A |
| Demolition with Nonfriable Asbestos Roofing | 10 days | Section 9.08.B |
| Exception for Hazardous Conditions | 10 days | Section 9.08.C |

B. The Board shall periodically review the fee schedule for notifications submitted pursuant to Section 9.04 and determine if the total projected fee revenue to be collected pursuant to this Section is sufficient to fully recover program costs. Any proposed fee revisions shall include opportunity for public review and comment. Accordingly, the Agency shall account for program costs. If the Board determines that the total projected fee revenue is either significantly excessive or deficient for this purpose, then the Board shall amend the fee schedule to more accurately recover program costs.

## WSR 09-14-006
### WITHDRAWAL OF PROPOSED RULES
### DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed June 22, 2009, 9:40 a.m.]

The children's administration requests the withdrawal of two WAC sections listed in the repeal section of the proposed rule making notice filed as WSR 09-10-024 on April 28, 2009 (WAC 388-25-0225 and 388-25-0235). The department no longer wishes to repeal these two WAC sections at this time.

Stephanie E. Schiller
Rules Coordinator

## WSR 09-14-012
### PROPOSED RULES
### DEPARTMENT OF REVENUE

[Filed June 22, 2009, 11:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-10-092.

Title of Rule and Other Identifying Information: WAC 458-20-12401 Special stadium sales and use tax, this rule (Rule 12401) explains the special stadium sales and use taxes imposed in 1995 (RCW 82.14.360), which is currently assessed only in King County.

Hearing Location(s): Capital Plaza Building, 4th Floor, L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504 (copies of draft rules are available for viewing and printing on our web site at http://dor.wa.gov/content/FindALawOrRule/RuleMaking/default.aspx), on August 6, 2009, at 10:30 a.m.

Date of Intended Adoption: August 13, 2009.

Submit Written Comments to: Gayle Carlson, P.O. Box 47453, Olympia, WA 98504-7453, e-mail GayleC@dor.wa.gov, fax (360) 586-0127, by August 6, 2009.

Assistance for Persons with Disabilities: Contact Martha Thomas at (360) 725-7497, no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing an amendment to update Rule 12401, which:

- Removes language from the opening paragraph identifying the 1995 legislation imposing the tax. This information is being removed because it is no longer needed;
- Adds "movie theaters" to the list of facilities that often sell food and beverages for immediate consumption. The term is added to the examples of facilities provided in subsection (2)(a) definition of "restaurant." This addition does not reflect a change in the department's interpretation of the law. It incorporates information now provided in Det. 98-098E, 17 WTD 55 (1998); and
- Updates language in subsection (4)(a), which is an example pertaining to bakery sales, to incorporate terminology consistent with Washington law that adopted provisions of the streamlined sales and use tax agreement. This update does not change the tax consequences of the example.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.14.360(1).

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6126; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Gilbert Brewer, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule does not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

June 22, 2009
Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 96-16-086, filed 8/7/96, effective 9/7/96)

**WAC 458-20-12401 Special stadium sales and use tax.** (1) **Introduction.** RCW 82.14.360 ((~~was amended in the third special session in 1995. (See chapter 1, 1995 3rd sp.s.) Effective January 1, 1996.~~)) provides for a special stadium sales and use tax that applies to sales of food and beverages by restaurants, taverns, and bars in counties with a population of one million or more. Currently, the special stadium tax applies only in King County. The tax applies only to those food and beverage sales that are already subject to the retail sales tax. Grocery stores, mini-markets, and convenience stores were specifically excluded from the definition of a restaurant and are not required to collect the tax. However, a restaurant located within a grocery store, mini-market, or convenience store is subject to this tax if the restaurant is owned or operated by a different legal entity from the store or market. This section explains when the tax will apply.

(2) **Definitions.** The following definitions apply to this section.

(a) "Restaurant" means any establishment having special space and accommodation where food and beverages are regularly sold to the public for immediate, but not necessarily on-site, consumption, but excluding grocery stores, mini-markets, and convenience stores. Restaurant includes, but is not limited to, lunch counters, diners, coffee shops, espresso shops or bars, concession stands or counters, delicatessens, and cafeterias. It also includes space and accommodations where food and beverages are sold to the public for immediate consumption that are located within hotels, motels, lodges, boarding houses, bed-and-breakfast facilities, hospitals, office buildings, movie theaters, and schools, colleges, or universities, if a separate charge is made for such food or beverages. Mobile sales units that sell food or beverages for immediate consumption within a place, the entrance to which is subject to an admission charge, are "restaurants" for purposes of this tax. So too are public and private carriers, such as trains and vessels, that sell food or beverages for immediate consumption on trips that both originate and terminate within the county imposing the special stadium tax if a separate charge for the food and/or beverages is made. A restaurant is open to the public for purposes of this section if members of the public can be served as guests. "Restaurant" does not include businesses making sales through vending machines or through mobile sales units such as catering trucks or sidewalk vendors of food or beverage items.

(b) "Tavern" has the same meaning here as in RCW 66.04.010 and means any establishment with special space and accommodation for the sale of beer by the glass and for consumption on the premises.

(c) "Bar" means any establishment selling liquor by the glass or other open container and includes, but is not limited

to, establishments that have been issued a class H license by the liquor control board.

(d) "Grocery stores, mini-markets, and convenience stores," have their ordinary and common meaning.

(3) **Tax application.** This special stadium sales and use tax currently applies only to food and beverages sold by restaurants, bars, and taverns in King County. The tax is in addition to any other sales or use tax that applies to these sales. This special tax only applies if the regular sales or use tax imposed by chapters 82.08 or 82.12 RCW applies.

(a) The tax applies to the total charge made by the restaurant, tavern, or bar, for food and beverages. If a mandatory gratuity is included in the charge that, too, is subject to the tax.

(b) Catering provided by a restaurant, tavern, or bar is also subject to the tax. However, when catering is done by a business that does not meet the definition of restaurant in subsection (2) of this section, has no facilities for preparing food, and all food is prepared at the customer's location, the charge is not subject to the tax.

(c) In the case of catering subject to the tax, if a separate charge is made for linens, glassware, tables, tents, or other items of tangible personal property that are not required for the catering, those separate charges are not subject to the tax. However, separately stated charges for items that are required as a part of the catering service, such as waitpersons or mandatory gratuities, are subject to the tax.

(4) **Examples.** The following examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances. For these examples, assume the transactions occur in King County.

(a) ((~~XYZ~~)) The Hot Bakery operates a coffee shop where customers may purchase baked goods and coffee for consumption on the premises ((~~or may purchase bakery products for consumption elsewhere~~)). ((~~The sales of~~)) When utensils are provided with the bakery goods ((~~and beverages for consumption on the premises are~~)), the sale of bakery goods, along with the coffee is considered prepared food. The sale of prepared food is subject to the retail sales tax and special stadium tax. ((~~The~~)) If the bakery products are bagged or boxed without utensils, the retail sales and special stadium ((~~tax does~~)) taxes do not apply ((~~to the bakery goods sold "to go" because~~)) under the provisions of RCW 82.08.0293 ((~~and~~)). See WAC 458-20-244((~~(6) these bakery goods are not subject to the state retail sales tax. Since the state retail sales tax does not apply to these sales, neither does the special stadium sales tax~~)) Food and food ingredients, for information about the sales of prepared foods.

(b) ((~~XYZ~~)) Charlie operates a "fast food" business. Customers may consume the food and beverages on the premises or may take the food "to go" for consumption elsewhere. All sales of food and beverages by this business are subject to the special stadium tax, including the food and beverages sold "to go."

(c) ((~~XYZ~~)) Jane operates carts that may be set up on a sidewalk or within parks from which customers may purchase hot dogs and beverages. The cart includes heating facilities for preparation of hot dogs at the cart site. No seating is provided by the business. The site location is not owned or leased by ((~~the business~~)) Jane. These sales are not subject to the special stadium sales tax because the business does not have a designated space for the preparation of the food it sells. This business does not fit the definition of "restaurant." However, if ((~~XYZ~~)) Jane operates a mobile food service unit selling food or beverages for immediate consumption at fixed locations within the grounds of a stadium, arena, fairgrounds, or other place, admission to which is subject to an admission charge, then the special stadium tax applies.

(d) ((~~XYZ~~)) Bill operates a combination gas station and convenience store. The convenience store sells some groceries and also some prepared foods such as hot dogs and hamburgers. Customers may also purchase soft drinks or coffee by the cup. None of these sales are subject to the special stadium sales tax because of the specific language in the statute exempting convenience stores from the tax.

(e) ((~~XYZ~~)) Peter operates a business that sells prepared pizza. The business prepares and bakes the pizza at its premises. The business has no seating. Customers may order the pizzas by either entering ((~~the seller's~~)) Peter's place of business or by telephone. Customers may either take delivery at the seller's site or the business will deliver the pizza to the customer's residence or other site. These sales are subject to the special stadium sales tax because the business does have a designated site and facilities for the preparation of food for sale for immediate consumption, even though no seating is available. The regular retail sales tax applies to these sales since these sales are not exempt food products under RCW 82.08.0293 (2)(((~~c~~))).

(f) ((~~XYZ~~)) Jack has the exclusive concession rights to prepare and sell hot dogs within a sports facility. Customers place their orders and take delivery of the prepared food and beverages at ((~~the seller's~~)) Jack's site in the sports facility. ((~~XYZ~~)) Jack provides no seating that ((~~it~~)) he controls. Customers generally take the food and beverage to their seats and consume the items while watching the sports event. ((~~XYZ~~)) Jack will also prepare hot dogs and soft drinks at ((~~its~~)) his food bar and use ((~~its~~)) his employees or agents to sell these products to customers in the stands while the sports event is in progress. All of the sales of food and beverages by ((~~XYZ~~)) Jack are subject to the special stadium sales tax. ((~~XYZ's~~)) Jack's business operation meets the definition of "restaurant." ((~~XYZ~~)) Jack has set aside space that ((~~it~~)) he controls for the purpose of preparing food and beverages for immediate consumption for sale to the public.

(g) ((~~DEF~~)) Jinny operates a cafe within ((~~ABC's~~)) Abe's grocery store, for the sale of food or beverages for immediate consumption on the premises. ((~~ABC~~)) Abe's grocery store is a separate entity from ((~~DEF~~)) Jinny's cafe, and it leases the space for the cafe to ((~~DEF~~)) Jinny. Sales of food and beverages by ((~~ABC~~)) Abe's grocery store are exempt from the special stadium tax, but sales ((~~from~~)) at the cafe by ((~~DEF~~)) Jinny are subject to ((~~that~~)) retail sales tax and the special stadium sales tax.

**WSR 09-14-020**
**PROPOSED RULES**
**PUBLIC DISCLOSURE COMMISSION**
[Filed June 22, 2009, 4:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-20-135.

Title of Rule and Other Identifying Information: New WAC 390-16-049 Out-of-state political committees—Implementation of RCW 42.17.093 and amendments to WAC 390-16-050 Forms for contributions and expenditures of out-of-state political committees. These rules clarify the reporting requirements and make changes to PDC C-5 form filed by out-of-state political committees.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on August 27, 2009, at 9:30 a.m.

Date of Intended Adoption: August 27, 2009.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, e-mail dellis@pdc.wa.gov, fax (360) 753-1112, by August 25, 2009.

Assistance for Persons with Disabilities: Contact Nicole Stauffer by phone (360) 753-1111 or (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New WAC 390-16-049 is designed to clarify when a political committee that is located out-of-state is required to file as an in-state committee under RCW 42.17.040 through 42.17.090 and amendments to WAC 390-16-050 incorporate provisions of WAC 390-16-049 in the C-5 form and makes inflationary adjustments in compliance with RCW 42.17.093 (1)(g).

Reasons Supporting Proposal: To provide guidance and clarification in public disclosure reporting by out-of-state political committees.

Statutory Authority for Adoption: RCW 42.17.370 and 42.17.093.

Statute Being Implemented: RCW 42.17.093.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The new rule and the amended rule clarify when and how out-of-state political committees file reports for purposes of public disclosure.

Name of Proponent: [Public disclosure commission (PDC)], governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to the adoption of these rules pursuant to subsection (5)(a)(i) of section 201, and, to date, JARRC has not made section 201 application [applicable] to the adoption of these rules.

June 22, 2009
Douglas J. Ellis
Assistant Director

NEW SECTION

**WAC 390-16-049 Out-of-state political committees—Implementation of RCW 42.17.093.** (1) RCW 42.17.093 governs campaign reporting in Washington state by committees located outside of Washington. The statute directs that an out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state (and that is not otherwise required to report as an in-state committee) reports the information listed in RCW 42.17.093 on a C5 form (WAC 390-16-050). The committee begins reporting on a C5 form when it makes an expenditure supporting or opposing a Washington state candidate or political committee.

(2) To file as an out-of-state political committee, all the criteria in (a) and (b) of this subsection must be satisfied:

(a) **Out-of-state.** First, the committee must be located out-of-state. It must be maintaining its office or headquarters in another U.S. state or the District of Columbia, and has no office, street address or corporate registered agent in Washington state. If there is no office or headquarters in another state or the District of Columbia, and no corporate registered agent in Washington state, the political committee is deemed out-of-state if its treasurer resides in another U.S. state or the District of Columbia.

(b) **Organizational purpose and campaign activities.** Second, the committee must also be currently organized primarily for engaging in campaign activities in another state. Therefore, to qualify as a current out-of-state committee, the committee must also:

(i) Be currently registered and actively filing campaign disclosure reports in one or more other states and has been so filing for the preceding two years; and

(ii) Have organizational documents showing it was originally formed and is currently organized for the purpose of making expenditures in another state or soliciting contributions for use in another state's election campaigns; and

(iii) Have spent less than twenty percent of its aggregate expenditures for all political campaign activity nationwide at any point in any calendar year to support and/or oppose Washington candidates for state, local and judicial office, Washington ballot measures and/or Washington political committees.

(3) A committee that does not satisfy the criteria in subsection (2) of this section shall file as an in-state committee under chapter 42.17 RCW, including RCW 42.17.040 through 42.17.090.

(4) Out-of-state political committees reporting under RCW 42.17.093 are also subject to reporting pursuant to RCW 42.17.103 (political advertising independent expenditures) and RCW 42.17.565 through 42.17.575 (electioneering communications).

AMENDATORY SECTION (Amending WSR 08-01-059, filed 12/14/07, effective 1/14/08)

**WAC 390-16-050 Forms for contributions and expenditures of out-of-state political committees.** The official form for the report required by RCW 42.17.093 of contributions and expenditures of an out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW 42.17.040 through 42.17.090 is designated "C-5," revised ((~~1/08~~)) 11/09. Copies of this form are available at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504-0908. Any paper attachments shall be on 8 1/2" x 11" white paper.

((~~STRICKEN GRAPHIC~~

PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

Form **C5** 1/08

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RECEIVED

**OUT OF STATE COMMITTEE CONTRIBUTIONS TO WASHINGTON CANDIDATES OR COMMITTEES**

**1. Name and address of committee making the contribution**
Name
Street address
City / State / Zip

**2. Check appropriate box**
☐ This is the first report submitted during 20__
☐ This shows new expenditures, contributions or information changed from reports submitted previously this calendar year.

**3. Provide the purpose of the committee and the identity of any business, union, association or person with which the committee is affiliated (e.g., a State Committee of the Oregon Republican Party, Idaho committee of United Workers Union or federal PAC of XYZ Trade Assn.)**

**4. Officers or responsible leaders of committee:**

| Name and address | Title |
|---|---|
| | |

**5. Candidate contributions: List each Washington candidate for state, local or judicial office to whom you have made a contribution of more than $50.00.**

| Candidate's name | Office sought | Political Party | Date | Amount given |
|---|---|---|---|---|
| | | | | |

**6. Ballot measure committee contributions: List each Washington committee supporting or opposing a ballot measure to whom you have made a contribution of more than $50.00.**

| Committee name and address | Ballot Number | For or Against? | Date | Amount given |
|---|---|---|---|---|
| | | | | |

**7. Other contributions and expenditures: List each other contribution or expenditure of more than $50.00 made to or on behalf of any Washington state, local or judicial candidate, ballot measure or political committee.**

| Recipient's name and address | Purpose | Date | Amount given |
|---|---|---|---|
| | | | |

Check here ☐ if continued

**8. Total contributions and expenditures (Add parts 5, 6, 7)** .....

PDC Form C-5 (6/06)

**CONTINUE ON REVERSE**

~~STRICKEN GRAPHIC~~))

((~~STRICKEN GRAPHIC~~

**9. Contributions received from Washington residents: List all contributions of more than $25.00 in the aggregate to this out-of-state committee during the current calendar year from Washington residents or corporations with their headquarters or a primary place of business in Washington.**

| Name and address | Date | Amount |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

Check here ☐ if continued on an attached sheet

**10. Contributions received from persons residing outside of Washington. List the name, address, and employer of each person or corporation residing outside the state of Washington who has made contributions of more than $2,550 in the aggregate to this out-of-state committee during the current calendar year.**

| Contributor's name, Address, City, State, Zip | Employer's Name, City and State | Date | Amount |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

Check here ☐ if continued on an attached sheet

**11. Eligibility to Give to State Office Candidates:** During the six months prior to making a contribution to a legislative or statewide executive candidate your committee must have received contributions of $10 or more from at least ten persons registered to vote in Washington State.

☐ A check here indicates your awareness of and pledge to comply with this provision. Absence of a check mark means your committee does not qualify to give to legislative and statewide executive office candidates.

**12. Certification:** I certify the information contained in this report is true, complete and correct to the best of my knowledge.

Signature of Committee Official

_____

Title

_____

Name – Typed or Printed

_____

Daytime Telephone No. ( ) _____

E-Mail Address _____

~~STRICKEN GRAPHIC~~))

((~~STRICKEN GRAPHIC~~

# INSTRUCTIONS
## (Statutory reference: RCW 42.17.093)

## WHO MUST REPORT

An out-of-state political committee, including political committees filing with the Federal Election Commission, organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW 42.17.040 through 42.17.090 which has made contributions or expenditures to or on behalf of a state, local or judicial candidate or political committee in Washington state.

A political committee is considered "out-of-state" if it maintains its office or headquarters in another state or the District of Columbia. If there is no office or headquarters, then the political committee is considered "out-of-state" if its treasurer resides in another state or the District of Columbia.

## WHEN TO REPORT

A C-5 report is due no later than the 10th day of the month following any month in which a contribution or other expenditure of more than $50 is made to or on behalf of a Washington state candidate or political committee. After filing an initial C-5 report, subsequent reports during the same calendar year shall be filed updating or amending the information previously reported. These follow-up reports are also due no later than the 10th day of the month following any month in which an additional contribution or other expenditure of more than $50 is made.

The C-5 report is considered filed as of the postmark date.

## SEND REPORT TO

**Public Disclosure Commission**
**711 Capitol Way, Room 206**
**PO Box 40908**
**Olympia, Washington 98504-0908**

**Questions?**
**Contract PDC at www.pdc.wa.gov, toll free at 1-877-601-2828 or 1-360-753-1111**

~~STRICKEN GRAPHIC~~))

PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

Form **C5** (11/09)

This space for office use
POST MARK
RECEIVED

# Out-of-State Political Committee Campaign Finance Report

**1. Name and full address of committee making the contribution**
Name
Street address
City / State / Zip

**2. Check appropriate box**
☐ This is the first report submitted during 20__
☐ This shows new expenditures, contributions or information changed from reports submitted previously this calendar year.

**3. Provide the purpose of the committee and the identity of any business, union, association or person with which the committee is affiliated (e.g., a State Committee of the Oregon Republican Party, Idaho committee of United Workers Union or federal PAC of XYZ Trade Assn.)**

**4. Officers or responsible leaders of committee:**

| Name and full address | Title |
|---|---|
| | |

**5. States where this political committee is registered and has been actively reporting campaign finance information for the preceding two years:**

| Name of state(s) & administrative agency(s) | Agency(s) website address |
|---|---|
| | |

**6. Candidate contributions: List each Washington candidate for state, local or judicial office to whom you have made a contribution of more than $50.00.**

| Candidate name | Office sought | Political party | Date | Amount |
|---|---|---|---|---|
| | | | | |

**7. Ballot measure committee contributions: List each Washington committee supporting or opposing a ballot measure to whom you have made a contribution of more than $50.00.**

| Committee name & full address | Ballot number | For or Against? | Date | Amount |
|---|---|---|---|---|
| | | | | |

**8. Other contributions and expenditures: List each other contribution or expenditure of more than $50.00 made to or on behalf of any Washington state, local or judicial candidate, ballot measure or political committee.**

| Recipient name & full address | Purpose | Date | Amount |
|---|---|---|---|
| | | | |

Check here ☐ if continued on an attached sheet

**9. Total contributions and expenditures (Add parts 6, 7, 8)** .....

PDC Form C-5 (11/09)

CONTINUE ON NEXT PAGE

**10. Aggregate contributions and expenditures made during this calendar year in Washington State.**
Include amounts shown on this report and C5 reports previously submitted this calendar year. . . . . _____

Does this aggregate total represent 20% or more of the committee's nationwide campaign activity to date for this calendar year? Y☐ N☐

**11. Contributions received from Washington residents.** List all contributions of more than $25.00 in the aggregate to this out-of-state committee during the current calendar year from Washington residents or corporations with their headquarters or a primary place of business in Washington.

| Name and full address | Date | Amount | Aggregate Total |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

Check here ☐ if continued on an attached sheet

**12. Contributions received from persons residing outside of Washington.** List the name, address, and employer of each person or corporation residing outside the state of Washington who has made contributions of more than $2,600 in the aggregate to this out-of-state committee during the current calendar year.

| Name and full address | Employer name, city and state | Date | Amount | Aggregate Total |
|---|---|---|---|---|
| | | | | |
| | | | | |
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| | | | | |

Check here ☐ if continued on an attached sheet

**13. Eligibility to Give to State Office Candidates:** During the six months prior to making a contribution to a legislative or statewide executive candidate your committee must have received contributions of $10 or more from at least ten persons registered to vote in Washington State.

☐ A check here indicates your awareness of and pledge to comply with this provision. Absence of a check mark means your committee does not qualify to give to legislative and statewide executive office candidates.

**14. Certification:** I certify the information contained in this report is true, complete and correct to the best of my knowledge.

Signature of Committee Official

_____

Title

_____

Name – Typed or Printed

_____

Daytime Telephone No. ( ) _____

E-Mail Address _____

## Instructions – (Statutory reference: RCW 42.17.093)

**Who Must Report on C5 Form:** An out-of-state political committee, including political committees filing with the Federal Election Commission, organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW 42.17.040 through 42.17.090 which has made contributions or expenditures to or on behalf of a state, local or judicial candidate or political committee in Washington state. See WAC 390-16-049 reprinted below. A political committee making contributions or expenditures to or on behalf of a state, local or judicial candidate or political committee in Washington state that fails to satisfy all of the conditions of WAC 390-16-049(3) shall not use the C5 form but instead shall register and report as a political committee pursuant to RCW 42.17.040 through 42.17.090 and as otherwise required by RCW 42.17.

**When to Report:** A C5 report is due no later than the 10th day of the month following any month in which a contribution or other expenditure of more than $50 is made to or on behalf of a Washington state candidate or political committee. After filing an initial C5 report, subsequent reports during the same calendar year shall be filed updating or amending the information previously reported. These follow-up reports are also due no later than the 10th day of the month following any month in which an additional contribution or other expenditure of more than $50 is made. The C5 report is considered filed as of the postmark date.

**Send Report to: Public Disclosure Commission, 711 Capitol Way, Room 206, PO Box 40908, Olympia, Washington 98504-0908**

**Questions? Contact PDC at www.pdc.wa.gov, toll free at 1-877-601-2828 or 1-360-753-1111**

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**WAC 390-16-049 Out-of-state political committees – Implementation of RCW 42.17.093**

(1) RCW 42.17.093 governs campaign reporting in Washington State by committees located outside of Washington. The statute directs that an out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state (and that is not otherwise required to report as an in-state committee) reports the information listed in RCW 42.17.093 on a C5 form (WAC 390-16-050). The committee begins reporting on a C5 form when it makes an expenditure supporting or opposing a Washington state candidate or political committee.

(2) To file as an out-of-state political committee, all the criteria in (a) and (b) below must be satisfied:

(a) **Out-of-State.** First, the committee must be located out-of-state. It must be maintaining its office or headquarters in another U.S. state or the District of Columbia, and has no office, street address or corporate registered agent in Washington State. If there is no office or headquarters in another state or the District of Columbia, and no corporate registered agent in Washington State, the political committee is deemed out-of-state if its treasurer resides in another U.S. state or the District of Columbia.

(b) **Organizational Purpose and Campaign Activities.** Second, the committee must also be currently organized primarily for engaging in campaign activities in another state. The political committee may be described in other states as a political committee, political action committee (PAC), group (Alaska) or similar terms to describe a committee. Therefore, to qualify as a current out-of-state committee, the committee must also:

(i) Be currently registered and actively filing campaign disclosure reports in one or more other states and has been so filing for the preceding two years; and,

(ii) Have organizational documents showing it was originally formed and is currently organized for the purpose of making expenditures in another state or soliciting contributions for use in another state's election campaigns; and,

(iii) Have spent less than 20 percent of its aggregate expenditures for all political campaign activity nationwide at any point in any calendar year to support and/or oppose Washington candidates for state, local and judicial office, Washington ballot measures and/or Washington political committees.

(3) A committee that does not satisfy the criteria subsection (2) shall file as an in-state committee under RCW 42.17, including RCW 42.17.040 – RCW 42.17.090.

(4) Out-of-state political committees reporting under RCW 42.17.093 are also subject to reporting pursuant to RCW 42.17.103 (political advertising independent expenditures) and 42.17.565 through 42.17.575 (electioneering communications).

## WSR 09-14-039
### PROPOSED RULES
### OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-22—Filed June 24, 2009, 1:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-13-098.

Title of Rule and Other Identifying Information: Reporting of affiliated business ownership of title insurance agents.

Hearing Location(s): Insurance Commissioner's Office, Room TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on August 4, 2009, at 10:00 a.m.

Date of Intended Adoption: August 11, 2009.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail KacyS@oic.wa.gov, fax (360) 586-3109, by August 3, 2009.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by August 3, 2009, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 48.29.015 requires that title insurance agents file an annual report setting forth the name and address of those persons who have had a financial interest in the title insurance agent during the year. In addition the report must include the percent of title orders originating from each of those persons who own a financial interest in the title insurance agent. The purpose of the proposed rules is to establish the information that must be included in the report, the procedures for filing the report, the procedures for reporting the sources of title orders received, and record-keeping requirements related to the reporting procedures.

Reasons Supporting Proposal: The proposed rules will provide the information required in the annual report to the commissioner, provide procedures for filing the report, and establish record-keeping requirements associated with preparing the report.

Statutory Authority for Adoption: RCW 48.02.060 and 48.29.005.

Statute Being Implemented: RCW 48.29.015.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7036; Implementation and Enforcement: Jeff Baughman, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7156.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Although most of the state's title insurance agents are small businesses these proposed rules impose only a minor cost on them. The effort on the part of title insurance agents to make any of the necessary verifications or identifications of "hidden" sources of referrals to comply with these proposed rules is estimated to be significantly less than 1% of the staff time devoted to running a title insurance agent's office.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3535, e-mail kacys@oic.wa.gov.

June 24, 2009
Mike Kreidler
Insurance Commissioner

### Chapter 284-29 WAC

### TITLE INSURANCE

NEW SECTION

**WAC 284-29-100 Definitions.** For purposes of this rule:

(1) An "affiliate" of, or person "affiliated" with a title insurance agent is a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) "Associates of producers" has the meaning as set forth in RCW 48.29.010 (3)(f).

(3) "Financial interest" has the meaning as set forth in RCW 48.29.010 (3)(d).

(4) "Person" has the meaning as set forth in RCW 48.01.070.

(5) "Producers of title insurance business or producer" has the meaning as set forth in RCW 48.29.010 (3)(e) and also includes associate of producers as set forth in RCW 48.29.010 (3)(f).

(6) "Report of affiliated business ownership" means a report required by RCW 48.29.015 setting forth the name, address, and percent of title orders originating from those persons who have had a financial interest in a title insurance agent.

(7) "Title insurance agent" has the meaning as set forth in RCW 48.17.010(15).

(8) "Title order" has the same meaning as "preliminary report," "commitment," or "binder" as set forth in RCW 48.29.010 (3)(c) and also includes "title policy" as set forth in RCW 48.29.010 (3)(a).

NEW SECTION

**WAC 284-29-110 No report required.** (1) If a title insurance agent does not have any producers of title insurance business or associates of a producer who own a financial interest in the title insurance agent, then the title insurance agent is not required to file the title insurance agent report of affiliated business ownership.

(2) If a title insurance agent is wholly owned through one or more intermediaries of a company traded on a national stock exchange, then the title insurance agent is not required to file the title insurance agent report of affiliated business ownership.

NEW SECTION

**WAC 284-29-120 Report form.** The title insurance agent report of affiliated business ownership form and

instructions as to how and where to submit the form are on the commissioner's web site at www.insurance.wa.gov.

NEW SECTION

**WAC 284-29-130 Report required.** (1) The title insurance agent report of affiliated business ownership must be filed with the commissioner annually by March 15th.

(2) If there is any change or addition to the ownership information contained in the annual report, then the title insurance agent must file an amended report with the commissioner within fifteen days after the end of the month in which the title insurance agent learns of the change or addition.

(3) Changes to the information regarding the percent of title orders originating from each of the producers do not need to be filed with the commissioner except with the annual filing. If the title insurance agent discovers or reasonably should have discovered that the information contained in the annual filing was not correct, then the title insurance agent must file an amended report within fifteen days after the end of the month in which the title insurance agent discovered the incorrect information.

NEW SECTION

**WAC 284-29-140 Identifying producers.** (1) If a person who has a financial interest in a title insurance agent also owns a controlling interest in another producer, then the title insurance agent must report this person and the other business entities controlled by the person as producers who have a financial interest in the title insurance agent. For example if John Brown personally has a financial interest in a title insurance agent and John Brown also owns a controlling interest in ABC Realty Co. and XYZ Home Builders Inc., then the title insurance agent, in addition to reporting John Brown as a producer, must also report ABC Realty Co. and XYZ Home Builders Inc. as producers having a financial interest in the title insurance agent.

(2) In reporting producers who have a financial interest in the title insurance agent, the information about the producer must be sufficient to properly identify the person who is directly in a position to refer or influence the referral of title insurance business to the title insurance agent.

(3) If a producer owns the financial interest in the title insurance agent through one or more intermediary entities, then the identity of the producer and the identity of other entities that the producer owns a controlling interest in that are producers must be set forth in the report. For example, if Henry Smith and Frank Jones own an interest in Joint Venture Co., and Joint Venture Co. has a financial interest in the title insurance agent, then Henry Smith and Frank Jones must be identified in the report as producers who have a financial interest in the title insurance agent, in addition to reporting other entities who are producers that are owned by Henry Smith and Frank Jones.

NEW SECTION

**WAC 284-29-150 Reporting of amount of business.** A title insurance agent must make all reasonable and good faith efforts to determine the source of the title orders that it receives. This must also include information that the title insurance agent obtains when it is also acting as an escrow agent for the transaction. For example:

(1) If a title insurance agent receives a title order in which the seller is XYZ Home Builders Inc., owned by John Brown who has a financial interest in the title insurance agent, then it may be assumed that the source of the title order was John Brown (XYZ Home Builders, Inc.) even though the title order may have been directly received from another person.

(2) If the title insurance agent receives a title order from a producer with a financial interest in the title insurance agent held through one or more intermediary entities, then the specific producer must be identified as the source of the title order. For example, Henry Smith and Frank Jones own an interest in Joint Venture Co., and Joint Venture Co. directly holds the financial interest in the title insurance agent. Henry Smith must be reported as the source of the title insurance business for title orders received from Henry Smith. Likewise, Frank Jones must be reported as the source of title insurance business of orders received from Frank Jones. The amount of business received from both Henry Smith and Frank Jones may not be aggregated and reported as being from Joint Venture Co.

(3) If a title insurance agent receives an order in its escrow department from ABC Realty Co. (owned by John Brown who also has a financial interest in the title insurance agent), and the escrow department then places the title order with the title department of the title insurance agent, then the title insurance agent must report the source of the title order as being ABC Realty Inc.

(4) If the title insurance agent handling the transaction, either through its title department or its escrow department, or both, has information that ABC Realty Inc. (owned by John Brown who has a financial interest in the title insurance agent) is one of the real estate companies involved in the transaction, then it must be assumed that ABC Realty Inc. was the source of the title order unless the title insurance agent has sufficient evidence that the title order was referred to the title insurance agent by another producer.

NEW SECTION

**WAC 284-29-160 Recordkeeping.** (1) A title insurance agent must keep and maintain complete and accurate records of the names and business addresses of those persons who have had a financial interest in the title insurance agent who are reasonably known or reasonably believed by the title insurance agent to be producers.

(2) A title insurance agent must keep and maintain records of its title orders sufficient to identify the source of the title orders.

(3) The records required by WAC 284-29-100 through 284-29-160 must be kept by the title insurance agent for a period of three years after the end of the year being reported upon.

(4) All records of a title insurance agent kept pursuant to WAC 284-29-100 through 284-29-160 must be available to

the commissioner or the commissioner's representative during regular business hours.

## WSR 09-14-057
### PROPOSED RULES
### DEPARTMENT OF FISH AND WILDLIFE
[Filed June 26, 2009, 3:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-10-069.

Title of Rule and Other Identifying Information: Amending WAC 232-16-050 Byron Game Reserve; adopting WAC 232-28-433 2009-10 Migratory waterfowl seasons and regulations; and repealing WAC 232-28-432 2008-09 Migratory waterfowl seasons and regulations.

Hearing Location(s): Sheriff's Ambulance Training Center, 425 North Highway, Colville, WA 99114, (509) 684-8261, on August 7-8, 2009, at 8:00 a.m.

Date of Intended Adoption: August 7-8, 2009.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by Friday, July 17, 2009.

Assistance for Persons with Disabilities: Contact Susan Yeager by August 5, 2009, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 232-16-050, the amendment corrects an error in the boundary description to update a road designation.

WAC 232-28-433, the new WAC specifies legal season dates, bag limits, and open areas to hunt waterfowl, coot, and snipe for the 2009-10 hunting season. WAC 232-28-433 replaces WAC 232-28-432.

Reasons Supporting Proposal: WAC 232-16-050, the amendment is necessary to clarify the boundary of the reserve.

WAC 232-28-433, waterfowl seasons and regulations are developed based on cooperative management programs among states of the Pacific Flyway and the United States Fish and Wildlife Service, considering population status and other biological parameters. The rule establishes waterfowl seasons and regulations to provide recreational opportunity, control waterfowl damage, and conserve the waterfowl resources of Washington.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210, 77.12.040.

Statute Being Implemented: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210, 77.12.040.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Natural Resources Building, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules regulate recreational hunters and do not directly regulate small business.

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

June 26, 2009
Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 05-174, filed 8/15/05, effective 9/15/05)

**WAC 232-16-050 Byron Game Reserve.** That part of the Byron Ponds segment of the Sunnyside Wildlife Area (department of fish and wildlife lands) east of the Mabton Pressure Pipeline, legally described as the W.1/2 of Section 12 that is north of ((~~U.S.~~)) Highway No. ((~~410~~)) 22 except for the NE1/4 of the SE1/4 of the SW1/4; the NW1/4 of the NW1/4 of the SE1/4 of Section 12; that part of Section 11 east of the Mabton pressure pipeline and north of ((~~U.S.~~)) Highway No. ((~~410~~)) 22; and that part of Section 2 that is east of said pipeline; all of the above sections being in Twp. 8N., R.23E.W.M.

REPEALER

The following section of the Washington Administrative Code is repealed:

| | |
|---|---|
| WAC 232-28-432 | 2008-09 Migratory waterfowl seasons and regulations. |

NEW SECTION

**WAC 232-28-433 2009-10 Migratory waterfowl seasons and regulations.**

**DUCKS**

**Statewide**

Oct. 17-21, 2009 and Oct. 24, 2009 - Jan. 31, 2010; except scaup season closed Oct. 17 - Nov. 6.

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 26-27, 2009.

Daily bag limit: 7 ducks, to include not more than 2 hen mallard, 1 pintail, 2 scaup, 1 canvasback, 2 redhead, 1 harlequin, 4 scoter, and 4 long-tailed duck.

Possession limit: 14 ducks, to include not more than 4 hen mallard, 2 pintail, 4 scaup, 2 canvasback, 4 redhead, 1 harlequin, 8 scoter, and 8 long-tailed duck.

Season limit: 1 harlequin.

**AUTHORIZATION REQUIRED TO HUNT SEA DUCKS.**

When hunting sea ducks (harlequin, scoter, long-tailed duck) in Western Washington, all persons are required to possess a sea duck hunting authorization and harvest report issued from

any WDFW license vendor. Hunters who did not possess a 2008-09 authorization must submit an application form to WDFW (forms available on-line and at Washington department of fish and wildlife, Olympia and regional offices).

Immediately after taking a sea duck into possession, hunters must record in ink the information required on the harvest report. By February 15, 2010, hunters must report harvest information on the department's internet or phone reporting systems. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2010-11 sea duck season.

**COOT (Mudhen)**

Same areas, dates (including youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 25 coots.
Possession limit: 25 coots.

**SNIPE**

Same areas, dates (except youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 8 snipe.
Possession limit: 16 snipe.

**GEESE (except Brant)**

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 26-27, 2009, statewide except Western Washington Goose Management Areas 2A and 2B.

Daily bag limit: 4 Canada geese.
Possession limit: 8 Canada geese.

**Western Washington Goose Seasons**

**Goose Management Area 1**

Island, Skagit, Snohomish counties.

Oct. 17, 2009 - Jan. 31, 2010 for snow, Ross', or blue geese. Oct. 17-29, 2009 and Nov. 7, 2009 - Jan. 31, 2010 for other geese (except Brant).

Daily bag limit: 4 geese.
Possession limit: 8 geese.

**AUTHORIZATION REQUIRED TO HUNT SNOW GEESE.**

When hunting snow geese in Goose Management Area 1, all persons are required to possess a snow goose hunting authorization and harvest report issued from any WDFW license vendor. Hunters who did not possess a 2008-09 authorization must submit an application form to WDFW (forms available on-line and at Washington department of fish and wildlife, Olympia and regional offices).

Immediately after taking a snow goose into possession, hunters must record in ink the information required on the harvest report. By February 15, 2010, hunters must report harvest information on the department's internet or phone reporting systems. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2010-11 snow goose season.

It is unlawful to discharge a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County. While hunting snow geese on Fir Island, if a hunter is convicted of 1) trespass, 2) shooting from, across, or along the maintained part of any public highway, 3) discharging a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County, or 4) exceeding the daily bag limit for snow geese, authorization will be invalidated for the remainder of the 2009-10 snow goose season and an authorization will not be issued for the 2010-11 snow goose season.

**QUALITY HUNTING PROGRAM IN GOOSE MANAGEMENT AREA 1.**

Hunters possessing a snow goose hunting authorization for Goose Management Area 1 can apply for a special quality hunt authorization to access private lands around Fir Island. Hunters must apply for these special authorizations by October 2, 2009, using the department's internet or mail application systems. Private lands enrolled in the program are only open to hunters with quality hunt authorizations. Most program lands are open as Feel Free to Hunt or Register to Hunt. All hunters must hunt over decoys and obey posted signs regarding access restrictions. Quality hunt authorizations are not valid for commercial uses.

On January 2, 9, 16, 23, and 30, 2010, several specially selected units in the program will be open only to hunters selected in random drawings for each hunt day. Hunters will be assigned at random to units selected for each hunt day. Drawings will be held in late November, and successful applicants will be notified in early December regarding their selected hunt day. On these hunt days, up to 3 individuals possessing snow goose authorizations can hunt with the successful applicant. Successful applicants must check in with the WDFW hunt coordinator at least one week prior to their scheduled hunting day to receive specific hunting unit information.

**Goose Management Area 2A**

Cowlitz and Wahkiakum counties, and that part of Clark County north of the Washougal River.

Open in all areas except Ridgefield NWR from 8 a.m. to 4:00 p.m., Saturdays, Sundays, and Wednesdays only, Nov. 14-29, 2009 and Dec. 9, 2009 - Jan. 31, 2010, except closed Dec. 25, 2009 and Jan. 1, 2010. Ridgefield NWR open from 8 a.m. to 4:00 p.m. Tuesdays, Thursdays, and Saturdays only, Nov. 19-28, 2009 and Dec. 10, 2009 - Jan. 31, 2010, except closed Nov. 26.

Bag limits for Goose Management Area 2A:

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose and 2 cackling geese.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose and 4 cackling geese.

Season limit: 1 dusky Canada goose.

**Goose Management Area 2B**

Pacific County.

Open from 8 a.m. to 4:00 p.m., Saturdays and Wednesdays only, Oct. 17, 2009 - Jan. 16, 2010.

Bag limits for Goose Management Area 2B:

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose, 1 Aleutian goose, and 2 cackling geese.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose, 2 Aleutian geese, and 4 cackling geese.

Season limit: 1 dusky Canada goose.

**Special Provisions for Goose Management Areas 2A and 2B:**

A dusky Canada goose is defined as a dark-breasted (as shown in the Munsell color chart 10 YR, 5 or less) Canada goose with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

The goose season for Goose Management Areas 2A and 2B will be closed early if dusky Canada goose harvests exceed area quotas which collectively total 40 geese. The fish and wildlife commission has authorized the director to implement emergency area closures in accordance with the following quotas: A total of 40 duskys, to be distributed 10 for Zone 1 (Ridgefield NWR); 5 for Zone 2 (Cowlitz County south of the Kalama River); 15 for Zone 3 (Clark County except Ridgefield NWR); 5 for Zone 4 (Cowlitz County north of the Kalama River and Wahkiakum County); and 5 for Zone 5 (Pacific County). Quotas may be shifted to other zones during the season to optimize use of the statewide quota and minimize depredation.

Hunting is only permitted by authorization, available at any WDFW license vendor to hunters who have met requirements for participation. New hunters and those who did not maintain a valid 2008-09 authorization must review goose identification training materials and score a minimum of 80% on a goose identification test to receive authorization. Hunters who fail a test must wait 28 days before retesting, and will not be issued a reciprocal authorization until that time.

With authorization, hunters will receive a harvest report. Hunters must carry the authorization card and harvest report while hunting. Immediately after taking any goose into possession, hunters must record in ink the information required on the harvest report. Hunters must go directly to the nearest check station and have geese tagged when leaving a hunt site, before 6:00 p.m. If a hunter takes the season bag limit of one dusky Canada goose or does not comply with requirements listed above regarding checking of birds and recording harvest on the harvest report, authorization will be invalidated and the hunter will not be able to hunt geese in Goose Management Areas 2A and 2B for the remainder of the season and the special late goose season. It is unlawful to fail to comply with all provisions listed above for Goose Management Areas 2A and 2B.

**Special Late Goose Season for Goose Management Area 2A:**

Open to Washington department of fish and wildlife master hunter program graduates and youth hunters (15 years of age or under, who are accompanied by a master hunter) possessing a valid 2009-10 southwest Washington goose hunting authorization, in areas with goose damage in Goose Management Area 2A on the following days, from 7:00 a.m. to 4:00 p.m.:

Saturdays and Wednesdays only, Feb. 6 - Mar. 10, 2010.

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose and 2 cackling geese.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose and 4 cackling geese.

Season limit: 1 dusky Canada goose.

A dusky Canada goose is defined as a dark-breasted Canada goose (as shown in the Munsell color chart 10 YR, 5 or less) with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

Hunters qualifying for the season will be placed on a list for participation in this hunt. Washington department of fish and wildlife will assist landowners with contacting qualified hunters to participate in damage control hunts on specific lands incurring goose damage. Participation in this hunt will depend on the level of damage experienced by landowners. The special late goose season will be closed by emergency action if the harvest of dusky Canada geese exceeds 85 for the regular and late seasons. All provisions listed above for Goose Management Area 2A regarding authorization, harvest reporting, and checking requirements also apply to the special late season; except hunters must confirm their participation at least 24 hours in advance by calling the goose hunting hotline (listed on hunting authorization), and hunters must check out by 5:00 p.m. on each hunt day regardless of success. It is unlawful to fail to comply with all provisions listed above for the special late season in Goose Management Area 2A.

**Goose Management Area 3**

Includes all parts of Western Washington not included in Goose Management Areas 1, 2A, and 2B.

Oct. 17-29, 2009 and Nov. 7, 2009 - Jan. 31, 2010.

Daily bag limit: 4 geese.
Possession limit: 8 geese.

**Eastern Washington Goose Seasons**

**Goose Management Area 4**

Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla counties.

Saturdays, Sundays, and Wednesdays only during Oct. 17, 2009 - Jan. 24, 2010; Nov. 11, 26, and 27, 2009; Dec. 25, 28, 29, and 31, 2009; January 1, 2010; and every day Jan. 25-31, 2010.

**Goose Management Area 5**

Includes all parts of Eastern Washington not included in Goose Management Area 4.

Oct. 17-21, 2009, every day from Oct. 24, 2009 - Jan. 31, 2010.

Bag limits for all Eastern Washington Goose Management Areas:

Daily bag limit: 4 geese.
Possession limit: 8 geese.

**BRANT**

Open in Skagit County only on the following dates:

Jan. 16, 17, 20, 23, 24, 27, 30, and 31, 2010.

If the 2009-10 preseason brant population in Skagit County is below 6,000 (as determined by the early January survey), the brant season in Skagit County will be canceled.

Open in Pacific County only on the following dates:
Jan. 9, 10, 12, 14, 16, 17, 19, 21, 23, and 24, 2010.

**AUTHORIZATION REQUIRED TO HUNT BRANT**

All persons hunting brant in this season are required to possess a brant hunting authorization and harvest report issued from any WDFW license vendor. Hunters who did not possess a 2008-09 authorization must submit an application form to WDFW (forms available on-line and at Washington department of fish and wildlife, Olympia and regional offices).

Immediately after taking a brant into possession, hunters must record in ink the information required on the harvest report. By February 15, 2010, hunters must report harvest information on the department's internet or phone reporting systems. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2010-11 brant season.

Bag limits for Skagit and Pacific counties:

Daily bag limit: 2 brant.
Possession limit: 4 brant.

**SWANS**

Season closed statewide.

**FALCONRY SEASONS**

**DUCKS, COOTS, AND SNIPE (Falconry)**

(Bag limits include geese and mourning doves.)

Oct. 17-21, 2009 and Oct. 24, 2009 - Jan. 31, 2010 statewide.

Daily bag limit: 3, straight or mixed bag with geese and mourning doves during established seasons.

Possession limit: 6, straight or mixed bag with geese and mourning doves during established seasons.

**GEESE (Falconry)**

(Bag limits include ducks, coot, snipe, and mourning doves.)

Goose Management Area 1: Oct. 17, 2009 - Jan. 31, 2010 for snow, Ross', or blue geese. Oct. 17-29, 2009 and Nov. 7, 2009 - Jan. 31, 2010 for other geese.

Goose Management Area 2A: Saturdays, Sundays, and Wednesdays only, Nov. 14-29, 2009 and Dec. 9, 2009 - Jan. 31, 2010.

Goose Management Area 2B: Saturdays and Wednesdays only, Oct. 17, 2009 - Jan. 17, 2010.

Goose Management Areas 3, 4, and 5: Oct. 17-29, 2009 and Nov. 7, 2009 - Jan. 31, 2010.

Daily bag limit for all areas: 3 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

Possession limit for all areas: 6 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

## WSR 09-14-058
### PROPOSED RULES
## SOUTHWEST CLEAN AIR AGENCY

[Filed June 29, 2009, 9:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-04-026.

Title of Rule and Other Identifying Information: See Reviser's note below.

Hearing Location(s): Office of Southwest Clean Air Agency (SWCAA), 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, on October 1, 2009, at 3:00 p.m.

Date of Intended Adoption: October 1, 2009.

Submit Written Comments to: Wess Safford, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, e-mail wess@swcleanair.org, fax (360) 576-0925, by September 17, 2009.

Assistance for Persons with Disabilities: Contact Tina Hallock by September 17, 2009, TTY (360) 574-3058.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: See Reviser's note below.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 70.94.141.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: SWCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Wess Safford, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, (360) 574-3058; Implementation: Paul Mairose, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, (360) 574-3058; and Enforcement: Robert Elliott, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, (360) 574-3058.

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

SWCAA are consistent with federal or state rules already in effect. This agency is not subject to the small business economic impact provision of chapter 19.85 RCW. A fiscal analysis has been performed to establish the basis for any proposed fee increases. Copies of this analysis are available from SWCAA.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 70.94.141(1), section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. SWCAA is not voluntarily invoking section 201, chapter 403, Laws of 1995, for this action.

June 24, 2009
Robert D. Elliott
Executive Director

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 09-16 issue of the Register.

## WSR 09-14-063
### PROPOSED RULES
### DEPARTMENT OF REVENUE
[Filed June 29, 2009, 11:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-15-094.

Title of Rule and Other Identifying Information: WAC 458-16-270 Schools and colleges, this rule explains the property tax exemption for nonprofit schools and colleges and for not-for-profit foundations that support institutions of higher education, authorized in RCW 84.36.050 as amended in 2006.

Hearing Location(s): Capital Plaza Building, 4th Floor, Executive Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on August 4, 2009, at 10:00 a.m.

Date of Intended Adoption: August 11, 2009.

Submit Written Comments to: James A. Winterstein, P.O. Box 47471, Olympia, WA 98504-7471, e-mail JimWi@dor.wa.gov, fax (360) 586-7602, by August 4, 2009.

Assistance for Persons with Disabilities: Contact Martha Thomas no later than ten days before the hearing date, TTY 1-800-451-7985 or (360) 725-7497.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule has been substantially revised and updated to recognize legislative changes that were enacted in chapter 226, Laws of 2006 (SHB 2804). The rule expands the exemption for nonprofit schools and colleges to include specified use of the property by parties other than the school or college.

Reasons Supporting Proposal: The rule has not been updated since the amendment of the statute, RCW 84.36.050, in 2006. The proposed rule will incorporate the changes in the law.

Statutory Authority for Adoption: RCW 84.36.865, 84.36.040, and 84.36.050.

Statute Being Implemented: RCW 84.36.050.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: James A. Winterstein, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-5880; Implementation and Enforcement: Brad Flaherty, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 570-5860.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required for the reason that the rule does not impose any new performance requirement or administrative burden on any small business.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

June 29, 2009
Gilbert W. Brewer
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 01-24-037, filed 11/28/01, effective 12/29/01)

**WAC 458-16-270 Schools and colleges.** (1) **Introduction.** This ((~~rule~~)) section explains the two property tax exemptions available under the provisions of RCW 84.36.050. The first exemption applies to property owned ((~~by~~)) or used by or for a nonprofit school or college ((~~and to~~)). The second exemption is for property owned by a not-for-profit foundation established for the exclusive support of an institution of higher education, as defined in RCW 28B.10.016, that is leased to and used by the institution. Nonprofit schools, colleges, and not-for-profit foundations seeking a property tax exemption under RCW 84.36.050 must also comply with the relevant requirements of RCW 84.36.805 and 84.36.840. (See subsection (9) of this section.)

(2) **Definitions.** For purposes of this ((~~rule~~)) section, the following definitions apply:

(a) "((~~Campus or~~)) College or campus purposes" means principally designed to further the educational, athletic, or social functions of an institution of higher education, as defined in RCW 28B.10.016, and only applies to property that is ((~~only needed because of the presence of the nonprofit school or college and is principally designed to further the educational purposes and functions of a nonprofit school or college or an institution of higher education, as defined in RCW 28B.10.016~~)) owned by a not-for-profit foundation and leased to and used by such an institution.

(b) "Cultural or art ((~~education~~)) educational program" ((~~includes and is limited to~~)) means:

(i) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(ii) A musical or dramatic performance or series of performances; or

(iii) An educational seminar or program, or series of such programs, offered by a nonprofit school or college to the general public on an artistic, cultural, or historical subject. (See RCW 82.04.4328(2).)

(c) "Educational, social and athletic programs" or "educational, social and athletic functions" individually or collectively mean those programs offered or functions performed by or for the school or college in each such general area, including, but not limited to, those illustrated by the examples set forth in this definition, and including educational, social, and athletic programs and functions sponsored or cosponsored by the school or college, offered by others on school or college-owned property in a manner consistent with the school or college's programs, and such programs and functions on school or college property that may involve alumni and community members.

(i) Examples of educational programs and functions include, in addition to those described in the definition of "educational purposes" in (d) of this subsection: Classes, seminars, conferences, providing instructional support to students and other participants in such programs and functions, and programs and functions that utilize and apply the academic and instructional resources and facilities of the school or college, including related administrative and support activities for these programs and functions.

(ii) Examples of athletic programs and functions include: Physical training, sport events and practices, athletic camps, and use of school or college recreational and fitness resources and facilities by students, alumni, faculty, staff, or third parties, including related administrative and support activities, which use the property in a manner consistent with the school or college's programs.

(iii) Examples of social programs or functions include activities engaged in by or for the school or college that further the health, safety, well being, emotional growth, welfare, psychological development, socialization, preparation and training for participation in society, development of adaptive skills and cultural awareness and related activities for students including, but not limited to, theatrical or musical performances, artistic, cultural, or technology exhibits or fairs, events, presentations and programs providing students with information about and access to goods and services they need while a student at the school or college.

(d) "Educational purposes" means, in addition to the educational programs and functions described in (c) of this subsection, systematic instruction, either formal or informal, in any and all branches of learning directed to an indefinite class of persons and from which a substantial public benefit is derived. The term includes all purposes that seek to promote or advance education.

((~~(d)~~)) (e) "Schools and colleges" means:

(i) Nonprofit educational institutions that are approved by the superintendent of public instruction or whose students and credentials are accepted without examination by schools and colleges established under either Title 28A or 28B RCW and offer students an educational program of a general academic nature; or

(ii) ((~~An institution of higher education, as defined in RCW 28B.10.016; or~~

~~(iii)~~)) Nonprofit institutions that meet the following criteria:

(A) They have a definable curriculum and measurable outcomes for a specific group of students;

(B) They have a qualified or certified faculty;

(C) They have facilities and equipment that are designed for the primary purpose of the educational program;

(D) They have an attendance policy and requirement;

(E) They have a schedule or course of study that supports the instructional curriculum; and

(F) They are accredited, recognized, or approved by an external agency that certifies educational institutions and the transferability of courses.

((~~(e) "Revenue"~~)) (f) "Net income" means ((~~income~~)) the amount received from the loan or rental of exempt property ((~~when the income~~)) that exceeds the amount of the maintenance and operation expenses, as defined in WAC 458-16-165, attributable to the portion of the property loaned or rented.

(g) "Pecuniary gain" means the generation of monetary receipts from commercial operations or other sales activities, when those receipts exceed expenses of operations or are intended to exceed expenses of operations.

(h) "Religious faculty" means a person who:

(i) Teaches at a school or college; and

(ii) Is a member of the clergy or a religious order or officially invested with ministerial or priestly authority, as distinguished from laity.

(i) "Third parties" means individuals, groups, organizations, associations, corporations, and entities other than the school or college to which an exemption is granted under this section.

(3) **Exemption - nonprofit schools or colleges.** Property owned or used by or for any nonprofit school or college within this state is exempt to the extent that it is used ((~~exclusively~~)) for educational purposes or cultural or art educational programs.

(a) Real property exempt under this ((~~rule~~)) section cannot exceed four hundred acres ((~~and must be used exclusively for school, college, or campus purposes~~)). The exempt property includes, but is not limited to:

(i) Buildings and grounds principally designed for the educational, athletic, or social programs or functions of the ((~~nonprofit~~)) school or college ((~~and the need for which would be nonexistent except for the existence of the school or college~~));

(ii) Buildings that house part-time or full-time students, religious faculty, or the chief administrator of the school or college;

(iii) Buildings ((~~that house religious faculty~~)) used for athletic activities of the school or college; and

(iv) ((~~Buildings that house the chief administrator~~)) All other school or college facilities, such as maintenance facilities, heating plants, storage facilities, security services facilities, food services facilities, transportation facilities, administrative offices, or a student union building or student commons, which are needed because of the presence of the school or college.

(b) ((~~The use of exempt property by professional organizations for conferences, seminars, or other activities that enhance the reputation of the nonprofit school or college will not nullify the exemption. Similarly, the use of exempt property owned by a nonprofit school or college for any education purpose will not nullify the exemption.~~

((c)))) With respect to all property that is not part of, or contiguous to, the main campus of a school or college and for which the institution wishes to obtain an exemption ((under this rule)), the department may require ((said)) the institution to provide, in detail, the following information:

(i) The names of courses taught or a description of the educational purposes or cultural or art educational programs taking place at the off-campus site;

(ii) A calendar of dates and times that shows how the subject property ((was)) is used; and

(iii) The number of students ((that participated)) who participate in the educational activities or cultural or art educational programs conducted at the off-campus site.

(((d) To be eligible to receive this exemption, the nonprofit school or college must be open to all persons regardless of race, color, national origin, or ancestry. However, there is no limitation on the type of courses the institution may offer.

(4) **Property leased to a nonprofit school or college.** If property is leased to a nonprofit school or college, in order to be exempt, the property must be:

(a) Irrevocably dedicated to the purpose for which exemption has been granted; and

(b) The benefit of the exemption must inure to the user.

(c) For example, if a private citizen leases real or personal property to a nonprofit school or college to be used for educational purposes or cultural or art educational programs, the leased property may qualify for exemption if it meets the requirements of subsection (3)(a), (b), and (c) of this rule.

(5) **Production of financial records - nonprofit schools or colleges.** In addition to the financial records that must be produced to comply with the requirements of WAC 458-16-165, a nonprofit school or college claiming exemption under this rule must annually submit a detailed summary containing the following information regarding the previous calendar year:

(a) A list of all property that it claimed was exempt;

(b) The purpose for which the property was used;

(c) The income derived from the property;

(d) The manner in which the income received was applied;

(e) The number of students who attended the school or college;

(f) The total income of the school or college and the sources from which it was derived; and

(g) The purposes to which the total income of the school or college was applied including, but not limited to, all income received and expenditures made.

((6)))) (c) If property is leased to a school or college, in order to be exempt, the benefit of the exemption must inure to the school or college.

(4) **Exemption - property owned by a not-for-profit foundation that is leased to and used by an institution of higher education.** RCW 84.36.050 also provides a property tax exemption to real or personal property owned by a not-for-profit foundation ((that is)) established for the exclusive support of an institution of higher education, as defined in RCW 28B.10.016((, if it is)). The property must be leased to and used by the institution ((exclusively)) for ((campus or)) college or campus purposes and ((is)) it must be principally designed to further the educational, athletic or social functions of the institution.

(a) An institution of higher education is defined in RCW 28B.10.016 as synonymous with "postsecondary institutions" and means the University of Washington, Washington State University, Western Washington University at Bellingham, Central Washington University at Ellensburg, Eastern Washington University at Cheney, The Evergreen State College, the community colleges, and the technical colleges.

(b) The exemption can only be obtained for property actively utilized by currently enrolled students.

(c) The benefit of the exemption must inure to the educational institution using the exempt property.

(5) **Uses of the exempt property that affect the exemption - exceptions.** For purposes of the school and college exemption:

(a) If exempt property is used by a third party entitled to a property tax exemption, the property remains exempt as long as the amount of rent or donations received by the school or college for that use does not result in net income.

(b) If exempt property is used by a third party not entitled to a property tax exemption, for pecuniary gain or to promote business activities, then the property, or portion so used, is taxable for the entire assessment year in which the nonqualifying use occurs and will remain taxable until a new application is filed with the department and approved, except as otherwise provided in this subsection, and subsection (6) of this section (nonqualifying inadvertent use), and subject to the provisions of subsection (9) of this section. When exemption is denied for only a portion of the school or college's property, any renewal application need only address that portion denied, not the entire property.

(c) There are three general exceptions to the loss of exemption when exempt property is used by a third party not entitled to a property tax exemption, which exceptions are described in (i), (ii), and (iii) of this subsection (5)(c), as follows:

(i) If exempt property is used by students, alumni, faculty, staff, or other third parties in a manner consistent with the educational, social, or athletic programs of the school or college, including property used for related administrative and support functions, and not for pecuniary gain or to promote business activities, then the property remains exempt.

(ii) When the school or college contracts with and permits the use by third parties of exempt property to provide school or college-related programs or services directed at students, faculty, and staff, and not primarily at the general public, then the property remains exempt, regardless of whether payment for the programs or services is made to such third party by the school or college, or by program participants or service recipients, and regardless of whether the use by the third party results in pecuniary gain for the third party or the promotion of the third party's business. Examples of such programs or services include school or college educational, social and athletic programs and functions; the provision of food services, including snack and coffee bars, food or bottled drink vending machines, or on-campus catering services for school or college events; placement of an automated teller machine on exempt property; the operation of a bookstore on campus that sells textbooks and other student oriented items;

and the provision of maintenance, operational, or administrative services.

(iii) If exempt property is used for pecuniary gain or to promote business activities for seven days or less each calendar year by third parties who are not entitled to a property tax exemption, the property remains exempt. Disqualifying use of more than seven days is measured separately with respect to each specific portion of the exempt property used, and is cumulative with respect to each such separate portion each year for all such third party use. For example, if a classroom in a building is used by three separate third parties for disqualifying uses on three separate occasions in one calendar year for periods of two, three, and five days respectively (for a total of ten days of disqualifying use), that classroom, but not the entire floor or building, loses its exemption for that calendar year. By contrast, if the five day disqualifying use occurred in a different portion of the building, such as an auditorium, neither the classroom nor the auditorium would be disqualified, since neither portion of the building would have been used for a disqualifying use for more than seven days in that year. This seven day limitation does not apply when exempt property is used as or for a sports or educational camp or program that is taught, operated, or conducted by a faculty member who is required or permitted to do so as part of his or her compensation package, whether or not participants pay a fee directly to such faculty member.

(6) **Effect of inadvertent use in a nonqualifying manner.** If property exempt under this section is inadvertently or accidentally used in a manner inconsistent with the purposes for which the exemption was granted, the exemption will not be nullified unless the use is part of a pattern of nonexempt use. A pattern of nonexempt use is presumed when an inadvertent or accidental use is repeated in the same assessment year or in two or more successive assessment years.

(7) ((~~**Additional requirements.** Any organization, association, corporation, or foundation that applies for a property tax exemption under this rule must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption under RCW 84.36.050.~~)) **Examples of uses that do not nullify the exemption.** In order to clarify the property tax exemption for schools and colleges, this subsection describes and gives examples of the types of use by third parties not entitled to a property tax exemption that do not nullify the tax exempt status of property owned or used by or for a school or college. The following examples should be used only as a general guide. The tax results of other specific situations must be determined after a review of all of the facts and circumstances. In the following examples, as long as any rent or donation associated with the use does not result in net income to the school or college, the exemption is not affected.

(a) Exempt property is used by students, alumni, faculty, staff, or other third parties for weddings, anniversary celebrations, family or school reunions, funeral services, or similar events. These uses are consistent with the educational or social programs of the school or college and the property remains exempt. The property remains exempt even when the persons or groups using the school or college property for such an event also hire persons such as a caterer, a musical group, or a wedding photographer specifically for the event.

(b) Exempt property is used by third parties, such as members of the community, for lectures, presentations, musical recitals, seminars, debates, or similar educational activities. If the third party use is contracted for and permitted by the school or college, for example when the school or college pays the presenter directly, or when the participants or patrons pay the presenter directly, there is no loss of exemption, as long as the uses are consistent with the educational, social, or athletic programs of the school or college. The presenter may also offer for sale, at the time of the presentation, books, tapes, CDs or similar items that relate directly to the presentation.

(c) Exempt property is used by third parties such as students, alumni, faculty, staff, or members of the community for athletic activities or events on sports fields, tennis courts, and in buildings used for athletics. These uses are consistent with the athletic programs of the school or college and the property remains exempt as long as the property is not used for third party pecuniary gain or to promote business activities. (The example is intended only to illustrate the application of the exception set forth in subsection (5)(c)(i) of this section, and should be distinguished from the exception described under subsection (5)(c)(ii) of this section which permits the generation of third party pecuniary gain in certain identified circumstances.) Any fees, charges, rents, donations or other remuneration for the use of the school or college exempt facilities may not result in net income.

(d) Exempt property is used by third parties for educational or instructional programs, such as private instruction, tutoring, driving instruction, English as a second language or other language courses, examination preparation, or other similar programs. These programs are consistent with the educational programs of the school or college and the property remains exempt as long as the property use is contracted for and permitted by the school or college and the uses are consistent with the educational programs of the school or college.

(e) Exempt property, such as student housing, is used for purposes of recruiting prospective students. Exempt school or college facilities, when not being used by currently enrolled students, are offered by the school or college to third parties for educational programs consistent with the educational purposes of the school or college. Such uses are consistent with the educational programs of the school or college and the property remains exempt.

(f) A school or college provides courses in vocational-technical skills, such as culinary arts, hotel management, automotive mechanics, or cosmetology. As a part of the course work, students obtain practical experience by providing products or services to the public. As long as the charge to the public for these products or services is exclusively used for the school or college's educational, social, or athletic programs, this use of exempt property is consistent with the school's educational programs and functions and will not result in the loss of exemption.

(g) Exempt property is used by a bank or credit union in a school or college student orientation program of limited duration and not more than one time each year, through

which students receive information from a variety of local businesses about services that they may need while attending a school or college. This is considered to be a social or educational program of the school or college and is not a disqualifying use.

(h) The school or college contracts with and permits third parties to use exempt property to conduct fund-raising activities when the funds raised will be used for educational purposes or cultural or art educational programs of the school or college. Such activities must be conducted in accordance with the provisions of WAC 458-16-165.

(8) **Examples of disqualifying use.** In order to clarify the property tax exemption for schools and colleges, this subsection describes and gives examples of the types of use by third parties not entitled to a property tax exemption that will nullify the tax exempt status of property owned or used by or for a school or college. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other specific situations must be determined after a review of all of the facts and circumstances.

(a) The placement and operation of a bank or credit union on exempt property. Such an activity is using the exempt property for pecuniary gain and to promote business activities and will cause the loss of exemption. Such an operation provides a service that is not distinguishable from services provided to the general community. The exemption is nullified for the portion of the property occupied by the bank or credit union.

(b) An antique shop, gift shop, or retail store that sells a variety of merchandise, but does not primarily sell products directed at students, faculty, or staff of the school or college, and occupies an exempt college-owned building on the school or college campus on a regular and continuing basis. Such a store does not provide a specific school or college related program or service, and is being operated for pecuniary gain and to promote business activities. The exemption is nullified for the portion of the building occupied by the business.

(9) **Additional requirements.**

(a) Any school or college, or not-for-profit foundation established for the exclusive support of an institution of higher education, that applies for a property tax exemption under this section must also comply with the provisions of RCW 84.36.805 to the extent applicable. Schools, colleges, and not-for-profit foundations established for the exclusive support of an institution of higher education may, without losing the exemption, loan or rent exempt property to organizations even though the property would not be exempt if owned by such organizations, as long as the rents or donations received for the use of the portion of the property loaned or rented are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented. WAC 458-16-165 describes and explains additional conditions and requirements that must be complied with to obtain and maintain a property tax exemption for a school, college, or not-for-profit foundation.

(b) Any school or college, or not-for-profit foundation established for the exclusive support of an institution of higher education, that applies for a property tax exemption under this section must also comply with the provisions of RCW 84.36.840. In accordance with that statute, the applicant must annually file a report with the department on or before April 1st. The report must be signed, and state that the revenues of the school, college, or foundation, including donations, have been applied to maintenance and operation expenses or capital expenditures of the school or college or foundation and to no other purpose. The report must also contain the following information:

(i) A list of all property, real and personal, claimed to be exempt, including the parcel number(s) and/or addresses for all real property;

(ii) The purpose(s) for which the property was used;

(iii) The revenue derived from the property for the preceding calendar year;

(iv) The use to which the revenue was applied;

(v) The number of students who attended the school or college; and

(vi) The total revenues of the school, college, or foundation, with the source from which they were derived, and the purposes to which the revenues were applied, giving a detailed accounting of the revenues and expenditures.

## WSR 09-14-076
### PROPOSED RULES
### DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed June 29, 2009, 2:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-05-055.

Title of Rule and Other Identifying Information: WAC 388-501-0050 Healthcare—general coverage, 388-501-0070 Healthcare coverage—Noncovered services, 388-501-0163 Healthcare coverage—Process for submitting a valid request for authorization, and 388-501-0169 Healthcare coverage—Limitation extension.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at http://www.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6094), on August 4, 2009, at 10:00 a.m.

Date of Intended Adoption: Not sooner than August 5, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on August 4, 2009.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 21, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

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

- Clarify that providers must be enrolled with the department and meet the requirements of chapter 388-502 WAC to be paid for furnishing healthcare services to clients;
- Clarify when the department pays for healthcare services;
- Clarify that the department does not reimburse clients for healthcare services purchased out-of-pocket;
- Clarify that the department does not pay for the replacement of department-purchased equipment, devices, or supplies which have been sold, lost, broken, destroyed, or stolen as a result of carelessness, negligence, recklessness, or misuse;
- Clarify how a noncovered healthcare service, recommended during an EPSDT exam is evaluated by the department for coverage;
- Correctly alphabetize the list of noncovered items;
- Add discography and upright magnetic resonance imaging to the list of noncovered services;
- Clarify that a client has the right to an administrative hearing, if one is available under state and federal laws.
- Add a new section (WAC 388-501-0163) to clarify the process for submitting a valid request for authorization; and
- Clarify limitation extensions.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, 74.09.530, 74.09.700.

Statute Being Implemented: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 45504, Olympia, WA 98504, (360) 725-1306; Implementation and Enforcement: Gail Kreiger, P.O. Box 45560, Olympia, WA 98504, (360) 725-1681.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not impose any new costs on small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Gail Kreiger, P.O. Box 45560, Olympia, WA 98504-5560, phone (360) 725-1681, fax (360) 586-9727, e-mail kreigga@dshs.wa.gov.

June 25, 2009
Stephanie E. Schiller
Rules Coordinator

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

**WAC 388-501-0050 Healthcare general coverage.** ((~~The following rules,~~)) WAC 388-501-0050 through 388-501-0065((~~,~~)) describe the healthcare services available to a client on a fee-for-service basis or ((~~as an enrollee~~)) to a client enrolled in a managed care organization (MCO) (defined in WAC 388-538-050). For the purposes of this section, healthcare services includes treatment, equipment, related supplies, and drugs. WAC 388-501-0070 describes noncovered services ((~~are described in WAC 388-501-0070~~)).

(1) Healthcare service categories listed in WAC 388-501-0060 do not represent a contract for healthcare services.

(2) For the provider to receive payment, the client must be eligible for the covered healthcare service on the date the healthcare service is performed or provided.

(3) Under the department's fee-for-service programs, providers must be enrolled with the department and meet the requirements of chapter 388-502 WAC to be paid for furnishing healthcare services to clients.

(4) The department pays only for ((~~medical or dental services, equipment, or supplies~~)) the healthcare services that are:

(a) Within the scope of the client's medical program;

(b) Covered - see subsection ((~~(5)~~)) (8) of this section;

(c) ((~~Medically necessary;~~

~~(d)~~)) Ordered or prescribed by a healthcare provider ((~~meeting~~)) who meets the requirements of chapter 388-502 WAC; ((~~and~~))

(d) Medically necessary as defined in WAC 388-500-0005;

(e) Submitted for authorization, when required, in accordance with WAC 388-501-0163;

(f) Approved, when required, in accordance with WAC 388-501-0165;

(g) Furnished by a provider according to ((~~the requirements of~~)) chapter 388-502 WAC; and

(h) Billed in accordance with department program rules and the department's current published billing instructions and numbered memoranda.

((~~(4) The department's fee-for-service program pays only for services furnished by enrolled providers who meet the requirements of chapter 388-502 WAC.~~))

(5) The department does not pay for any healthcare service((~~, treatment, equipment, drug, or supply~~)) requiring prior authorization from the department, if prior authorization was not obtained before the healthcare service was provided.

(6) The department does not reimburse clients for healthcare services purchased out-of-pocket.

(7) The department does not pay for the replacement of department-purchased equipment, devices, or supplies which have been sold, lost, broken, destroyed, or stolen as a result of carelessness, negligence, recklessness, or misuse unless otherwise allowed in specific program rules.

(8) **Covered healthcare services**

(a) Covered healthcare services are either:

(i) "Federally mandated" - means the state of Washington is required by federal regulation (42 CFR 440.210 and 220) to cover the healthcare service for medicaid clients; or

(ii) "State-option" - means the state of Washington is not federally mandated to cover the healthcare service but has chosen to do so at its own discretion.

(b) The department may limit the scope, amount, duration, and/or frequency of covered healthcare services. Limitation extensions are authorized according to WAC 388-501-0169.

((~~(7)~~)) (9) **Noncovered healthcare services**

(a) The department does not pay for any healthcare service((~~, equipment, or supply~~)):

(i) That federal or state laws or regulations prohibit the department from covering; or

(ii) Listed as noncovered in WAC 388-501-0070 or in any other program rule. The department evaluates a request for a noncovered healthcare service only if an exception to rule is requested according to the provisions in WAC 388-501-0160.

(b) When a noncovered healthcare services is recommended during the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) ((~~applies, a noncovered~~)) exam and then ordered by a provider, the department evaluates the healthcare service((~~, equipment, or supply will be evaluated~~)) according to the process in WAC 388-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC 388-534-0100 for EPSDT rules).

AMENDATORY SECTION (Amending WSR 07-04-036, filed 1/29/07, effective 3/1/07)

**WAC 388-501-0070 Healthcare coverage—Noncovered services.** (1) The department does not pay for any healthcare service((~~, treatment, equipment, drug or supply~~)) not listed or referred to as a covered healthcare service under the medical programs described in WAC 388-501-0060, regardless of medical necessity. For the purposes of this section, healthcare services includes treatment, equipment, related supplies, and drugs. Circumstances ((~~under~~)) in which clients are responsible for payment of healthcare services are described in WAC 388-502-0160.

(2) This section does not apply to healthcare services provided ((~~under~~)) as a result of the early and periodic screening, diagnosis, and treatment (EPSDT) program as described in chapter 388-534 WAC.

(3) The department does not pay for any ancillary healthcare service(s) provided in association with a noncovered healthcare service.

(4) The following list of noncovered healthcare services is not intended to be exhaustive. Noncovered healthcare services include, but are not limited to:

(a) Any healthcare service specifically excluded by federal or state law;

(b) Acupuncture, Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, naturopathy, and sanipractice;

(c) Chiropractic care for adults;

(d) Cosmetic, reconstructive, or plastic surgery, and any related healthcare services ((~~and supplies~~)), not specifically allowed under WAC 388-531-0100(4).

(e) Discography;

(f) Ear or other body piercing;

(((~~f~~))) (g) Face lifts or other facial cosmetic enhancements;

(((~~g) Gender reassignment surgery and any surgery related to transsexualism, gender identity disorders, and body dysmorphism, and related services, supplies, or procedures, including construction of internal or external genitalia, breast augmentation, or mammoplasty;~~)))

(h) ((~~Hair transplants, epilation (hair removal), and electrolysis;~~

(~~i~~))) Fertility, infertility or sexual dysfunction testing, and related care, drugs, and/or treatment including but not limited to:

(i) Artificial insemination;

(ii) Donor ovum, sperm, or surrogate womb;

(iii) In vitro fertilization;

(iv) Penile implants;

(v) Reversal of sterilization; and

(vi) Sex therapy.

(((~~j~~))) (i) Gender reassignment surgery and any surgery related to trans-sexualism, gender identity disorders, and body dysmorphism, and related healthcare services or procedures, including construction of internal or external genitalia, breast augmentation, or mammoplasty;

(j) Hair transplants, epilation (hair removal), and electrolysis;

(k) Marital counseling;

(((~~k~~))) (l) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;

(((~~l~~))) (m) Nonmedical equipment;

(((~~m~~))) (n) Penile implants;

(((~~n~~))) (o) Prosthetic testicles;

(((~~o~~))) (p) Psychiatric sleep therapy;

(((~~p~~))) (q) Subcutaneous injection filling;

(((~~q~~))) (r) Tattoo removal;

(((~~r~~))) (s) Transport of Involuntary Treatment Act (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities; ((~~and~~))

(((~~s~~))) (t) Upright magnetic resonance imaging (MRI); and

(u) Vehicle purchase - new or used vehicle.

(5) For a specific list((~~ing~~)) of noncovered healthcare services in the following service categories, refer to the ((~~accompanying~~)) WAC citation:

(a) Ambulance transportation and nonemergent transportation as described in ((~~WAC 388-546-0250~~)) chapter 388-546 WAC;

(b) Dental services (((~~,~~))for clients twenty((~~-one~~)) years of age and younger((~~,~~))) as described in chapter 388-535 WAC;

(c) Dental services (((~~,~~))for clients twenty-one years of age and older((~~,~~))) as described in chapter 388-535 WAC;

(d) Durable medical equipment as described in ((~~WAC 388-543-1300~~)) chapter 388-543 WAC;

(e) Hearing care services as described in ((~~WAC 388-544-1400~~)) chapter 388-547 WAC;

(f) Home health services as described in WAC 388-551-2130;

(g) Hospital services as described in WAC 388-550-1600;

(h) Physician-related services as described in WAC 388-531-0150;

(i) Prescription drugs as described in ((~~WAC 388-530-1150~~)) chapter 388-530 WAC; and

(j) Vision care services as described in ((~~WAC 388-544-0475~~)) chapter 388-544 WAC.

(6) A client has a right to request an administrative hearing ((~~when a service is denied as noncovered~~)), if one is available under state and federal law. When the department denies all or part of a request for a noncovered healthcare service(s) ((~~or equipment~~)), the department sends the client and the provider written notice, within ten business days of the date the decision is made, that includes:

(a) A statement of the action the department intends to take;

(b) Reference to the specific WAC provision upon which the denial is based;

(c) Sufficient detail to enable the recipient to:

(i) Learn why the department's action was taken; and

(ii) Prepare a response to the department's decision to classify the requested healthcare service as noncovered.

(d) The specific factual basis for the intended action; and

(e) The following information:

(i) ((~~The client's~~)) General administrative hearing rights;

(ii) Instructions on how to request the hearing;

(iii) Acknowledgement that a client may be represented at the hearing by legal counsel or other representative;

(iv) ((~~Upon the client's request, the name and address of the nearest legal services office;~~

~~(v)~~)) Instructions on how to request an exception to rule (ETR); ((~~and~~))

((~~(vi)~~)) (v) Information regarding department-covered healthcare services, if any, as an alternative to the requested noncovered healthcare service; and

(vi) Upon the client's request, the name and address of the nearest legal services office.

(7) A client can request an exception to rule (ETR) as described in WAC 388-501-0160.

NEW SECTION

**WAC 388-501-0163 Healthcare coverage—Process for submitting a valid request for authorization.** (1) The department requires providers to obtain authorization for certain healthcare services in accordance with this section, chapters 388-501 and 388-502 WAC, other applicable department rules, current published department billing instructions, and/or numbered memoranda. For the purposes of this section, healthcare services include treatment, equipment, related supplies, and drugs.

(a) For healthcare services that require prior authorization (PA), a provider (as defined in WAC 388-500-0005) must submit a written, electronic, or telephonic request to the department. To be a valid request for prior authorization, the provider must submit the request and conform to the department's current published program billing instructions, numbered memoranda, and any additional requirements in Washington Administrative Code (WAC) and/or Revised Code of Washington (RCW).

(b) For expedited prior authorization (EPA), a provider must certify that the client's clinical condition meets the appropriate EPA criteria outlined in the department's current published program billing instructions, numbered memoranda, and any additional requirements in WAC and/or RCW. The provider must use the department-assigned EPA number when submitting a claim for payment to the department.

(c) The department requires prior authorization for covered healthcare services when the applicable expedited prior authorization criteria are not met.

(d) Upon request, a provider must submit documentation to the department showing how the client's condition meets the required criteria for PA or EPA.

(2) Department authorization requirements for covered healthcare services are not a denial of service and do not create a right to an administrative hearing.

(3) The department returns invalid requests to the provider and takes no further action unless the request for authorization is resubmitted. The return of an invalid request is not a denial of service and does not create a right to an administrative hearing.

(4) Failure of a provider to request authorization for a healthcare service that requires it or a provider's failure to do so properly is not a denial of service and does not create a right to an administrative hearing.

(5) The department's authorization of healthcare service(s) does not guarantee payment. See WAC 388-501-0050 for other general requirements that must be satisfied before payment can be made for a healthcare service requested and authorized under this section.

(6) The department evaluates a request for an authorization of a healthcare service that exceeds identified limitations, on a case-by-case basis and in accordance with WAC 388-501-0169.

(7) The department may recoup any payment made to a provider if the department later determines the healthcare service was not properly authorized or did not meet EPA criteria. Refer to chapters 388-502 and 388-502A WAC.

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

**WAC 388-501-0169 Healthcare coverage—Limitation extension.** This section addresses requests for limitation extensions (((~~additional covered services when a client has received the maximum services allowed under specific healthcare program rules~~))) regarding scope, amount, duration and/or frequency of a covered healthcare service. For the purposes of this section, healthcare services includes treatment, equipment, related supplies, and drugs. The department does not authorize or pay for any covered healthcare services exceeding ((~~the maximum allowed until~~)) identified limitations unless authorization is obtained prior to client receiving the service.

(1) No limitation extension of covered healthcare services will be authorized when prohibited by specific program rules.

(2) When ((~~an~~)) a limitation extension is not prohibited by specific program rules, ((~~a client or~~)) the client's provider may request a limitation extension.

(3) ((~~Under fee-for-service (FFS),~~)) The department evaluates requests for limitation extensions ((~~using~~)) as follows:

(a) For a fee-for-service client, the process described in WAC 388-501-0165.

(b) For a managed care enrollee, the client's managed care organization (MCO) evaluates requests for limitation extensions according to the MCO's prior authorization process.

(((~~(4) In addition to subsection (3),~~))) (c) Both the department and MCO consider the following in evaluating a request for a limitation extension:

(((~~(a)~~))) (i) The level of improvement the client has shown to date related to the requested healthcare service and the reasonably calculated probability of continued improvement if the requested healthcare service is extended; and

(((~~(b)~~))) (ii) The reasonably calculated probability the client's condition will worsen if the requested healthcare service is not extended.

## WSR 09-14-077
### PROPOSED RULES
### DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed June 29, 2009, 3:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-16-104.

Title of Rule and Other Identifying Information: The department is amending WAC 388-110-140 Assisted living services facility structural requirements.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at http://www.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6094), on August 4, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 5, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m., August 4, 2009.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 21, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing amendments to this section to include kitchen sink requirements for assisted living resident units in boarding homes; clarify rule language; and delete unnecessary or redundant language.

Reasons Supporting Proposal:

- Rectify an inadvertent omission of a physical requirement that occurred during a previous rule making;
- Provide clarity to architects, building contractors, boarding home administrators, and department of health construction review staff, and department staff regarding assisted living facility physical requirements;
- Clarify the type of sink that is required in the kitchen area of a resident unit; and
- Make rules more user-friendly/easier to understand.

Statutory Authority for Adoption: RCW 74.39A.010, 18.20.090.

Statute Being Implemented: Chapters 74.39A, 18.20 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Judy Johnson, P.O. Box 45600, Olympia, WA 98513, (360) 725-2591; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The costs only apply to new boarding home construction. The department determined that the amendments were no more than "minor costs" as defined in RCW 19.85.030.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Judy Johnson, Boarding Home Program, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, fax (360) 438-7903, e-mail johnsjm1@dshs.wa.gov.

June 17, 2009
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-16-063 and 04-18-001, filed 7/30/04 and 8/19/04, effective 9/19/04)

**WAC 388-110-140 Assisted living services facility ((~~structural~~)) physical requirements.** (1) ((~~In a boarding home with an assisted living services contract,~~)) Licensed boarding homes with an assisted living services contract are required to:

(a) Meet the physical requirements that were in effect at the time of initial contracting; or

(b) If there is a break in contract, meet the requirements in effect at the time of the new contract.

(2) The contractor must ensure each resident has a private apartment-like unit ((~~meeting the requirements of a type 'B' dwelling unit as defined by the International Code Council A117.1 as adopted by the Washington State Building Code Council. Except as provided in subsection (3) of this section,~~)). Each unit must have at least the following:

(a) A minimum area of ((~~one hundred eighty square feet in an existing boarding home, and~~)) two hundred twenty square feet ((~~in a new boarding home~~)). The minimum area may include counters, closets and built-ins, but must exclude the bathroom;

(b) A ((~~separate~~)) private bathroom((~~, which includes~~)). The private bathroom must be equipped with a sink, a toilet, and a shower or bathtub. ((~~In a new boarding home, the contractor must provide a minimum of~~)) At least one wheelchair

accessible bathroom with a roll-in shower that is at least forty-eight inches by thirty inches must be provided for every two residents whose care is partially or fully funded ((~~by the department~~)) through the assisted living contract;

(c) A lockable entry door;

(d) A kitchen area. The kitchen area must be equipped with:

(i) A refrigerator((~~,~~));

(ii) A microwave oven, range or ((~~stovetop, and a counter or table for food preparation. In a new boarding home, the kitchen area must also be equipped with~~)) cooktop;

(iii) A counter mounted kitchen sink, with inside dimensions of at least twenty-one inches by fifteen inches, and a minimum depth of seven inches;

(iv) A storage space for utensils and supplies((~~,~~)); and

(v) A work counter surface, with a minimum usable surface area of thirty inches ((~~wide~~)) in length by twenty-four inches ((~~in depth~~)) deep, a maximum height of thirty-four inches, ((~~and a~~)) and having a clear knee space beneath at least twenty-seven inches in height and thirty inches in length; and

(e) A living area wired for telephone and, where available in the geographic location, wired for television service.

((~~(2)(a) For purposes of this section, a new boarding home is:~~

~~(i) A new building to be used as a boarding home or part of a boarding home, for which plans are submitted to the department of health for construction review on or after June 8, 1996; or~~

~~(ii) An addition, modification, or alteration to an existing licensed boarding home, for which plans are submitted to the department of health for construction review on or after June 8, 1996.~~

~~(A) The department may, in consultation with the office of construction review services in the department of health, exempt from selected new boarding home contract construction requirements, a limited addition, modification, or alteration to an existing licensed boarding home that will improve the quality of life for residents, if compliance with all new boarding home contract construction requirements would otherwise make the limited addition, modification, or alteration cost prohibitive. A limited addition, modification, or alteration means any physical change to an existing licensed boarding home that does not affect the structural integrity of the building, does not affect fire and life safety, and does not increase the boarding home's maximum facility capacity as defined in WAC 388-78A-2020.~~

~~(B) A major addition, modification, or alteration to an existing licensed boarding home must meet new boarding home contract construction requirements for applicable portions of the building. A major addition, modification, or alteration means any physical change within a room or area in an existing licensed boarding home that results in reconstruction to structural or other building systems.~~))

((~~(b) All boarding homes that are not new boarding homes under subsection (2)(a) of this section, are existing boarding homes. An existing building, or portion thereof, that is converted to boarding home use must be considered an existing boarding home unless there is an addition, modification or alteration to the existing building.~~

~~(3) If a boarding home submitted plans to the department of health for construction review on or after June 8, 1996, and the boarding home had an assisted living contract as of September 1, 2004, then the boarding home is "grandfathered" under the contracting rules for structural requirements that were in effect at the time of contracting and is considered to meet the assisted living structural requirements of subsection (1) of this section. However, if the same boarding home submits plans to the department of health for construction review for an addition, modification or alteration of the boarding home after September 1, 2004, then the boarding home must meet the current new boarding home requirements of subsection (1) for the applicable portions of the building.~~))

((~~(4)~~)) (3) Married couples may share an apartment-like unit under an assisted living contract if:

(a) Both residents understand they are each entitled to live in a separate private unit; and

(b) Both residents mutually request to share a single apartment-like unit.

((~~(5)~~)) (4) ((~~In a new boarding home,~~)) The contractor must provide a private accessible mailbox ((~~in which the resident may receive mail~~)) for each resident whose care is partially or fully funded through the assisted living contract.

((~~(6)~~)) (5) The contractor must provide homelike smoke-free common areas with sufficient space for socialization designed to meet resident needs. Common areas must be available for resident use at any time provided such use does not disturb the health or safety of other residents. The contractor must make access to outdoor areas available to all residents.

((~~(7)~~)) (6) The contractor must provide a space for residents to meet with family and friends outside the resident's living unit.

((~~(8)~~)) (7) The department may grant an exemption to the requirements of this section ((~~as they apply to a specified resident when it is in the best interest of the specific resident~~)) in accordance with WAC 388-78A-2820.

## WSR 09-14-100
### PROPOSED RULES
### DEPARTMENT OF FISH AND WILDLIFE

[Filed June 30, 2009, 11:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-10-025.

Title of Rule and Other Identifying Information: Repealing chapter 220-88C WAC; and adding WAC 220-44-095 Coastal sardine purse seine fishery—Harvest, landing, and reporting requirements—Gear.

Hearing Location(s): WDFW Region 6 Office, 48 Devonshire Road, Montesano, WA 98563, on August 11, 2009, at 10:00 a.m.

Date of Intended Adoption: August 12, 2009.

Submit Written Comments to: Corey Niles, Marine Resources Policy Coordinator, 48 Devonshire Road, Monte-

sano, WA 98563, e-mail Corey.Niles@dfw.wa.gov, fax (360) 664-0689, by July 31, 2009.

Assistance for Persons with Disabilities: Contact Susan Yeager by July 31, 2009, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The legislature created a new license limitation program in ESHB 1326 for the harvest and delivery of Pacific sardines into the state. The current emerging commercial fishery rules for sardine/pilchard will no longer apply once this new law becomes effective on July 26, 2009. This proposal would extend the current harvest, bycatch, landing, and reporting requirements to the new licenses and incorporate federal coastal pelagic species regulations by reference.

Reasons Supporting Proposal: The agency is mandated to conserve food-fish resources, maintain the economic well-being and stability of the fishing industry in the state, and promote orderly fisheries.

Statutory Authority for Adoption: Chapter 331, Laws of 2009 (ESHB 1326); and RCW 77.04.020, 77.12.047, and 77.-65.220.

Statute Being Implemented: Chapter 331, Laws of 2009 (ESHB 1326).

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

Name of Proponent: The Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Corey Niles, 48 Devonshire Road, Montesano, WA 98563, (360) 249-4628; Implementation: Lorna Wargo, 48 Devonshire Road, Montesano, WA 98563, (360) 249-4628; and Enforcement: Chief Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are no more restrictive than the existing emerging commercial fishery regulations and will not result in additional costs to fishery participants.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

June 30, 2009
Lori Preuss
Rules Coordinator

NEW SECTION

**WAC 220-44-095 Coastal sardine purse seine fishery—Harvest, landing, and reporting requirements—Gear.** (1)(a) It is unlawful to possess, transport through the waters of the state, or deliver into any Washington port, Pacific sardine (*Sardinops sagax*) or other coastal pelagic species taken in violation of gear requirements and other rules published in Title 50, Part 660, Subpart I of the Code of Federal Regulations (CFR). These federal regulations govern commercial fishing for coastal pelagic species in the Exclusive Economic Zone off the coasts of Washington, Oregon, and California. Where the federal regulations refer to the fishery management area, that area is interpreted to include Washington state waters coterminous with the Exclusive Economic Zone. Updates to the federal regulations are published in the Federal Register. Discrepancies or errors between the CFR and Federal Register will be resolved in favor of the Federal Register. This chapter incorporates the CFR by reference and is based, in part, on the CFR. A copy of the federal rules may be obtained by contacting Lori Preuss at 360-902-2930, or going to the U.S. Government Printing Office's GPO Access web site (www.gpoaccess.gov). State regulations that are more restrictive than the federal regulations will prevail.

(b) The coastal sardine fishery season is open to purse seine fishing each year only from April 1st through December 31st. It is unlawful to take Pacific sardine in state waters except for the incidental take authorized by the coastal baitfish regulations.

(c) It is unlawful to retain any species that is taken incidental to sardine, except for anchovy, mackerel, and market squid (*Logligo opalescens*). Any salmon encircled in the purse seine must be released prior to completion of the set, and no salmon may be landed on the fishing vessel.

(d) It is unlawful to transfer sardine catch from one fishing vessel to another.

(e) It is unlawful to fail to have legal purse seine gear aboard the vessel making a sardine landing.

(f) It is unlawful to fail to deliver sardine landings to a shore-side processing facility.

(g) Once a delivery has commenced at a processing plant, all fish on board the vessel must be offloaded at that plant.

(h) It is unlawful to deliver more than fifteen percent cumulative weight of sardines for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, other fishery products, or by-products, for purposes other than human consumption or fishing bait used during the sardine fishery season.

(2) License owners must designate a vessel upon issuance or renewal of the license and must be identified as either the vessel owner or primary license operator.

(3) Persons fishing under a Washington sardine purse seine fishery license or temporary annual fishery permit must:

(a) Carry an observer on board for any sardine fishing trip if requested by the department;

(b) Surrender up to five hundred sardines per vessel per trip if requested by department samplers for biological information; and

(c) Complete a department-issued logbook each month in which fishing activity occurs, and submit it to the department by the 15th day of the following month.

(4) Violation of reporting requirements under this section is punishable pursuant to RCW 77.15.280.

(5) Violation of gear, harvest, or landing requirements under this section is punishable pursuant to RCW 77.15.520.

**WSR 09-14-106**
**PROPOSED RULES**
**DEPARTMENT OF LABOR AND INDUSTRIES**
[Filed June 30, 2009, 12:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-10-081.

Title of Rule and Other Identifying Information: Comprehensive treatment for chronic noncancer pain, structured intensive multidisciplinary program (SIMP), lumbar fusions, and intervertebral artificial disc replacements.

The subject of this rule making is the implementation of two health technology clinical committee (HTCC) coverage determinations. This rule would establish a definition and criteria for a SIMP for the comprehensive treatment of chronic noncancer pain and establish who is eligible for certain lumbar fusions or implantation of an intervertebral artificial disc. In addition, this rule making will clarify that the lumbar Charite artificial disc is a covered device by deleting current language in WAC 296-20-03002 that lists it as a noncovered device.

Hearing Location(s): Department of Labor and Industries, Room S119, 7273 Linderson Way S.W., Tumwater, WA 98501, on August 14, 2009, at 10:00 a.m.

Date of Intended Adoption: September 14, 2009.

Submit Written Comments to: Jami Lifka, Office of the Medical Director, P.O. Box 44321, Olympia, WA 98504-4321, e-mail lifk235@lni.wa.gov, fax (360) 902-6315, by August 14, 2009.

Assistance for Persons with Disabilities: Contact office of information and assistance, by August 1, 2009, TTY (360) 902-5797 or (360) 902-4941.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to implement the lumbar fusion and artificial disc determinations made by the statutory HTCC. According to RCW 70.14.120, the department must comply with HTCC coverage decisions. The rule will implement the HTCC coverage determinations by defining a structured intensive multidisciplinary program (SIMP) and what it means to successfully complete such a program.

In addition, this rule making will clarify that the lumbar Charite artificial disc is a covered device by deleting current language in WAC 296-20-03002 that lists it as a noncovered device.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 70.14.120, 51.-04.020, 51.04.030.

Statute Being Implemented: RCW 70.14.120.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The rule supports a redesigned department policy and fee schedule for purchasing comprehensive treatment for the management of chronic noncancer pain. The policy and fee schedule were developed in collaboration with all the current commission on accreditation of rehabilitation facilities (CARF) accredited providers of comprehensive treatment for chronic noncancer pain in Washington state.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Jami Lifka, 7273 Linderson Way S.W., Tumwater, WA, (360) 902-4941; Implementation: Gary Franklin, MD, MPh, Office of the Medical Director, (360) 902-5020; and Enforcement: Bob Malooly, Assistant Director of Insurance Services, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no disproportionate cost to small business.

A cost-benefit analysis is not required under RCW 34.05.328. There is no more than minimal cost to business.

June 30, 2009
Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 06-15-110, filed 7/18/06, effective 8/18/06)

**WAC 296-20-03002 Treatment not authorized.** The department or self-insurer will not allow nor pay for following treatment:

(1) Use of diapulse, thermatic (standard model only), spectrowave and superpulse machines on workers entitled to benefits under the Industrial Insurance Act.

(2) Iontophoresis; prolotherapy; acupuncture; injections of colchicine; injections of fibrosing or sclerosing agents; and injections of substances other than anesthetic or contrast into the subarachnoid space (intra-thecal injections).

(3) ((~~Lumbar artificial disc replacement with Charite lumbar artificial disc.~~

~~(4)~~)) Treatment to improve or maintain general health (i.e., prescriptions and/or injection of vitamins or referrals to special programs such as health spas, swim programs, exercise programs, athletic-fitness clubs, diet programs, social counseling).

((~~(5)~~)) (4) Continued treatment beyond stabilization of the industrial condition(s), i.e., maintenance care, except where necessary to monitor prescription of medication necessary to maintain stabilization i.e., anti-convulsive, anti-spasmodic, etc.

((~~(6)~~)) (5) After consultation and advice to the department or self-insurer, any treatment measure deemed to be dangerous or inappropriate for the injured worker in question.

((~~(7)~~)) (6) Treatment measures of an unusual, controversial, obsolete, or experimental nature (see WAC 296-20-045). Under certain conditions, treatment in this category may be approved by the department or self-insurer. Approval must be obtained prior to treatment. Requests must contain a description of the treatment, reason for the request with benefits and results expected.

NEW SECTION

**WAC 296-20-12055 Structured intensive multidisciplinary program (SIMP) for chronic noncancer pain.** (1) Injured workers eligible for benefits under Title 51 RCW

may be evaluated for and enrolled in a comprehensive treatment program for chronic noncancer pain if it meets the definition of a structured, intensive, multidisciplinary program (SIMP). The goals for this program are to help workers recover their function, reduce or eliminate disability, and improve the quality of their lives by helping them cope effectively with chronic noncancer pain.

(2) Prior authorization is required for all workers to participate in a SIMP for functional recovery from chronic pain.

NEW SECTION

**WAC 296-20-12060 SIMP requirements for lumbar fusion and artificial disc replacement candidates.** Special conditions and requirements apply to workers who are considering having a lumbar fusion or lumbar intervertebral artificial disc replacement due to uncomplicated degenerative disc disease (referred to as lumbar surgery candidates as defined in WAC 296-20-12065). Lumbar surgery candidates must successfully complete a SIMP to obtain authorization for a lumbar fusion or a lumbar intervertebral artificial disc replacement. Refer to WAC 296-20-12095 for referral and prior authorization information.

NEW SECTION

**WAC 296-20-12065 SIMP definitions.** The definitions in this section refer to terms used in WAC 296-20-12055 through 296-20-12095.

(1) **SIMP** means a chronic pain management program with the following four components:

**Structured** means care is delivered through regular scheduled modules of assessment, education, treatment, and follow up evaluation where workers interact directly with licensed health care practitioners. Workers follow a treatment plan designed specifically to meet their needs.

**Intensive** means the treatment phase is delivered on a daily basis, six to eight hours per day, five days per week, for up to four consecutive weeks. Slight variations can be allowed if necessary to meet the worker's needs.

**Multidisciplinary** (interdisciplinary) means that structured care is delivered and directed by licensed health care professionals with expertise in pain management in at least the areas of medicine, psychology, and physical therapy or occupational therapy. The SIMP may add vocational, nursing, and additional health services depending on the workers' needs and covered benefits.

**Program** means an interdisciplinary pain rehabilitation program that provides outcome-focused, coordinated, goal-oriented team services. Care coordination is included within and across each service area. The program benefits workers who have impairments associated with pain that impact their participation in daily activities and their ability to work. This program measures and improves the functioning of persons with pain and encourages their appropriate use of healthcare systems and services.

(2) **Uncomplicated degenerative disc disease (UDDD)** means chronic low back pain of discogenic origin without objective clinical evidence of any of the following conditions:

• Radiculopathy;

• Functional neurologic deficits;

• Spondylolisthesis (> grade 1);

• Isthmic spondylolysis;

• Primary neurogenic claudication associated with stenosis;

• Fracture, tumor, infection, inflammatory disease; or

• Degenerative disease associated with significant deformity.

(3) **Lumbar surgery candidate** means an injured worker who is considering having a lumbar fusion or lumbar intervertebral artificial disc replacement due to uncomplicated degenerative disc disease.

(4) **Important associated conditions** means medical or psychological conditions (often referred to as comorbid conditions) that hinder functional recovery from chronic pain.

(5) **Treatment plan** means an individualized plan of action and care developed by licensed health care professionals that addresses the worker's identified needs and goals. It describes the intensity, duration, frequency, setting, and timeline for treatment and addresses the elements described in the treatment phase. It is established during the evaluation phase and may be revised during the treatment phase.

(6) **Valid tests and instruments** mean those that have been shown to be scientifically accurate and reliable for tracking functional progress over time.

NEW SECTION

**WAC 296-20-12070 SIMP evaluation phase.** See WAC 296-20-12095 SIMP referral and prior authorization requirements, for information about how and when each phase may be prior authorized by the claim manager.

Evaluation phase:

The Evaluation phase occurs before the treatment phase and includes treatment plan development and a report. Only one evaluation is allowed per authorization but it can be conducted over one to two days. The evaluation phase includes all of the following components:

(1) A history and physical exam along with a medical evaluation by a physician;

(2) Review of medical records and reports, including diagnostic tests and previous efforts at pain management;

(3) Assessment of any important associated conditions that may hinder recovery (e.g., opioid dependence and other substance use disorders, smoking, significant mental health disorders, and unmanaged chronic disease). If such conditions exist, see WAC 296-20-12095 SIMP referral and prior authorization requirements;

(4) Assessment of past and current use of all pain management medications, including over the counter, prescription, scheduled, and illicit drugs;

(5) Psychological and social assessment by a licensed clinical psychologist using valid tests and instruments;

(6) Identification of the worker's family and support resources;

(7) Identification of the worker's reasons and motivation for participation and improvement;

(8) Identification of factors that may affect participation in the program;

(9) Assessment of pain and function using valid tests and instruments; it should include the current levels, future goals, and the estimated treatment time to achieve them for each of the following areas:

• Activities of daily living (ADLs);

• Range of motion (ROM);

• Strength;

• Stamina;

• Capacity for and interest in returning to work.

(10) If the claim manager has assigned a vocational counselor, the SIMP provider must coordinate with the vocational counselor to assess the likelihood of the worker's ability to return to work and in what capacity;

(11) A summary report of the evaluation and a preliminary recommended treatment plan. If there are any barriers preventing the worker from moving on to the treatment phase, the report should explain the circumstances;

(12) For lumbar surgery candidates, the report should address their expectation and interest in having surgery.

NEW SECTION

**WAC 296-20-12075 SIMP treatment phase.** Treatment phase services may be provided for up to twenty consecutive days (excluding weekends and holidays) depending on individual needs and progress toward treatment goals. Each treatment day lasts six to eight hours. Services are coordinated and provided by an interdisciplinary team of physicians, psychologists, physical or occupational therapists, and may include nurses, vocational counselors, and care coordinators. Treatment must include all the following elements:

(1) Graded exercise: Progressive physical activities guided by a physical or occupational therapist that promote flexibility, strength, and endurance to improve function and independence;

(2) Cognitive behavioral therapy: Individual or group cognitive behavioral therapy with the psychologist, psychiatrist or psychiatric advanced registered nurse practitioner;

(3) Coordination of health services: Coordination and communication with the attending provider, claim manager, family, employer, and community resources as needed to accomplish the goals set forth in the treatment plan;

• For lumbar surgery candidates, communication and consultation with the spine surgeon is recommended;

(4) Education and skill development on the factors that contribute to pain, responses to pain, and effective pain management;

• For lumbar surgery candidates, this includes provision and review of a patient education aid, provided by the insurer, describing the risks associated with lumbar fusion;

(5) Tracking of pain and function: Individual medical assessment of pain and function levels using valid tests and instruments;

(6) Ongoing assessment of important associated conditions, medication tapering, and clinical assessment of progress toward goals; opioid and mental health issues can be treated concomitantly with pain management treatment;

(7) Performance of real or simulated work or daily functional tasks;

(8) SIMP vocational services may include instruction regarding workers' compensation requirements. Vocational services with return to work goals are needed in accordance with the return to work action plan when a vocational referral has been made;

(9) A home care plan for the worker to continue exercises, cognitive and behavioral techniques and other skills learned during the treatment phase;

(10) A report at the conclusion of the treatment phase that addresses all the following questions:

• To what extent did the worker meet his or her treatment goals?

• What changes, if any, have occurred in the worker's medical and psycho-social conditions, including dependence on opioids and other medications?

• What changes, if any, have occurred in the worker's pain level and functional capacity as measured by valid tests and instruments?

• What changes, if any, have occurred in the worker's ability to manage pain?

• What is the status of the worker's readiness to return to work or daily activities?

• How much and what kind of follow up care does the worker need?

• For lumbar surgery candidates, what is the worker's current expectation and interest in having surgery?

NEW SECTION

**WAC 296-20-12080 SIMP follow up phase.** (1) So long as the claim remains open, a follow up phase may occur within six months after the treatment phase has concluded. This phase is not a substitute for and cannot serve as an extended treatment phase. The goals of the follow up phase are to:

(a) Improve and reinforce the pain management gains made during the treatment phase;

(b) Help the worker integrate the knowledge and skills gained during the treatment phase into his or her job, daily activities, and family and community life;

(c) Evaluate the degree of improvement in the worker's condition at regular intervals and produce a written report describing the evaluation results.

(2) Site of the follow up phase. The activities of the follow up phase may occur at the original multidisciplinary clinic (clinic-based) or at the worker's home, workplace, or healthcare provider office (community-based). This approach permits maximum flexibility for workers whose needs may range from intensive, focused follow up care at the clinic to more independent episodes of care closer to home. It also enables workers to establish relationships with providers in their communities so they have increased access to healthcare resources.

(3) Face-to-face vs. nonface-to-face services: Follow up services are payable as "face-to-face" and "nonface-to-face" services. Face-to-face services are when the provider interacts directly with the worker, the worker's family, employer, or other healthcare providers. Nonface-to-face services are when the SIMP provider uses the telephone or other electronic media to communicate with the worker, worker's fam-

ily, employer, or other healthcare providers for the purpose of coordinating care in the worker's home community. Both are subject to the following limits:

(a) Face-to-face services: Up to twenty-four hours are allowed with a maximum of four hours per day.

(b) Nonface-to-face services: Up to forty hours are allowed.

(4) Reporting requirements.

(a) If a worker has been receiving follow up services, a summary report must be submitted to the insurer that provides the following information:

• The worker's status, including whether the worker returned to work, how pain is being managed, medication use, whether the worker is getting services in his or her community, activity levels, and support systems;

• What was done during the follow up phase;

• What resulted from the follow up care; and

• Measures of pain and function using valid tests and instruments.

(b) This summary report must be submitted at the following intervals:

• For nonlumbar surgery candidates: At one and three months.

• For lumbar surgery candidates (regardless of whether they had lumbar surgery after successfully completing SIMP treatment): At one, three, and six months.

NEW SECTION

**WAC 296-20-12085 Requirements the SIMP provider must meet.** Refer to department policy on comprehensive treatment for chronic noncancer pain for requirements the SIMP provider must meet.

NEW SECTION

**WAC 296-20-12090 Requirements the worker must meet for a SIMP.** An injured worker must make a good faith effort to participate and comply with the treatment plan prescribed for him or her by the SIMP provider. To successfully complete a SIMP, the worker must meet all the requirements in this section. The worker must:

(1) Be medically and physically stable enough to safely tolerate and participate in all physical activities and treatments that are part of his or her treatment plan;

(2) Be psychologically stable enough to understand and follow instructions and to put forth an effort to work toward the goals that are part of his or her treatment plan;

(3) Agree to be evaluated and comply with treatment prescribed for any important associated conditions that hinder progress or recovery (e.g., opioid dependence and other substance use disorders, smoking, and significant mental health disorders);

(4) Attend each day and each session that is part of his or her treatment plan. Sessions may be made up if, in the opinion of the provider, they do not interfere with the worker's progress toward treatment plan goals;

(5) Cooperate and comply with his or her treatment plan;

(6) Not pose a threat or risk to himself or herself, to staff, or to others;

(7) Review and sign a participation agreement with the provider;

(8) Participate with coordination efforts at the end of the treatment phase to help him or her transition back to his or her home, community, and workplace.

NEW SECTION

**WAC 296-20-12095 SIMP referral and prior authorization requirements.** (1) All SIMP services require:

• Prior authorization by the claim manager; and

• A referral from the worker's attending provider.

An occupational nurse consultant, claim manager, or insurer assigned vocational counselor may recommend a SIMP for the worker, but this cannot substitute for a referral from the attending provider.

(2) When the attending provider refers a worker to a chronic pain management program, the claim manager may authorize an evaluation if the worker has had unresolved chronic pain for longer than three months despite conservative care and has one or more of the following conditions:

(a) Is unable to return to work due to the chronic pain;

(b) Has returned to work but needs help with chronic pain management;

(c) Has significant pain medication dependence, tolerance, abuse, or addiction;

(d) Is a lumbar surgery candidate. It is recommended that lumbar surgery candidates be evaluated by a SIMP provider prior to requesting surgery.

(3) Prior authorization for the evaluation phase occurs first and includes only one evaluation. Once authorized, the SIMP provider verifies the worker meets the requirements set forth in WAC 296-20-12090 and can fully participate in the program. If the worker:

(a) Meets the requirements and the SIMP provider recommends they move on to the treatment phase, the SIMP provider must provide the insurer with a report and treatment plan as described under the evaluation phase.

(b) Does not meet the requirements, the SIMP provider must provide the insurer with a report explaining what requirements are not met and the goals the worker must meet before he or she can return and participate in the program. If the worker is found to have important associated conditions during the evaluation phase that prevent him or her from participating in the treatment phase, the SIMP provider must either treat the worker or recommend to the worker's attending provider and the claim manager what type of treatment the worker needs.

(4) The treatment phase must be prior authorized separately from the evaluation phase. Treatment phase authorization includes authorization for the follow up phase.

(5) SIMP services are authorized on an individual basis. If there are extenuating circumstances that warrant additional treatment or a restart of the program, providers must submit this request along with supporting documentation to the claim manager.

(6) If a lumbar surgery candidate previously participated in a SIMP as a lumbar surgery candidate but did not successfully complete treatment, one additional SIMP may be authorized only if:

(a) The worker obtains an additional surgical recommendation noting clinical changes one year or more after the date first referred to a SIMP; or

(b) The reason the worker did not participate fully or successfully complete a SIMP the first time was because of associated conditions that are now fully resolved.

(7) If a lumbar surgery candidate successfully completed a SIMP and did not have surgery, and in the future becomes a lumbar surgery candidate again, another SIMP may be authorized but is not required.

(8) If a worker's treatment is interrupted due to significant family or life circumstances such as a death in the family, the claim manager may authorize resuming or restarting the SIMP if recommended by the SIMP provider.

(9) If a SIMP provider plans to travel to the worker's community to deliver face-to-face services, mileage may be reimbursed, but only if it is authorized prior to travel. Lodging, meals, or any per diem expenses are not reimbursable. Actual travel time is not included in the twenty-four-hour limit as stated in WAC 296-20-12080. When requesting prior authorization for mileage, the SIMP provider must explain the reason for the visit and how it will benefit the worker.

## WSR 09-14-119
### PROPOSED RULES
### DEPARTMENT OF PERSONNEL

[Filed July 1, 2009, 9:09 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-46-035 Layoff option.

Hearing Location(s): Department of Personnel, 600 South Franklin, Olympia, WA, on August 13, 2009, at 8:30 a.m.

Date of Intended Adoption: August 13, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by August 6, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by August 6, 2009, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The following proposed rule change addresses what layoff options rights to classifications an employee has held permanent status in prior to any breaks in state service.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

June 30, 2009
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

**WAC 357-46-035 Layoff option.** (1) **What option does a permanent employee have to take a position when the employee is scheduled for layoff?**

Within the layoff unit, a permanent employee scheduled for layoff must be offered the option to take a position, if available, that meets the following criteria:

(a) The position is allocated to the class in which the employee holds permanent status at the time of the layoff. If no option to a position in the current class is available, the employee's option is to a position in a class in which the employee has held permanent status that is at the same salary range. If the employee has no option to take a position at the same salary range, the employee must be given an opportunity to take a position in a lower class in a class series in which the employee has held permanent status, in descending salary order. The employee does not have to have held permanent status in the lower class in order to be offered the option to take a position in the class.

(b) The position is comparable to the employee's current position as defined by the employer's layoff procedure.

(c) The employee satisfies the competencies and other position requirements.

(d) The position is funded and vacant, or if no vacant funded position is available, the position is occupied by the employee with the lowest employment retention rating.

(2) **What if the employee has no option under subsection 1?**

(a) If a permanent employee has no option available under subsection (1) of this section, the employer must determine if there is an available position in the layoff unit to offer the employee in lieu of separation that meets the following criteria:

(i) The position is at the same or lower salary range maximum as the position from which the employee is being laid off;

(ii) The position is vacant or held by a probationary employee or an employee in a nonpermanent appointment;

(iii) The position is comparable or less than comparable; and

(iv) The position is one for which the employee meets the competencies and other position requirements.

(b) If more than one qualifying position is available, the position with the highest salary range maximum is the one that must be offered.

(3) **What happens when a class in which the employee previously held permanent status has been revised or abolished?**

If a class in which an employee has previously held permanent status has been revised or abolished, the employer shall determine the closest matching class to offer as a layoff option. The closest matching class must be at the same or lower salary range maximum as the class from which the employee is being laid off.

(4) **Does an employee have layoff option rights to classifications the employee held permanent status in prior to any breaks in state service?**

General government employees have layoff option rights to all classifications the employee has held permanent status in regardless of any breaks in state service.

Higher education employers must address in their layoff procedure whether or not employees will be given layoff options to classes they held permanent status in prior to any breaks in state service.

## WSR 09-14-120
### PROPOSED RULES
### DEPARTMENT OF PERSONNEL

[Filed July 1, 2009, 9:10 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-46-070 Which employees are eligible to have their name placed on an employer's internal layoff list? and 357-46-080 Which employees are eligible to have their name placed on an employer's statewide layoff list?

Hearing Location(s): Department of Personnel, 600 South Franklin, Olympia, WA, on August 13, 2009, at 8:30 a.m.

Date of Intended Adoption: August 13, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by August 6, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by August 6, 2009, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are proposing that we change WAC 357-46-070 and 357-46-080 so that employees will have layoff list rights to any class they have held permanent status in regardless of whether or not the employee has had a break in service.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

June 30, 2009
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

**WAC 357-46-070 Which employees are eligible to have their name placed on an employer's internal layoff list?** (1) Permanent employees of the employer who satisfy the following criteria must have their name placed on the employer's internal layoff list if the employee exercises this option within the two-year eligibility period:

(a) **Employees who are laid off or have been notified in writing by the employer that they are scheduled to be laid off** are eligible to be on the internal layoff list for classes in which they held permanent status ((~~during the current period of unbroken service~~)) at the same or lower salary range and lower classes in the same class series. Permanent status is not required for the lower classes in the class series. For purposes of this subsection "employees" includes Washington management service (WMS) employees who are laid off or have been notified by the employer that they are scheduled to be laid off and who have held permanent status in Washington general service ((~~during the current period of unbroken service~~)). WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of layoff or notification of layoff.

(b) **Employees who accept a voluntary demotion in lieu of layoff** are eligible to be on the internal layoff list for the class from which they demoted and classes at that salary range and lower salary ranges in which the employee held permanent status ((~~during the current period of unbroken service~~)) and lower classes in the same class series. Permanent status is not required for the lower classes in the class series. Washington management service (WMS) employees who accept a voluntary demotion in lieu of layoff are eligible to be on the internal layoff list for classes in which they held permanent status ((~~during the current period of unbroken service~~)). WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of the demotion.

(c) **Employees who accepted less than comparable positions** as defined by the employer's layoff procedure are eligible to be on the internal layoff list for classes in which they held permanent status at the same or lower salary range and lower classes in the same class series. Permanent status is not required for the lower classes in the class series.

(d) **Employees who have not successfully completed a trial service period and are placed in a nonpermanent position following reversion** are eligible to be on the internal layoff list for classes in which the employee previously held permanent status ((~~during the current period of unbroken service~~)).

(e) **Employees who remain in a position reallocated to a lower salary range** are eligible to be on the internal layoff list for the class the employee held permanent status in prior to the reallocation.

(2) Employees who have been demoted for cause from a class are **not** eligible to be on the internal layoff list for that class.

(3) General government employees have layoff list rights to all classifications the employee has held permanent status in regardless of any breaks in state service.

Higher education employers must address in their layoff procedure whether or not employees will be given layoff rights to classes they held permanent status in prior to any breaks in state service.

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

**WAC 357-46-080 Which employees are eligible to have their name placed on an employer's statewide layoff list?** (1) Permanent employees who satisfy the following criteria must have their name placed on the statewide layoff list for other employers if the employee exercises this option within the two-year eligibility period:

(a) Employees who are laid off or notified in writing by the employer that they are scheduled to be laid off are eligible to be on the statewide layoff list for classes in which they held permanent status ((~~during the current period of unbroken service~~)) at the same or lower salary range and lower classes in the same class series. Permanent status is not required in the lower classes in the class series. For purposes of this subsection "employees" includes Washington management service (WMS) employees who are laid off or have been notified by the employer that they are scheduled to be laid off and who have held permanent status in Washington general service ((~~during the current period of unbroken service~~)). WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of layoff or notification of layoff.

(b) Employees who accept a voluntary demotion in-lieu of layoff are eligible to be on the statewide layoff list for the class from which they demoted and classes at that salary range and lower salary ranges in which the employees held permanent status and lower classes in the same class series. Permanent status is not required for the lower classes in the class series. Washington management service (WMS) employees who accept a voluntary demotion in lieu of layoff are eligible to be on the statewide layoff list for classes in which they held permanent status ((~~during the current period of unbroken service~~)). WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of the demotion.

(c) Employees who accepted less-than-comparable positions at the time of layoff are eligible to be on the statewide layoff list for classes in which they held permanent status at the current or lower salary range and lower classes in the same class series. Permanent status is not required for the lower classes in the class series.

(2) Employees who have been demoted for cause from a class are **not** eligible to be on the statewide layoff list for that class.

(3) General government employees have layoff list rights to all classifications the employee has held permanent status in regardless of any breaks in state service.

Higher education employers must address in their layoff procedure whether or not employees will be given layoff rights to classes they held permanent status in prior to any breaks in state service.

## WSR 09-14-122
### PROPOSED RULES
### DEPARTMENT OF PERSONNEL
[Filed July 1, 2009, 9:11 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-13-083 What happens if an employee requests a director's review of his or her allocation or files an exception to the director's decision and is laid off before a decision is issued?

Hearing Location(s): Department of Personnel, 600 South Franklin, Olympia, WA, on August 13, 2009, at 8:30 a.m.

Date of Intended Adoption: August 13, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by August 6, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by August 6, 2009, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The following proposed new rule addresses what happens if an employee requests a director's review of his/her allocation or files exceptions to the director's decision and is laid off before a decision is issued.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

June 30, 2009
Eva N. Santos
Director

NEW SECTION

**WAC 357-13-083 What happens if an employee requests a director's review of his or her allocation or files an exception to the director's decision and is laid off before a decision is issued?** When an employee's position has been reallocated as part of a board or director's decision on allocation and when the employee was laid off prior to the board or director's decision being issued, the following applies:

(1) The employee's position is reallocated effective as of the date the request for a position review was filed with the employer;

(2) If the employee was reallocated to a class with a higher salary range, the employee is due back pay from the effective date of the allocation to the effective date of the layoff;

(3) The layoff action (including options afforded to the employee) is not impacted; and

(4) The employee shall have layoff list rights to the class the employee's former position was reallocated to in accordance with WAC 357-46-070 and 357-46-080.

## WSR 09-14-124
### PROPOSED RULES
### DEPARTMENT OF PERSONNEL

[Filed July 1, 2009, 9:16 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-07-065 How is the department of personnel organized? and 357-58-045 Who is covered by the WMS rules?

Hearing Location(s): Department of Personnel, 600 South Franklin, Olympia, WA, on August 13, 2009, at 8:30 a.m.

Date of Intended Adoption: August 13, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by August 6, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by August 6, 2009, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rule modifications are housekeeping in nature.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

June 30, 2009

Eva N. Santos

Director

AMENDATORY SECTION (Amending WSR 08-07-062, filed 3/17/08, effective 4/18/08)

**WAC 357-07-065 How is the department of personnel organized?** The staff is organized in six general areas:

(1) Personnel services: Provides consultation and services related to recruitment, assessment, affirmative action, human resources, salary surveys, compensation plan administration, and classification to state agencies, institutions of higher education, and related higher education boards.

(2) Organizational and employee development services (located at 600 South Franklin Street, Olympia, Washington): Provides organizational, management, and employee development services to all state agencies.

(3) Administrative services: Provides support services for facilities and supplies, financial services including payroll and travel, duplicating and mailroom services, combined fund drive, forms and records management, administration of agency and statewide master contracts, and administers the statewide employee survey. Within the administrative division, the employee assistance program (EAP) helps with personal or work related problems affecting work performance. EAP offices are at the following locations: 1222 State Ave. N.E., Suite 201, Olympia, Washington; 701 Dexter Ave. N. #108, Seattle, Washington; and at 4407 N. Division, Suite 210, Spokane, Washington.

(4) Legal affairs: Provides affirmative action consultation, rule interpretation, labor/employment discrimination guidance, legislative services and responds to requests for public records. Provides director's review and appeal services (located at ((~~2828 Capitol Blvd.~~)) 600 S. Franklin Street, Olympia, Washington), processes and adjudicates requests for director's reviews and provides administrative support for personnel resources board appeals.

(5) Director's office: Provides agency leadership, internal human resources, planning and performance, communication services, and operational support.

(6) Information services (located at Building #1, Rowesix, 4224 6th Avenue, Lacey, Washington): Administers all central statewide technology systems supporting human resources activities.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

**WAC 357-58-045 Who is covered by the WMS rules?** Chapter 357-58 WAC applies only to managers and ((~~do~~)) does not apply to classified employees in the Washington general service.

## WSR 09-14-125
### PROPOSED RULES
### DEPARTMENT OF PERSONNEL
[Filed July 1, 2009, 9:18 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-58-554 What is a WMS employee's status during temporary layoff?

Hearing Location(s): Department of Personnel, 600 South Franklin, Olympia, WA, on August 13, 2009, at 8:30 a.m.

Date of Intended Adoption: August 13, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by August 6, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by August 6, 2009, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Effective June 16, 2009, a change was adopted to WAC 357-46-067 which states that an employee's probation or trial service period would not be extended for periods of time on temporary layoff. We are now amending WAC 357-58-554 to say that the duration of the employee's WMS review period will not be extended for periods of time on temporary layoff.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

June 30, 2009
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 06-07-048, filed 3/9/06, effective 4/10/06)

**WAC 357-58-554 What is a WMS employee's status during temporary layoff?** (1) ((~~Hours not worked due to~~)) The following applies during a temporary layoff ((~~are not treated as leave without pay, therefore~~)):

(a) A WMS employee's anniversary date, seniority, or unbroken service date is not adjusted for periods of time spent on temporary layoff; ((~~and~~))

(b) A WMS employee continues to accrue vacation and sick leave in accordance with chapter 357-31 WAC; and

(c) The duration of an employee's review period shall not be extended for periods of time spent on temporary layoff.

(2) A WMS employee who is temporarily laid off is not entitled to:

(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;

(b) Payment for his/her vacation leave balance; and

(c) Use of his/her accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds.

(3) If the temporary layoff was not due to lack of funds, an employer may allow a WMS employee to use accrued vacation leave in lieu of temporary layoff.

## WSR 09-14-126
### PROPOSED RULES
### DEPARTMENT OF PERSONNEL
[Filed July 1, 2009, 9:20 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-04-027 What rights does an exclusive bargaining unit representative have when a vacant bargaining unit position is exempted from the civil service rules? and 357-52-010 What actions may be appealed?

Hearing Location(s): Department of Personnel, 600 South Franklin, Olympia, WA, on August 13, 2009, at 8:30 a.m.

Date of Intended Adoption: August 13, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by August 6, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by August 6, 2009, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SHB 2049 passed during the 2009 legislative session. This bill adds language to RCW 41.06.170 that says if a vacant position is being exempted the exclusive bargaining unit representative may act in lieu of an employee for the purpose of appeal.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

June 30, 2009
Eva N. Santos
Director

NEW SECTION

**WAC 357-04-027 What rights does an exclusive bargaining unit representative have when a vacant bargaining unit position is exempted from the civil service rules?** As provided in RCW 41.06.070(3), the exclusive bargaining unit representative for a vacant position that has been exempted from chapter 41.06 RCW may appeal the exemption of the position in accordance with chapter 357-52 WAC.

AMENDATORY SECTION (Amending WSR 06-03-072, filed 1/12/06, effective 2/13/06)

**WAC 357-52-010 What actions may be appealed?** (1) Within WGS, the following actions may be appealed:

(a) Any permanent WGS employee subject to the statutory jurisdiction of the board who is dismissed, suspended, demoted, or separated or whose base salary is reduced may appeal to the board.

(b) Any employee, subject to the statutory jurisdiction of the board who adversely is affected by a violation of the state civil service law (chapter 41.06 RCW) or the rules contained in Title 357 WAC, or an employer, may appeal to the board as follows:

(i) For a violation of state civil service law or rules relating to a layoff action, excluding removal from a layoff list, the employee may appeal directly to the board.

(ii) For a violation of state civil service law or rules relating to any other subject, including removal from a layoff list, the employee or employer may appeal to the board by filing written exceptions to the director's review determination, except as provided in WAC 357-49-010(1).

(c) Through December 31, 2005, an employee in a position at the time of its allocation or reallocation or the employer may appeal to the personnel appeals board by filing written exceptions to the director's review determination in accordance with Title 358 WAC. As of January 1, 2006, an employee in a position at the time of its allocation or reallocation or the employer may appeal to the personnel resources board by filing written exceptions to the director's review determination.

(d) An employee whose position has been exempted from chapter 41.06 RCW or the exclusive bargaining unit representative for a vacant position that has been exempted from chapter 41.06 RCW may appeal the exemption to the board.

(e) An individual or the employer may appeal remedial action to the board by filing written exceptions to the director's review determination.

(2) Within WMS, the following actions may be appealed:

(a) Any permanent Washington management service employee who is dismissed, suspended, demoted, laid off, or separated, or whose base salary is reduced may appeal to the board. A determination of which Washington management service positions will be eliminated in a layoff action is not subject to appeal.

(b) An employee whose position has been exempted from chapter 41.06 RCW may appeal the exemption to the board.

## WSR 09-14-127
### PROPOSED RULES
## DEPARTMENT OF PERSONNEL

[Filed July 1, 2009, 9:23 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-31-240 What happens if an employee uses accrued sick leave during a period when he/she is receiving time loss compensation? and 357-31-245 What happens if an employee uses accrued vacation leave, accrued sick leave, accrued compensatory time, recognition leave, or receives holiday pay during a period when he/she is receiving time loss compensation?

Hearing Location(s): Department of Personnel, 600 South Franklin, Olympia, WA, on August 13, 2009, at 8:30 a.m.

Date of Intended Adoption: August 13, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by August 6, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by August 6, 2009, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Effective January 1, 2009, the state administrative and accounting manual (SAAM) changed to allow an employee to receive both time loss payments and paid sick leave. During the 2007 legislative session, language was added to RCW 51.32.090 which the office of financial management (OFM) interpreted to mean employers must allow the payment of both time loss and sick leave. Based on this, OFM changed the SAAM to say "An employee is entitled to both payments for the same time period without any deductions for the time loss payments."

Current civil service rules allow employees to receive time loss exclusively, use accrued paid leave exclusively, or combine time loss compensation and accrued paid leave but WAC 357-31-240 states that if an employee uses sick leave they must have the payment of sick leave reduced by the amount of time loss compensation received.

Because of discrepancy between the SAAM and DOP rules, we are proposing to repeal WAC 357-31-240 and modify WAC 357-31-245. We have also added a reference to recognition leave to WAC 357-31-245.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

June 30, 2009
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

**WAC 357-31-245 What happens if an employee uses accrued vacation leave, accrued sick leave, accrued compensatory time, recognition leave, or receives holiday pay during a period when he/she is receiving time loss compensation?** An employee who uses accrued vacation leave, accrued sick leave, accrued compensatory time, recognition leave, or receives holiday pay during a period when he/she is receiving time loss compensation is entitled to time-loss compensation and full pay for vacation leave, sick leave, compensatory time, recognition leave, and holiday pay.

REPEALER

The following section of the Washington Administrative Code is repealed:

| | |
|---|---|
| WAC 357-31-240 | What happens if an employee uses accrued sick leave during a period when he/she is receiving time loss compensation? |

## WSR 09-14-128
### PROPOSED RULES
### DEPARTMENT OF PERSONNEL

[Filed July 1, 2009, 9:24 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-34-045 Are employers required to provide release time for nonrequired training?

Hearing Location(s): Department of Personnel, 600 South Franklin, Olympia, WA, on August 13, 2009, at 8:30 a.m.

Date of Intended Adoption: August 13, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by August 6, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by August 6, 2009, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HB 2328 passed during the 2009 legislative session. Section 5 of this bill adds language to Title 49 RCW which states that the director of the department of personnel shall adopt rules that authorize state agencies to provide allowances to employees with sensory disabilities who must attend training necessary to attain a new service animal. The employee's absence to attend this training must be treated in the same manner as that granted to employees who are absent to attend training that supports or improves their job performance, except that the employee shall not be eligible for reimbursement. We are proposing this change to comply with HB 2328.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

June 30, 2009
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-01-195, filed 12/21/04, effective 7/1/05)

**WAC 357-34-045 Are employers required to provide release time for nonrequired training?** (1) Employers **may** ((~~release employees from work without a loss in pay to participate in nonrequired training.~~)) allow an employee with a sensory disability (as defined in HB 2328, chapter 294, Laws of 2009) to attend training, without a loss in pay, necessary to attain a new service animal. The employee shall not be eligible for reimbursement under RCW 43.03.050 and 43.03.060.

(a) If the training for a new service animal is foreseeable the employee shall provide the employer with at least thirty days advanced notice. If the date of the training requires the absence to begin in less than thirty days, the employee shall provide notice as is practicable.

(b) Employers may require that a request to attend a service animal training be supported by a certification issued by the training organization. Certification is sufficient if it states the date the training is scheduled to begin and the training session's duration.

(2) Employers **may** release employees from work without a loss in pay to participate in other nonrequired training.

**WSR 09-14-129**
**PROPOSED RULES**
**DEPARTMENT OF PERSONNEL**
[Filed July 1, 2009, 9:30 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-31-330 For what reasons may an employer grant leave without pay?, 357-31-373 Is an employee whose spouse or registered domestic partner is a member of the armed forces of the United States entitled to take leave from work when the military spouse or registered domestic partner has been called to active duty or when the military spouse or registered domestic partner is on leave from deployment?, 357-31-525 What is an employee entitled to under the federal Family and Medical Leave Act of 1993 and the Washington family leave law?, 357-31-395 What definitions apply to shared leave?, 357-31-567 When must an employer grant the use of recognition leave?, 357-46-060 Does a veteran receive any preference in layoff?, 357-58-475 Does a veteran receive any preference in layoff?, 357-31-535 Who designates absences which meet the criteria of the Family and Medical Leave Act?, 357-31-520 How does the Family and Medical Leave Act of 1993 and the family care law interact with the civil service rules?, and 357-31-230 When can an employee use accrued compensatory time?

Hearing Location(s): Department of Personnel, 600 South Franklin, Olympia, WA, on August 13, 2009, at 8:30 a.m.

Date of Intended Adoption: August 13, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by August 6, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by August 6, 2009, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: E2SSB 5688 passed during the 2009 legislative session. This bill states that agencies shall amend their rules to grant or impose all privileges, immunities, rights, benefits, or responsibilities granted or imposed by statute to an individual because they are a spouse in a marital relationship are to be granted or imposed on equivalent terms to an individual because that individual is in a state registered domestic partnership.

**Please note:** In preparation for E2SSB 5688, the department of personnel is filing this CR-102. However, this CR-102 may be withdrawn if Referendum 71 qualifies to be on the ballot.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

June 30, 2009
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 09-03-013, filed 1/9/09, effective 2/13/09)

**WAC 357-31-230 When can an employee use accrued compensatory time?** (1) Employees must request to use accrued compensatory time in accordance with the employer's leave policy. When considering employees' requests, employers must consider the work requirements of the department and the wishes of the employee.

(2) An employee must be granted the use of accrued compensatory time to care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued compensatory time may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued compensatory time if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued compensatory time to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(5) Compensatory time off may be scheduled by the employer during the final sixty days of a biennium.

(6) Employers may require that accumulated compensatory time be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

AMENDATORY SECTION (Amending WSR 09-03-014, filed 1/9/09, effective 2/13/09)

**WAC 357-31-330 For what reasons may an employer grant leave without pay?** Leave without pay may be allowed for any of the following reasons in accordance with the employer's leave policy:

(1) For any reason leave with pay may be granted, as long as the conditions for leave with pay are met;

(2) Educational leave;

(3) Leave for government service in the public interest;

(4) Military leave of absence as required by WAC 357-31-370;

(5) Parental leave as required by WAC 357-31-460;

(6) Family care emergencies as required by WAC 357-31-295;

(7) Bereavement or condolence;

(8) Absence due to inclement weather as provided in WAC 357-31-255;

(9) To accommodate annual work schedules of employees occupying cyclic year positions as specified in WAC 357-19-295;

(10) Serious health condition of an eligible employee's child, spouse, registered domestic partner, or parent as required by WAC 357-31-525;

(11) Leave taken voluntarily to reduce the effect of an employer's layoff;

(12) Leave that is authorized in advance by the appointing authority as part of a plan to reasonably accommodate a person of disability; or

(13) Employees receiving time loss compensation.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

**WAC 357-31-373 Is an employee whose spouse or registered domestic partner is a member of the armed forces of the United States entitled to take leave from work when the military spouse or registered domestic partner has been called to active duty or when the military spouse or registered domestic partner is on leave from deployment?** (1) During a period of military conflict, an employee who is a spouse or registered domestic partner of a member of the armed forces of the United States, National Guard, or reserves who has been notified of an impending call or order to active duty or has been deployed is entitled to a total of fifteen days of unpaid leave per deployment. The employee is entitled to the fifteen days of unpaid leave after the military spouse or registered domestic partner has been notified of an impending call or order to active duty and before deployment or when the military spouse or registered domestic partner is on leave from deployment. The employee may choose to substitute accrued leave to which the employee is entitled for any part of the leave without pay.

(2) An employee who seeks leave under this section must provide the employer with notice:

(a) Within five business days of the employee's spouse or registered domestic partner receiving official notice of an impending call or order to active duty; or

(b) Within five business days of the employee's spouse or registered domestic partner receiving official notice of leave from deployment.

AMENDATORY SECTION (Amending WSR 09-11-066, filed 5/14/09, effective 6/16/09)

**WAC 357-31-525 What is an employee entitled to under the federal Family and Medical Leave Act of 1993 and the Washington family leave law?** (1) The Family and Medical Leave Act of 1993 (29 USC 2601 et seq) and its implementing rules, 29 CFR Part 825, and additional amendments provide that an eligible employee must be granted, during a twelve-month period, a total of twelve work weeks of absence:

(a) As a result of the employee's serious health condition;

(b) To care for an employee's parent, spouse, or minor/dependent child who has a serious health condition;

(c) For the birth of and to provide care to an employee's newborn, adopted or foster child as provided in WAC 357-31-460; and/or

(d) Due to a qualifying exigency (as described in the Family and Medical Leave Act of 1993 and its amendments (29 USC 2601 et seq) and its implementing rules, 29 CFR Part 825) arising from the fact that the employee's spouse, child of any age, or parent is on active duty or has been notified of pending call to active duty in the armed forces in support of a contingency operation.

(i) This subsection only applies if the spouse, child, or parent of the employee is a member of the National Guard or Reserves, and certain retired members of the regular armed forces and retired reserves. This section does not apply if the spouse, child, or parent of the employee is a member of the regular armed forces on active duty.

(ii) This section only applies to federal calls to active duty.

(2) An eligible employee who is the spouse, son, daughter, parent of a child of any age, or next of kin of a covered service member shall be entitled to a total of twenty-six work weeks of leave during a twelve-month period to care for the service member who is suffering from a serious illness or injury arising from injuries incurred in the line of duty. The leave described in this paragraph shall only be available during a single twelve-month period. This twelve-month period begins on the first day leave is taken pursuant to this subsection.

(a) For purposes of this section, "next of kin" with respect to an individual means the nearest blood relative of that individual other than the individual's spouse, parent, or child in the following order of priority:

(i) Blood relatives who have been granted legal custody of the service member;

(ii) Siblings;

(iii) Grandparents;

(iv) Aunts and uncles;

(v) Cousins;

(vi) The service member can designate another blood relative as the "nearest blood relative" and that designation takes precedent over the above list.

(b) For purposes of this section, "covered service member" is a member of the armed forces, including the National Guard or reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on a temporary disability retired list for a serious illness or injury.

(c) For purposes of this section, "serious illness or injury" means an injury or illness incurred by the covered service member in the line of duty while on active duty in the armed forces that may render the service member medically unfit to perform the duties of the service member's office, grade, rank, or rating.

(3) During the twelve-month period described in subsection (2) above, an eligible employee shall be entitled to a combined total of twenty-six work weeks of leave under subsections (1) and (2) above. Nothing in this section shall be construed to limit the availability of leave under subsection (1) during any other twelve-month period.

(4) For general government employers, the twelve-month period in subsections (1) and (2) above is measured forward from the date the requesting employee begins leave under the Family and Medical Leave Act (FMLA) of 1993. The employee's next twelve-month period would begin the first time leave under the ((~~Family and Medical Leave Act~~)) FMLA is taken after completion of the previous twelve-month period. Higher education employers must define within their family and medical leave policy how the twelve months are measured.

AMENDATORY SECTION (Amending WSR 05-08-140, filed 4/6/05, effective 7/1/05)

**WAC 357-31-535 Who designates absences which meet the criteria of the Family and Medical Leave Act?** The employer designates absences which meet the criteria of the Family and Medical Leave Act. Paid or unpaid leave((~~, excluding compensatory time,~~)) used for that designated absence must be counted towards the twelve weeks of the Family and Medical Leave Act entitlement.

Because the Family and Medical Leave Act of 1993 (29 USC 2601 et seq) does not recognize registered domestic partners, an absence to care for an employee's registered domestic partner cannot be counted toward the twelve weeks of the Family and Medical Leave Act entitlement.

AMENDATORY SECTION (Amending WSR 09-03-013, filed 1/9/09, effective 2/13/09)

**WAC 357-31-567 When must an employer grant the use of recognition leave?** (1) An employee's request to use recognition leave must be approved under the following conditions:

(a) An employee must be granted the use of recognition leave if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.-020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; and

(b) In accordance with WAC 357-31-373, an employee must be granted the use of recognition leave to be with a spouse or registered domestic partner who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) and (b) above may be subject to verification that the condition or circumstance exists.

AMENDATORY SECTION (Amending WSR 05-08-139, filed 4/6/05, effective 7/1/05)

**WAC 357-31-395 What definitions apply to shared leave?** (1) "Employee" means any employee who is entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained.

(2) "Employee's relative" normally must be limited to the employee's spouse, registered domestic partner, child, grandchild, grandparent, or parent.

(3) "Severe" or "extraordinary" condition is defined as serious or extreme and/or life threatening.

(4) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(5) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard, and any other category of persons designated by the President of the United States in time of war or national emergency.

AMENDATORY SECTION (Amending WSR 05-08-140, filed 4/6/05, effective 7/1/05)

**WAC 357-31-520 How does the Family and Medical Leave Act of 1993 and the family ((~~Care~~)) leave law interact with the civil service rules?** Benefits provided through state laws and civil service rules must not be diminished or withheld in complying with the Family and Medical Leave Act of 1993.

Washington's family leave law (chapter 49.78 RCW) generally is similar to and runs concurrently with the federal FMLA for those provisions outlined in WAC 357-31-525 (1)(a) through (c) but also allows leave to be taken for the care of an employee's registered domestic partner with a serious health condition. However, Washington's family leave law does not address exigency leave, described in WAC 357-31-525 (1)(d), or leave for a covered service member, described in WAC 357-31-525(2). Therefore, an employer is not required to provide exigency leave or leave for a covered service member for a registered domestic partner.

Because the FMLA does not recognize registered domestic partners, an absence to care for an employee's registered domestic partner cannot be counted towards the twelve weeks of the FMLA entitlement described in WAC 357-31-525. For example:

If an employee uses twelve weeks of leave to care for their registered domestic partner during a twelve-month period, and no other FMLA leave was used, the employee is still entitled to his or her full twelve-week FMLA entitlement during the same twelve-month period, as the leave used was provided for a purpose not covered by FMLA; however, if an

employee uses twelve weeks of leave to care for their parent or for another FMLA qualifying reason, then during that same twelve-month period the employer would not be required to provide additional leave under Washington's family leave law to care for the employee's registered domestic partner because the twelve-week entitlement under FMLA and Washington's family leave law has been exhausted.

AMENDATORY SECTION (Amending WSR 05-12-077, filed 5/27/05, effective 7/1/05)

**WAC 357-46-060 Does a veteran receive any preference in layoff?** (1) An eligible veteran receives a preference by having his/her seniority increased. This is done by adding the eligible veteran's total active military service, not to exceed five years, to his/her unbroken service date.

(2) An eligible veteran is defined as any permanent employee who:

(a) Has one or more years in active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government; and

(b) Has received, upon termination of such service:

(i) An honorable discharge;

(ii) A discharge for physical reasons with an honorable record; or

(iii) A release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given.

(3) "An eligible veteran" does not include any person who as a veteran voluntarily retired with twenty or more years' active military service and has military retirement pay in excess of five hundred dollars per month.

(4) The surviving spouse or surviving registered domestic partner of an eligible veteran is entitled to veteran's seniority preference for up to five years as outlined in subsection (1) and (2) of this section regardless of whether the veteran had at least one year of active military service.

AMENDATORY SECTION (Amending WSR 07-23-011, filed 11/8/07, effective 12/11/07)

**WAC 357-58-475 Does a veteran receive any preference in layoff?** (1) An eligible veteran receives a preference by having his/her seniority increased. This is done by adding the eligible veteran's total active military service, not to exceed five years, to his/her unbroken service date.

(2) An eligible veteran is defined as any permanent employee who:

(a) Has one or more years in active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government; and

(b) Has received, upon termination of such service:

(i) An honorable discharge;

(ii) A discharge for physical reasons with an honorable record; or

(iii) A release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given.

(3) "An eligible veteran" does not include any person who as a veteran voluntarily retired with twenty or more years' active military service and has military retirement pay in excess of five hundred dollars per month.

(4) The surviving spouse or surviving registered domestic partner of an eligible veteran is entitled to veteran's seniority preference for up to five years as outlined in subsection (1) and (2) of this section regardless of whether the veteran had at least one year of active military service.

## WSR 09-14-130
### PROPOSED RULES
### DEPARTMENT OF PERSONNEL

[Filed July 1, 2009, 9:33 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-01-172 Family members, 357-01-228 Parent-in-law, 357-01-282 Registered domestic partner, 357-16-110 Do veterans receive any preference in the hiring process?, 357-31-070 When is an employer required to approve an employee's request to use a personal holiday?, 357-31-130 When can an employee use accrued sick leave?, 357-31-200 When must an employer grant the use of vacation leave?, 357-31-285 Is an employer required to authorize the absence of an employee for family care emergencies?, and 357-31-327 When must an employer grant leave without pay?

Hearing Location(s): Department of Personnel, 600 South Franklin, Olympia, WA, on August 13, 2009, at 8:30 a.m.

Date of Intended Adoption: August 13, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by August 6, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by August 6, 2009, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: E2SSB 5688 passed during the 2009 legislative session. This bill states that agencies shall amend their rules to grant or impose all privileges, immunities, rights, benefits, or responsibilities granted or imposed by statute to an individual because they are a spouse in a marital relationship are to be granted or imposed on equivalent terms to an individual because that individual is in a state registered domestic partnership.

**Please note:** In preparation for E2SSB 5688, the department of personnel is filing this CR-102. However, this CR-102 may be withdrawn if Referendum 71 qualifies to be on the ballot.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

June 30, 2009
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 09-03-013, filed 1/9/09, effective 2/13/09)

**WAC 357-01-172 Family members.** Individuals considered to be members of the family are parent, step-parent, sister, brother, parent-in-law, spouse, registered domestic partner, grandparent, grandchild, minor/dependent child, and child. For the purpose of domestic violence, sexual assault, or stalking provisions within Title 357 WAC family member also includes a domestic partner as defined in RCW 26.60.-020 or a person with whom the employee has a dating relationship as defined in RCW 26.50.010.

AMENDATORY SECTION (Amending WSR 05-12-093, filed 5/27/05, effective 7/1/05)

**WAC 357-01-228 Parent-in-law.** A biological parent of an employee's spouse or an employee's registered domestic partner or an individual who stood *in loco parentis* to an employee's spouse or to an employee's registered domestic partner when the employee's spouse or the employee's registered domestic partner was a child. A person who had day-to-day responsibilities to care for and financially support the employee's spouse or the employee's registered domestic partner when he or she was a child is considered to have stood *in loco parentis* to the employee's spouse or to the employee's registered domestic partner.

NEW SECTION

**WAC 357-01-282 Registered domestic partner.** An individual considered to be a register domestic partner has met the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who has been issued a certificate of state registered domestic partnership by the secretary of state's office.

AMENDATORY SECTION (Amending WSR 05-12-077, filed 5/27/05, effective 7/1/05)

**WAC 357-16-110 Do veterans receive any preference in the hiring process?** (1) If an employer is administering an examination prior to certification, the employer must grant preference to veterans in accordance with the veterans scoring criteria provisions of RCW 41.04.010.

(2) If no examination is administered prior to certification, the employer must refer the following individuals to the employing official under the provisions of RCW 73.16.010 as long as the individual meets the competencies and other position requirements:

(a) Eligible veterans;

(b) Surviving spouses or registered domestic partners of eligible veterans; or

(c) Spouses or registered domestic partners of honorably discharged veterans who have a service connected permanent and total disability.

AMENDATORY SECTION (Amending WSR 07-03-054, filed 1/12/07, effective 2/15/07)

**WAC 357-31-285 Is an employer required to authorize the absence of an employee for family care emergencies?** Absence because of an employee's inability to report for or continue scheduled work due to a family care emergency:

(1) **Must** be authorized for care of the employee's spouse, registered domestic partner, household member, or the employee's/spouse's/registered domestic partner's minor/dependent child, parent or grandparent up to the limits specified in WAC 357-31-300.

(2) **May** be authorized for care of others, including a child over the age of eighteen who is capable of self care, in accordance with the employer's leave policy.

AMENDATORY SECTION (Amending WSR 09-03-013, filed 1/9/09, effective 2/13/09)

**WAC 357-31-070 When is an employer required to approve an employee's request to use a personal holiday?** (1) An employer must approve the use of a personal holiday as long as:

(a) The employee is entitled to a personal holiday in accordance with RCW 1.16.050 and WAC 357-31-055;

(b) The employee has requested the personal holiday in accordance with the employer's leave procedures; and

(c) The employee's absence does not interfere with the operational needs of the employer.

(2) At any time, an employer must allow an employee to use part or all of the personal holiday for any of the following reasons:

(a) To care for a minor/dependent child with a health condition that requires treatment or supervision;

(b) To care for a spouse, registered domestic partner, parent, parent-in-law or grandparent of the employee who has a serious health condition or an emergency health condition;

(c) If the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; or

(d) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the mili-

tary spouse or registered domestic partner is on leave from deployment.

AMENDATORY SECTION (Amending WSR 09-03-013, filed 1/9/09, effective 2/13/09)

**WAC 357-31-130 When can an employee use accrued sick leave?** The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy.

(1) Employers **must** allow the use of accrued sick leave under the following conditions:

(a) Because of and during illness, disability, or injury that has incapacitated the employee from performing required duties.

(b) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(c) To care for a minor/dependent child with a health condition requiring treatment or supervision.

(d) To care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or emergency health condition.

(e) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300, and 357-31-305.

(f) For personal health care appointments.

(g) For family members' health care appointments when the presence of the employee is required if arranged in advance with the employing official or designee.

(h) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee((,)) or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (1)(d) of this section.

(i) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(ii) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

(i) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.-020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(j) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(2) Employers **may** allow the use of accrued sick leave under the following conditions:

(a) For condolence or bereavement.

(b) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255.

AMENDATORY SECTION (Amending WSR 09-03-013, filed 1/9/09, effective 2/13/09)

**WAC 357-31-200 When must an employer grant the use of vacation leave?** (1) An employee's request to use vacation leave must be approved under the following conditions:

(a) As a result of the employee's serious health condition.

(b) To care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition.

(c) To care for a minor/dependent child with a health condition that requires treatment or supervision.

(d) For parental leave as provided in WAC 357-31-460.

(e) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.-020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(f) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) through (f) above may be subject to verification that the condition or circumstance exists.

AMENDATORY SECTION (Amending WSR 09-03-014, filed 1/9/09, effective 2/13/09)

**WAC 357-31-327 When must an employer grant leave without pay?** An employer must grant leave without pay under the following conditions:

(1) When an employee who is a volunteer firefighter is called to duty to respond to a fire, natural disaster, or medical emergency;

(2) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.-020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; or

(3) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

**WSR 09-14-132**
**PROPOSED RULES**
**DEPARTMENT OF FISH AND WILDLIFE**
[Filed July 1, 2009, 9:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-16-019.

Title of Rule and Other Identifying Information: WAC 232-12-073 Master hunter permit program.

Hearing Location(s): Sheriff's Ambulance Training Center, 425 North Highway, Colville, WA 99114, on August 7-8, 2009, at 8:45 a.m.

Date of Intended Adoption: September 11, 2009.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.Preuss@dfw.wa.gov, fax (360) 902-2155, by July 31, 2009.

Assistance for Persons with Disabilities: Contact Susan Yeager by July 31, 2009, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2009, the Washington state legislature passed SHB 1778, which includes two new statutes authorizing the master hunter permit program. These statutes provide the cost for initial and renewal master hunter permits; they allow the department to conduct background checks on initial and renewal permit applicants; they give the department authority to suspend permits for specific reasons; and they allow the department to establish the program's requirements and curriculum. These proposed rules mirror the two statutes and provide the accountability standards for initial and renewal applicants. These rules also indicate the conditions and lengths of time for which a permit will be suspended. The effect of these rules will be to ensure that master hunters are ethical hunters and can serve as highly regarded role models for the general hunting community.

Reasons Supporting Proposal: The department requires application requirements and suspension protocol to attract and retain ethical master hunters. Master hunters play a key role in controlling problem game animals that damage property or threaten public safety. They also contribute significant volunteer conservation work to the state.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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

Name of Proponent: The Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Mike Kuttel and Lori Preuss, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-8413; Implementation: Mike Kuttel and Eric Anderson, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-8413; and Enforcement: Chief Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules affect recreational hunters.

A cost-benefit analysis is not required under RCW 34.05.328. These rules do not involve hydraulics.

July 1, 2009
Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-03-088, filed 1/16/08, effective 2/16/08)

**WAC 232-12-073 Master hunter permit program.** (1) In order to effectively manage wildlife in areas or at times when a higher proficiency and demonstrated skill level are needed for resource protection or public safety, the department establishes the master hunter permit program.

(2) The master hunter permit program emphasizes safe, lawful, and ethical hunting practices. ((~~Two of the program's~~)) Program goals ((~~are to improve~~)) include improving the public's perception of hunting and ((~~to perpetuate~~)) perpetuating the highest hunting standards. A master hunter((~~s actively~~)) permit is required to participate in controlled hunts to eliminate problem animals that damage property ((~~and/~~))or threaten public safety.

(a) The cost of initially applying for ((~~the~~)) a master hunter ((~~program is twenty~~)) permit shall be fifty dollars. The ((~~department will determine the program's prerequisites and curriculum. The department may establish an advisory group to assist agency staff in developing the prerequisites and curriculum~~)) cost of renewing a master hunter permit shall be twenty-five dollars.

(b) ((~~Master hunter candidates who successfully complete the master hunter program will receive a certificate, a master hunter patch, and a master hunter identification card. The master hunter identification card is valid for five consecutive years from the date of issuance. The card will be renewed for an additional five years if, during the period of validity, the master hunter completes forty hours of additional master hunter program requirements as determined by the department.~~)) The department shall determine the program's requirements and curriculum. The director shall establish an advisory group to assist agency staff in developing and managing the program.

(3) Master hunters are held to the highest ethical standards because these hunters are ambassadors for the department and are role models and mentors for the hunting community and for the public at large. ((~~As such, current advanced hunters must apply to be master hunters. Applicants must submit to a criminal background check. Applicants who have prior wildlife or trespassing-while-hunting convictions within the last ten years, or prior felonies prohibiting the possession of firearms (unless firearm possession is reinstated), or who have a current hunting license suspension in another state, cannot apply for the master hunter program.~~

~~(a) Individuals who successfully complete the master hunter program must obey all laws and regulations.~~)) Initial master hunter permit applicants must submit to a criminal background check. The department shall deny entry into the master hunter permit program to those applicants who have:

(a) Paid the required fine or been convicted within the last ten years of a chapter 77.15 RCW offense;

(b) Paid the required fine or been convicted within the last ten years of trespassing, reckless endangerment, criminal conspiracy, or making a false statement to law enforcement, while hunting, fishing, or engaging in any activity regulated by the department;

(c) Prior felonies prohibiting the possession of firearms, unless firearm possession is reinstated; or

(d) A current hunting or fishing license revocation or a current suspension of hunting or fishing license privileges in another state.

(4) Master hunter((~~s~~)) permit applicants will be required to sign and abide by a hunter code of ethics ((~~in addition to all department laws and regulations.~~

~~(b) Persons who successfully pass the master hunter program and maintain the requirements set forth in this section are entitled to participate in special hunts. These hunters must possess a valid master hunter identification card while participating in the hunts. Master hunters who are convicted of wildlife misdemeanors, gross misdemeanors, or felonies; trespassing while hunting; or reckless endangerment involving hunting weapons, will be removed from the master hunter program for life. Master hunters who commit wildlife infractions may be removed from the master hunter program for up to a five-year period.~~

~~(c) The department's master hunter coordinator will maintain open communications with landowners and the community to investigate complaints about master hunters or the master hunter program. If a master hunter is charged with a wildlife or trespassing violation that does not result in a conviction, or an ethical violation that does not rise to a criminal law or regulation violation, a master hunter peer review committee, selected by the advisory group, will evaluate the behavior to decide whether it was egregious. If the committee deems the behavior egregious, the department may suspend the violator's master hunter privileges for any amount of time, up to and including life.~~

~~(d) Any person who has his or her master hunter privileges suspended under this subsection~~)) and pass a comprehensive examination based upon study materials provided by the department. An initial master hunter permit applicant found to have submitted fraudulent information to the department or to have cheated on the master hunter examination will be excluded from the master hunter permit program for life.

(5) Initial master hunter permit applicants who successfully complete the master hunter permit program will receive a master hunter patch and a master hunter permit. The initial master hunter permit is valid for five consecutive years from the date of issuance. The permit may be renewed for additional five-year increments if, during each five-year period of validity, the master hunter fulfills the renewal requirements established by the department.

(6) Master hunters renewing their permit shall authorize the department to conduct a criminal background check each time they renew. The criminal background check will go back five years from the master hunter's anniversary date or back to the date this rule amendment was adopted, whichever period of time is shorter. The department's approval will be determined by compliance with this section.

(7) Persons who successfully complete the master hunter permit program and maintain the requirements developed by the department are entitled to participate in special hunts. These master hunters must possess a valid master hunter permit while participating in the hunts.

(8) The department shall suspend a master hunter's permit for life if the master hunter:

(a) Pays the required fine or is convicted of a chapter 77.15 RCW misdemeanor, gross misdemeanor, or felony;

(b) Pays the required fine or is convicted of trespassing, reckless endangerment, criminal conspiracy, or making a false statement to law enforcement, while hunting, fishing, or engaging in any activity regulated by the department;

(c) Pays the required fine or is convicted of a felony prohibiting the possession of firearms, unless firearm possession is reinstated;

(d) Has his or her hunting or fishing license revoked, or hunting or fishing license privileges suspended, in another state; or

(e) Submitted fraudulent information to the department.

(9) A master hunter who pays the required fine or is found to have committed a chapter 77.15 RCW infraction shall have his or her master hunter permit suspended for a period of two years.

(10) If a master hunter is cited, or charged by complaint, for a chapter 77.15 RCW offense; or for trespass, reckless endangerment, criminal conspiracy, or making a false statement to law enforcement, while hunting, fishing, or engaging in any activity regulated by the department, the department may immediately suspend the person's master hunter permit until the offense has been adjudicated.

(11) The department's master hunter coordinator will maintain open communications with landowners and the community. The department will investigate written accusations about master hunters and determine whether such complaints have merit and warrant enforcement action.

(12) Except under subsection (10) of this section, if a master hunter has his or her initial or renewal master hunter permit suspended for less than life, and the person wants to become a master hunter again, he or she must repeat the entire master hunter permit application process once the suspension period is over.

(13) Any person who has been denied initial admission into the master hunter permit program, renewal of his or her master hunter permit, or has had his or her master hunter permit suspended, has the right to an administrative hearing to contest the agency action. Such hearing will be held pursuant to chapter 34.05 RCW, the Administrative Procedure Act. Initial master hunter permit applicants who fail to submit the application fee or who submit an incomplete application will have their application returned. Denial of admission on these grounds does not trigger the right to an administrative hearing.

(((~~(c)~~))) (14) "Conviction," as used in this section, is defined in RCW 77.15.050.

(((~~(4)~~))) (15) It is unlawful for any person to ((~~participate~~)) hunt or actively assist in a hunt restricted to master hunters if such person has not successfully ((~~passed~~)) been admitted into the master hunter ((~~course~~)) permit program and maintained the requirements set forth in this section, or if the per-

son's master hunter ((~~privileges have~~)) permit has been suspended. Master hunters need a valid master hunter permit and a valid hunting license and tag to hunt in master hunter restricted hunts. "To hunt," as used in this section, is defined as "an effort to kill, injure, capture, or harass a wild animal or wild bird," pursuant to RCW 77.08.010(53). Violation of this subsection shall be enforced under RCW 77.15.400 for wild birds, RCW 77.15.410 for big game, and RCW 77.15.430 for wild animals other than big game.

(16) Only Washington residents, as defined in RCW 77.08.010(39), may apply for an initial master hunter permit.

## WSR 09-14-133
### PROPOSED RULES
### DEPARTMENT OF AGRICULTURE

[Filed July 1, 2009, 9:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-10-014.

Title of Rule and Other Identifying Information: WAC 16-470-300 through 16-470-340, onion white rot disease. The department is proposing to revise the current onion white rot disease rule by adding Benton County to the existing pest-free area. In addition, the department is amending the existing language to increase its clarity and readability and update the language to conform to current industry and regulatory standards.

Hearing Location(s): Washington State University, Irrigated Agriculture Research and Extension Center (IAREC), 24106 North Bunn Road, Hamilton Hall, Small Conference Room, Prosser, WA 99350, on August 11, 2009, at 1:00 p.m.

Date of Intended Adoption: August 18, 2009.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by August 11, 2009.

Assistance for Persons with Disabilities: Contact Henri Gonzales by August 4, 2009, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to revise the current onion white rot rule by adding Benton County to the existing pest-free area. Onion white rot is a potentially devastating disease of onions and closely related species. It can cause greatly decreased yields and reduced storage quality. Once a field is infested the disease remains indefinitely in the soil. A quarantine was established in the 1980s to prevent the introduction and spread of the disease within the production areas of Washington state where onion white rot does not occur. The affected growers have requested amending the rule to add Benton County to the existing pest-free area to protect onion and seed garlic production in that county.

Reasons Supporting Proposal: Modifying the existing quarantine is necessary to protect the onion and seed garlic crop from this potentially devastating disease.

Statutory Authority for Adoption: Chapters 17.24 and 34.05 RCW.

Statute Being Implemented: Chapter 17.24 RCW.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tom Wessels, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1984.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency must prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on businesses in an industry. Since commercial onion growers usually plant with true seed and true seed is exempt from the quarantine, the rule amendments would have no more than minor additional cost for commercial growers. In addition, onion sets and bulbs are sold by retail nurseries for noncommercial purposes. To determine whether the revision would have a financial impact on small businesses in Benton County, plant services staff surveyed nursery garden centers in Benton County. None of the responders believed that the revision would have a more than minor economic effect on their business. Analysis of the economic effects of the proposed rule amendments demonstrate that the changes will not impose more than minor cost on the regulated industry and, therefore, an SBEIS is not required.

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

July 1, 2009

Mary A. Martin Toohey

Assistant Director

AMENDATORY SECTION (Amending WSR 01-01-013, filed 12/6/00, effective 1/6/01)

**WAC 16-470-300 Quarantine—Onion white rot disease.** Onion white rot is a potentially devastating disease of onions and closely related species, which ((~~causes~~)) can greatly ((~~decreased~~)) decrease yields and ((~~reduced~~)) reduce storage quality. It is spread primarily by movement of contaminated water, soil, equipment, tools, and machinery, and by infested onion plants and plant parts. Onion white rot disease is caused by the fungus *Sclerotium cepivorum*((~~, a fungus~~)). Once a field is infested, the ((~~disease~~)) fungus remains indefinitely in the soil. The director finds that onion white rot disease is detrimental to the onion industry of Washington ((~~state~~)) and establishes a quarantine to prevent introduction and spread of the disease ((~~within~~)) into noninfested areas of ((~~Washington~~)) the state.

AMENDATORY SECTION (Amending WSR 01-01-013, filed 12/6/00, effective 1/6/01)

**WAC 16-470-305 Onion white rot disease—Definitions.** The following definitions apply to WAC 16-470-300 through 16-470-340:

(1) "Onion" means any plant of the Allium genus, including, but not limited to((,)) onion, garlic, leek, chive and shallots.

(2) "Pest-free area ((~~for onion white rot~~))" means Adams, Benton, Franklin and Grant counties.

AMENDATORY SECTION (Amending WSR 01-01-013, filed 12/6/00, effective 1/6/01)

**WAC 16-470-310 Onion white rot disease—Area under order.** The area under ((~~exterior~~)) quarantine for onion white rot disease is all states of the United States and all areas of Washington outside of the pest-free area. ((~~The area under interior quarantine for onion white rot disease is all counties of Washington state.~~))

AMENDATORY SECTION (Amending WSR 01-01-013, filed 12/6/00, effective 1/6/01)

**WAC 16-470-320 Onion white rot disease—Restrictions—Control—Prevention—Sanitation.** ((~~The following restrictions are declared to be the proper methods for the control and prevention of the introduction of onion white rot disease, which shall be used in the pest-free area for onion white rot:~~))

(1) No person shall ((~~import~~)) transport onion bulbs, sets or seedlings into the pest-free area ((~~for onion white rot~~)) for the purpose of planting or propagation, except those ((~~produced in and shipped from any area of this state or other states where onion white rot is not known to occur. Each shipment must be certified to be free from white rot disease by the pest protection organization of the state where the onion planting stock was produced~~)) that are certified free of onion white rot disease by the plant protection organization of the state of origin.

(2) Except as provided in this chapter, no person shall ((~~in any manner import or move soil,~~)) bring machinery, tools, or equipment, previously used in onion production, into the pest-free area ((~~for onion white rot. If the soil,~~)) unless the machinery, tools, or equipment have been ((~~previously used in any manner in fields outside the pest-free area for onion white rot. Machinery, tools or equipment may be imported or moved into the pest-free area for onion white rot with prior approval from the department. The soil, machinery, tools or equipment must be~~)) cleaned and sanitized ((~~to the satisfaction of the department~~)) prior to movement into the pest-free area ((~~for onion white rot~~)). ((~~The~~)) Cleaning ((~~shall~~)) must include the thorough removal of all soil and debris ((~~by the use of~~)) followed by sanitization with steam under pressure((~~. Sanitation must be accomplished by the use of steam~~)) or other methods approved by the department. ((~~For the purposes of this section, "machinery, tools or equipment" includes but is not limited to vehicles, farm trucks, harvesters, and tillage equipment.~~))

(3) ((~~The department may stop the movement into or within the pest-free area for onion white rot of any machinery, tools or equipment that has not been cleaned and sanitized as provided in this section.~~

~~(4) No person shall knowingly import into the pest-free area for onion white rot~~)) Livestock which have been pastured on ((~~irrigated~~)) fields ((~~known to be~~)) infested with ((~~white rot~~)) *Sclerotium cepivorum* or which have been fed white rot infested plant parts may not be transported into the pest-free area. Onion ((~~white rot infested~~)) plants or plant parts may not be ((~~imported~~)) transported into the ((~~quarantine~~)) pest-free area for livestock feed. ((~~Onion white rot infested plant parts found in the pest-free area for onion white rot may not be fed to livestock.~~)) No restrictions are imposed by this section on livestock moving to feed lots, sale yards, or exhibition sites (such as fairgrounds, shows, etc.) in the pest-free area ((~~for onion white rot~~)).

AMENDATORY SECTION (Amending WSR 01-01-013, filed 12/6/00, effective 1/6/01)

**WAC 16-470-330 Onion white rot disease—Enforcement.** (1) The department may inspect any ((~~onions or~~)) onion plant, plant part, or plantings ((~~areas~~)) within the pest-free area ((~~for onion white rot during any time of the year~~)) to determine whether ((~~the disease organism~~)) *Sclerotium cepivorum* is present. If ((~~the department finds the disease organism in onions~~)) *Sclerotium cepivorum* is detected at any stage of production or transportation or in ((~~land~~)) soil, the department may ((~~seize~~)) impound any infested onions ((~~which are separated from the land on which they were grown,~~)) or other articles and by written order direct the control and eradication of an infestation.

(2) Movement of infested onions or other articles within the pest-free area ((~~for onion white rot~~)) or removal of infested onions or other articles from the pest-free area ((~~for onion white rot must be carried out only with the department's prior approval and under its supervision~~)) is prohibited, except when the infested onions or other articles are accompanied by a written permit issued by the department. Requests for permits must be addressed to: Plant Services Program Manager, Plant Protection Division, Washington State Department of Agriculture, 1111 Washington St. S.E., P.O. Box 42560, Olympia, WA 98540-2560; fax 360-902-2092; e-mail: nursery@agr.wa.gov.

(3) Control and eradication methods that may be used are limited to those approved by the department. They may include:

(a) ((~~The destruction of any infested~~)) Destroying onions from an infested lot, bin, or location, and other infested articles;

(b) ((~~A directive that a specific~~)) Prohibiting the production of onions in part or all of any infested area ((~~be taken out of onion production~~));

(c) ((~~A directive that any infested area be fenced, properly diked to prevent~~)) Preventing off-flow of irrigation or rainwater((~~, and planted to an approved crop which will prevent soil erosion and will not require annual tillage~~)) from any infested area;

(d) Prohibiting the pasturing of animals on any infested area;

(e) ((~~A directive that~~)) Requiring equipment, tools and machinery used on an infested area be cleaned and sanitized as described in WAC 16-470-320 prior to removal from the area.

AMENDATORY SECTION (Amending Order 1873, filed 9/25/85)

**WAC 16-470-340 Onion white rot disease—Research.** The department may, with the consent of the owner, allow use of an infested growing area as an experimental plot by Washington State University for onion white rot research. Use of the growing area for research shall be subject to the prior written approval of((~~, and supervised by~~)) the department.

## WSR 09-14-136
### PROPOSED RULES
### STATE BOARD OF HEALTH

[Filed July 1, 2009, 11:25 a.m.]

Supplemental Notice to WSR 09-04-049.

Preproposal statement of inquiry was filed as WSR 04-20-050.

Title of Rule and Other Identifying Information: Chapter 246-366 WAC, Primary and secondary schools and chapter 246-366A WAC, Environmental health and safety standards for primary and secondary schools, these chapters provide minimum environmental health and safety rules for all schools in Washington state. This is a supplemental notice to WSR 09-04-049, which was a continuance of WSR 08-15-174.

Hearing Location(s): John A. Cherberg Building, Hearing Room 4, Capitol Campus, Capitol Way, Olympia, Washington, on August 12, 2009, at 1:00 p.m.

Date of Intended Adoption: August 12, 2009.

Submit Written Comments to: Ned Therien, 101 Israel Road S.E., P.O. Box 47990, Olympia, WA 98504-7990, school.rule@doh.wa.gov, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-4088, by August 5, 2009.

Assistance for Persons with Disabilities: Contact Desiree Robinson by July 29, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to update the current chapter 246-366 WAC to include provisions for water quality sampling, indoor air quality, and safety in areas such as playgrounds, labs, and shops. The proposal would replace chapter 246-366 WAC with a more modern chapter 246-366A WAC. The entire new chapter is organized to provide clarity for those provisions related to construction and those related to operation and maintenance. Two alternatives are proposed for making implementation contingent on legislative action.

Implementation of the new chapter is restricted by section 222, chapter 564, Laws of 2009 and future implementation is contingent on full or partial funding or other legislative action. The board is faced with the challenge of determining how to manage and implement the rule in a manner that is responsive to legislative direction, accommodates a phased-in implementation, allows for timely expenditures of allocated funds when they become available, and makes it possible to amend selected portions of the rule without being caught in a perpetual cycle of rule making or having to open the entire rule for reconsideration each time. The board is considering two procedural alternatives for adopting the rule but delaying implementation pending legislative action.

• **Alternative A—Annual Amendment of the Rule-Making Order:** The first alternative would be to adopt the previous proposal as published as WSR 09-04-049 and as amended by the board in October 2008, and to file a rule-making order (CR-103) with an effective date of July 1, 2010. After the conclusion of each legislative session and before July 1 of the same year, the board would amend the rule-making order to implement only those sections of the rule for which implementation has been authorized through legislative action and to preclude implementation of all unauthorized sections for at least one more year by extending the effective date. This alternative would require board amendments to the October 2008 language to change specified dates for implementing certain subsections. A new chapter 246-366A WAC could be adopted with or without proposed changes to chapter 246-366 WAC.

• **Alternative B—Contingent Implementation Dates and Interpretive Statements:** The second alternative is to adopt the previous proposal as amended by the board with additional language that makes implementation contingent on legislative action. Under this alternative, the rule-making order would have an effective date thirty-one days of [after] filing but the rule text would distinguish implementation dates from effective dates. If and when the legislature took action to allow implementation of all or part [of] the rule, the board would publish an interpretive statement explaining which sections are to be implemented and when, and it would notify all interested persons. This alternative would include proposed changes to chapter 246-366 WAC and a new chapter 246-366A WAC.

Reasons Supporting Proposal: Students, parents, and teachers requested the state board of health update and strengthen the primary and secondary school rules to better protect children's health and safety. The last major update of the chapter was in 1971 and standards for health and safety have changed considerably since that time. Further, the rule needed to be rewritten to provide clarity.

Statutory Authority for Adoption: RCW 43.20.050.

Statute Being Implemented: RCW 43.20.050.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Implementation of the new chapter is contingent on full or partial funding or other legislative action and is currently restricted by section 222, chapter 564, Laws of 2009.

Name of Proponent: State board of health, governmental.

Name of Agency Personnel Responsible for Drafting: Ned Therien, 101 Israel Road, Tumwater, WA, (360) 236-4103; Implementation and Enforcement: Nancy Bernard, 243 Israel Road, Tumwater, WA, (360) 236-3072.

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

Small Business Economic Impact Statement

Brief Description of the Rule: Approximately one million children attend schools in Washington state. The state

board of health (the board) is required to establish rules for environmental health and safety in all schools and has done so since the 1960s. The current framework in chapter 246-366 WAC, Primary and secondary schools, has been in place since 1971. These rules apply to 295 public school districts with approximately 2,300 school facilities as well as approximately 450 private schools. These rules are administered by local health jurisdictions.

In 2004, the board directed the department of health (the department) to begin a rule-making process in response to growing concerns that the rules were generally outdated and no longer adequate for indoor air quality, drinking water, and safety in areas such as laboratories and playgrounds. As a result, this proposal will repeal the current chapter 246-366 WAC and replace it with chapter 246-366A WAC that has been reorganized and rewritten to clarify those requirements that are construction related and those that are a part of ongoing operation and maintenance of facilities. Many parts of the current chapter have been reorganized and rewritten for clarity, but have not changed significantly.

The current rules, chapter 246-366 WAC, establishes minimum environmental health and safety standards for schools in Washington state. The specific objectives of the proposed revisions are to protect students and users of school facilities from environmental hazards by:

- Delineating responsibilities of the school boards and officials, the local board of health and health officer, and the department;
- Improving indoor air quality;
- Improving playground safety;
- Improving water quality monitoring;
- Improving mold prevention and remediation; and
- Improving overall school safety.

Small Business Economic Impact Statement Requirement: The department has reviewed this proposal and has determined that a small business economic impact statement is required because these rules affect privately owned schools, which, for the purposes of this analysis, are considered businesses. Small public schools are not included in this analysis as they are not considered a business under the Regulatory Fairness Act, chapter 19.85 RCW.

Industries Affected by the Rule: The industry affected by these rules is privately owned schools.

Costs of Complying with the Rule: The tables below reflect the incremental construction costs and operation and maintenance (O&M) costs for these rules. These costs are expressed as costs per school and cost per student. These costs are identified and explained in the preliminary significant analysis for these rules.

The department assumes, with few exceptions such as playground equipment standards and HVAC costs, these costs apply to a representative school regardless of ownership type, i.e., public or private.

| School Type | Size of Representative School (sq/ft) | Incremental Construction Costs per School | Incremental Construction Costs per Square Foot |
|---|---|---|---|
| Elementary | 65,000 | $317,774 | $4.89 |
| Middle/Jr. High | 95,000 | $521,128 | $5.49 |
| High School | 225,000 | $962,432 | $4.28 |

| School Type | Size of School (sq/ft) | Students per School | Start-up* O&M Costs per School | Start-up O&M Costs per Student | Annual On-going O&M Costs per School | Annual On-going O&M Costs per Student |
|---|---|---|---|---|---|---|
| Elementary | 65,000 | 489 | $13,400 | $27.40 | $9,042 | $18.49 |
| Middle/Jr. High | 95,000 | 688 | $11,812 | $17.17 | $7,239 | $10.52 |
| High School | 225,000 | 1,442 | $14,838 | $10.29 | $9,868 | $6.84 |

*Start-up costs reflect the one-time costs for water quality, HVAC retrofit, and policy development although actual implementation dates for these requirements will vary depending on the requirement and school type.

Disproportionate Impact on Small Businesses: The department has determined that these rules may impose a disproportionate impact on small businesses, in this case small private schools. The department assumes that private schools are generally located in smaller sized facilities with fewer students per school. Based on information from the office of superintendent of public instruction web site, the approximate 450 private schools serve on average 154 students each. Based on this fact and coupled with the reality of economies of scale, these privately owned schools will incur a higher average cost per square foot and per student to comply with these rules than larger public schools. Using any of the methods provided for in statute to gauge impact (cost per employee (teachers and other school staff), cost per hour of labor (custodial staff), or cost per hundred dollars of sales (tuition)), these rules will have a disproportionate impact on small privately owned schools. And, while this analysis does not pertain to public entities, many of the same challenges due to economies of scale will also apply [to] small public schools.

Mitigation Measures: The following describes mitigation measures considered during the development of these rules.

**Reduce, modify, or eliminate substantive regulatory requirements:** These rules do not propose to reduce, modify, or eliminate substantive regulatory requirements for small businesses, to do so would create dual standards that, in

effect, would provide different health and safety protection for students based on school size or school ownership type.

**Simplify, reduce, or eliminate record-keeping and reporting requirements:** These rules identify minimum record-keeping and reporting requirements necessary to achieve the intent of these rules.

**Reduce the frequency of inspections:** These rules establish consistent inspection frequency for all schools regardless of size or ownership type. However, the proposal grants local health jurisdictions the discretion to allow schools to self-inspect two out of every three years as a way to reduce costs.

**Delay compliance timetables:**

Operation and Maintenance - two components of these rules have delayed implementation dates. The change from annual to periodic inspections is delayed one year from the effective date of these rules. Water quality monitoring for lead and copper have staggered effective dates starting with elementary schools in the first two years, junior high schools the third year, and senior high schools the fourth year.

Construction - there are conditions that modify the applicability of certain construction requirements of this chapter. The first in WAC 246-366A-005 provides for application of the existing construction requirements of chapter 246-366 WAC if the local permitting jurisdiction received a complete building permit application for school construction prior to September 1, 2010. The site review requirements of WAC 246-366A-030 allow for the same deviation from construction related requirements if construction plan notification to the local health officer is made prior to September 1, 2010. Lastly, WAC 246-366A-090 provides deviation from the new heating and ventilation construction requirements related to ducted air returns and upgraded duct lining if the local permitting jurisdiction received a complete building permit application prior to September 1, 2013.

**Reduce or modify fine schedules for noncompliance:** This mitigation measure is not possible to apply to this rule making as there are no fine schedules established in these rules.

**Other mitigation techniques:** The department will provide privately owned schools with all model policies (e.g., approved use and management of hazardous materials, use of upholstered furniture, animals in schools, safety standards, etc.) to help schools comply with these rules with the lowest possible cost.

These rules allow for variance requests to the local health officer so that schools can meet the intent of these rules in alternative, less costly ways.

**Small Business Involvement in Rule Development:** The department invited private school representatives to serve on the original school rule development committee as well as the costing workshop and the later rule revision team. Proposals from the representatives of private schools were considered as part of the process of rule development, but did not include proposed rule changes to specifically accommodate the special needs of private schools.

**Jobs Created or Lost as a Result of the Rule:** The department assumes that private schools will meet the intent of these rules in the least costly manner. The department assumes private schools will make necessary adjustments in their budgeting process, which could include reducing existing nonstaffing costs and seeking additional revenue via tuition increases or other fund-raising activities. Based on these potential actions, coupled with private school's ability to seek variances from the local health officer, the department estimates that these rules will not result in any jobs created or lost.

A copy of the statement may be obtained by contacting Ned Therien, P.O. Box 47990, Olympia, WA 98504-7990, phone (360) 236-4103, fax (360) 236-4088, e-mail ned.therien@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ned Therien, P.O. Box 47990, Olympia, WA 98504-7990, phone (360) 236-4103, fax (360) 236-4088, e-mail ned.therien@doh.wa.gov.

June 30, 2009
Craig McLaughlin
Executive Director

NEW SECTION

**WAC 246-366-005 Purpose.** The purpose of this chapter is to maintain minimum environmental health and safety standards for school facilities until the legislature permits full or partial implementation of chapter 246-366A WAC. To the extent funded or otherwise approved by the legislature, chapter 246-366A WAC is intended to replace or supersede this chapter or corresponding portions thereof as identified by the Washington state board of health.

NEW SECTION

**WAC 246-366-160 Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

## ALTERNATIVE A

## Chapter 246-366A WAC

## ENVIRONMENTAL HEALTH AND SAFETY STANDARDS FOR PRIMARY AND SECONDARY SCHOOLS

NEW SECTION

**WAC 246-366A-001 Introduction and purpose.** These rules establish minimum environmental health and safety standards for school facilities and are intended to promote a healthy and safe school environment.

NEW SECTION

**WAC 246-366A-005 Applicability.** (1) These rules apply to all school facilities operated for the primary purpose of providing education at the kindergarten through twelfth

grade (K-12) levels, and preschools that are part of such facilities except:

(a) Private residences used for home-based instruction as defined by RCW 28A.225.010(4);

(b) Facilities hosting educational programs where educational instruction is not a primary purpose, including, but not limited to, detention centers, jails, hospitals, mental health units, or long-term care facilities;

(c) Private facilities where tutoring is the primary purpose; and

(d) Public or private postsecondary education facilities providing instruction to students primarily enrolled in secondary school.

(2) These rules are in addition to all other requirements that apply to schools and do not affect the applicability of those requirements.

(3) Additional state board of health environmental health and safety rules that apply to school facilities include, but are not limited to:

(a) Chapter 246-215 WAC Food services;

(b) Chapter 246-217 WAC Food worker cards;

(c) Chapter 246-260 WAC Water recreation facilities;

(d) Chapter 246-262 WAC Recreational water contact facilities;

(e) Chapter 246-272A WAC On-site sewage systems;

(f) Chapter 246-272B WAC Large on-site sewage system regulations;

(g) Chapter 246-290 WAC Public water supplies; and

(h) Chapter 246-291 WAC Group B public water systems.

(4) These rules are not intended to replace or supersede the department of labor and industries' authority and jurisdiction over employee safety and health.

(5) These rules are not intended to replace requirements of the building code council under Title 51 WAC, but may be more stringent to protect health and safety.

(6) For a school undergoing an alteration or addition, WAC 246-366A-040, 246-366A-060, 246-366A-090, 246-366A-100, 246-366A-110, 246-366A-120, 246-366A-150, and 246-366A-160 apply only to:

(a) Areas that are part of the addition;

(b) Areas undergoing alteration; and

(c) Changes to existing building systems, such as heating and ventilation systems, when those changes are included in construction documents or a building permit application describing the alteration or addition.

(7) If the local permitting jurisdiction received a complete building permit application for school construction prior to September 1, 2010, the construction-related requirements of chapter 246-366 WAC in effect at the time of application apply.

NEW SECTION

**WAC 246-366A-010 Definitions.** The following definitions apply to these rules:

(1) "Addition" means an extension or increase in floor area or height of a building or structure.

(2) "Air contaminants of public health importance" means pollutants in the indoor air that could, depending on dose and circumstances, have health impacts, including but not limited to:

(a) Volatile organic compounds, for example, formaldehyde and benzene;

(b) Combustion by-products, for example, carbon monoxide and nitrogen oxides;

(c) Vapors and gases, for example, chlorine, mercury, and ozone;

(d) Heavy metal dusts and fumes, for example, chromium and lead; and

(e) Particulates, for example, wood and ceramic dust.

(3) "Alteration" means any construction or renovation to an existing structure other than repair or addition.

(4) "Construction" or "construction project" means any activity subject to state or local building codes.

(5) "Construction documents" means written, graphic, and pictorial documents prepared or assembled for describing the design, location, and physical characteristics of the elements of a project necessary for obtaining a building permit.

(6) "Contaminant" means any hazardous material that occurs at greater than natural background levels.

(7) "Decibel (dB)" means a standard unit of measurement of sound pressure.

(8) "Decibel, A-weighted (dBA)" means a decibel measure that has been weighted in accordance with the A-weighting scale. The A-weighting adjusts sound level as a function of frequency to correspond approximately to the sensitivity of human hearing.

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

(10) "Drinking fountain" means the type of plumbing fixture that delivers a stream of water for drinking without actively cooling the water.

(11) "Emergency eye wash" means a hands-free device that:

(a) Irrigates and flushes both eyes simultaneously with tepid potable water;

(b) Activates an on-off valve in one second or less and remains on without user assistance until intentionally turned off; and

(c) Delivers at least 0.4 gallons (1.5 liters) of water per minute for at least fifteen minutes.

(12) "Emergency shower" means a hand-activated shower that delivers tepid potable water to cascade over the user's entire body at a minimum rate of 20 gallons (75 liters) per minute for at least fifteen minutes.

(13) "Equivalent sound level ($L_{eq}$)" means the level of a constant sound that, over a given time period, contains the same amount of sound energy as the measured fluctuating sound.

(14) "Faucet" means the type of plumbing fixture that is a valved outlet device attached to a pipe that normally serves a sink or tub and can discharge hot water, cold water, or both.

(15) "First draw sample" means a water sample collected immediately upon opening a plumbing fixture that has not been used for at least eight hours prior to collection.

(16) "Flush sample" means a water sample collected after allowing cold water to run for at least thirty seconds from a plumbing fixture that has not been used for at least eight hours prior to collection.

(17) "Foot-candle" means a unit of measure of the intensity of light falling on a surface, equal to one lumen per square foot.

(18) "Hazardous materials" means toxic, corrosive, flammable, explosive, persistent, or chemically reactive substances that, depending on dose and circumstances, pose a threat to human health.

(19) "Imminent health hazard" means a significant threat or significant danger to health or safety that requires immediate action to prevent serious illness, injury, or death.

(20) "Laboratory" means instructional areas of the school facility where students might be exposed to greater potential health and safety hazards than typically exist in general academic classrooms. Such laboratories may include, but are not limited to, chemistry, physics, material science, and biology laboratories and art studios (for example: Darkrooms, ceramic studios, and print making studios).

(21) "Local board of health" means the county or district board of health as defined in RCW 70.05.010(3).

(22) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the county or district public health department as defined in RCW 70.05.010, or his or her authorized representative, including, but not limited to, the environmental health director.

(23) "Mechanical exhaust ventilation" means the removal of indoor air to the outside of the building by mechanical means.

(24) "Noise criterion (NC)" means a system for rating the noise level in an occupied area by comparing actual or calculated sound level spectra with a series of established octave band spectra.

(25) "Noise criterion 35 (NC35)" means the curve for specifying the maximum permissible sound pressure level for each frequency band.

(26) "Preschool" means an instructional curriculum and portion of a school facility designed to instruct children not old enough to attend kindergarten.

(27) "Portable" means any relocatable structure that is transported to a school site and is placed or assembled there for use by students as part of a school facility.

(28) "Repair" means the reconstruction or renewal of any part of an existing school facility for the purpose of its maintenance.

(29) "School" means any public, religious-affiliated, or private institution for instructing students in any grade from kindergarten through twelfth grade.

(30) "School board" means an appointed or elected board whose primary responsibility is to operate schools or to contract for school services and includes the governing body or owner of a private school.

(31) "School facility" means buildings or grounds owned or leased by the school or donated to the school for the primary purpose of student use including, but not limited to, portables, playgrounds and sports fields.

(32) "School officials" means those persons designated by the school board as responsible for planning, policy development, budgeting, management, or other administrative functions.

(33) "Shop" means instructional areas of the school facility where students are exposed to greater health and safety hazards than typically exist in general academic classrooms. Shops include, but are not limited to, industrial and agricultural shops, including career and technical education (for example: Metal-working, wood-working, construction, automotive, and horticulture).

(34) "Site" means any real property used or proposed to be used as a location for a school.

(35) "Source capture system" means a mechanical exhaust system designed and constructed to capture air contaminants at their source and release air contaminants to the outdoor atmosphere.

(36) "Tempered water" means water having a temperature range between eighty-five degrees Fahrenheit and one hundred ten degrees Fahrenheit.

(37) "Tepid water" means water having a temperature range between sixty degrees Fahrenheit and ninety-five degrees Fahrenheit.

(38) "Toxic" means having the properties to cause or significantly contribute to death, injury, or illness.

(39) "Variance" means an alternative to a specific requirement in these rules, approved by the local health officer, that provides a comparable level of protection.

(40) "Very low lead plumbing fixture" means plumbing fittings or fixtures used in the installation or repair of any plumbing providing water for human consumption that contain less than 0.3% lead by weight.

(41) "Water cooler" means the type of plumbing fixture that is a mechanical device affixed to drinking water supply plumbing that actively cools the water.

NEW SECTION

**WAC 246-366A-015 Guidance for rule implementation and compliance.** (1) The department, in cooperation with the office of superintendent of public instruction, shall:

(a) Update the *Health and Safety Guide for K-12 Schools in Washington* (the guide) at least every four years; and

(b) Make the guide available on the department's web site.

(2) The guide is the primary source of guidance for local health officers and school officials implementing these rules.

NEW SECTION

**WAC 246-366A-020 Responsibilities—General.** (1) Responsibilities of school officials. School officials shall:

(a) Maintain conditions within the school environment that will not endanger health and safety.

(b) Identify, assess, and mitigate or correct environmental health and safety hazards in their school facilities, establish necessary protective procedures, use appropriate controls, and take action to protect or separate those at risk from identified hazards, consistent with the level of risk presented by the specific hazard, until mitigation or correction is complete.

(c) When conditions are identified that pose an imminent health hazard:

(i) Take immediate action to mitigate hazards and prevent exposure;

(ii) Promptly notify the local health officer; and

(iii) Promptly inform school facility staff, students, and parents about the conditions and actions taken in response.

(d) Retain for at least six years, unless otherwise required by other state or federal laws, records pertaining to:

(i) Health and safety inspections of the school facilities, including the final report findings, correction schedules established in consultation with the local health officer, and recommended actions;

(ii) Imminent health hazards identified under this section and WAC 246-366A-190, and actions taken in response;

(iii) Site assessment, review, and approval as required under WAC 246-366A-030;

(iv) Construction project plan review and approval as required under WAC 246-366A-040; and

(v) Playground plan review and approval as required under WAC 246-366A-150.

(e) Have the records described in this subsection available for the public, except where otherwise provided by applicable public disclosure law.

(f) Prepare a report to the public and the school board at least annually about environmental health and safety conditions in the schools. The report must include an explanation of:

(i) Variances obtained from the local health officer regarding requirements of these rules;

(ii) Dates of environmental health and safety inspections conducted under requirements of these rules and any deficiencies not corrected within the time frame established by the local health officer in accordance with subsection (2) of this section;

(iii) Any imminent health hazards identified; and

(iv) A method for school officials to receive public comment about the report.

(2) Responsibilities of the local health officer.

(a) Except as provided in (b) of this subsection, the local health officer shall:

(i) Periodically conduct an environmental health and safety inspection of each school facility within his or her jurisdiction. Beginning September 1, 2011, those inspections must be conducted at least once each year.

(ii) Notify school officials at the time of discovery or immediately following the inspection if conditions that pose an imminent health hazard are identified, and recommend actions to mitigate the hazards and prevent exposure.

(iii) Consult with school officials upon completion of the inspection about findings and recommended follow-up actions and, if necessary, develop a correction schedule. Approaches and timelines used to address noncompliant conditions will depend on the level of risk to health and safety presented by the condition, and may include consideration of low-cost alternatives.

(iv) Develop draft and final inspection reports, in consultation with school officials, within sixty days after conducting an inspection. The report must include inspection findings related to this rule and any required correction schedule.

(v) Confirm, as needed, that corrections are accomplished.

(vi) Retain for at least six years, unless otherwise required by other state or federal laws, records pertaining to:

(A) Health and safety inspections of the school facilities performed by the local health officer, including, but not limited to, the final inspection report and correction schedules; and

(B) Imminent health hazards identified under this section and WAC 246-366A-190, and local health officer actions taken in response.

(vii) Have the records described in this subsection available for the public, except where otherwise provided by applicable public disclosure law.

(b) The local health officer may allow a school official or qualified designee to conduct a required inspection under a program approved by the local health officer not more than two out of every three years. The program must include provisions for:

(i) Assuring that the school official or designee conducting the inspection has attended training in the standards, techniques, and methods used to conduct an environmental health and safety inspection;

(ii) Completing a standardized checklist at each inspection;

(iii) Providing a written report to the local health officer about the findings of the inspection;

(iv) Notifying the local health officer regarding any identified imminent health hazards and coordinating with the health officer to mitigate hazards and prevent exposure; and

(v) Consulting with the local health officer on follow-up and corrective actions needed to address noncompliant conditions that do not pose an imminent health hazard.

(3) Responsibilities of the department.

(a) The department shall:

(i) Report to the state board of health once every three years. The report must include a summary of:

(A) Variances granted by local health officers; and

(B) Rule implementation status.

(ii) Make technical assistance and training available to local health jurisdictions, educational service districts, school districts, and school personnel for implementation of these rules, including:

(A) Inspection techniques and procedures;

(B) Inspection materials and checklists;

(C) Variance request evaluations; and

(D) Model environmental health and safety programs for schools and local health jurisdictions.

(b) The department, at the request of the local health officer, may assist in investigating environmental health and safety incidents at schools.

(c) Establish a school rule technical advisory committee to help promote consistent statewide interpretation and implementation of these rules.

NEW SECTION

**WAC 246-366A-030 Site assessment, review, and approval.** (1) A full site assessment and local health officer review and approval to determine environmental health and safety risk, is required for:

(a) Constructing a new school facility on a site that was previously undeveloped or developed for other purposes; or

(b) Converting an existing structure for primary use as a school facility.

(2) The local health officer shall determine, in consultation with school officials, the need for and scope of the site assessment, review, and approval process for:

(a) Constructing a new school facility on an existing school site;

(b) Constructing an addition to an existing school facility; and

(c) Converting part of an existing structure primarily used for other purposes into a school facility.

(3) A full site assessment must include:

(a) A Phase 1 Environmental Site Assessment (ESA) that meets the requirements of the *American Society for Testing and Materials (ASTM) Standard #1527-05* (published November 2005);

(b) Sampling and analysis of potential contaminants if the Phase 1 ESA indicates that hazardous materials may be present. Sampling and analysis must comply with applicable rules of the Washington state department of ecology;

(c) A noise assessment. Noise from any source must not exceed an hourly average of 55 dBA (the mean sound energy level for a specified time ($Leq_{60\ minutes}$)) and must not exceed an hourly maximum (the maximum sound level recorded during a specified time period (Lmax)) of 75 dBA during the time of day the school is in session. Sites exceeding these sound levels are acceptable if a plan for noise reduction is included in the new construction proposal and the plan for noise reduction is approved by the local health officer.

(4) School officials shall:

(a) Notify the local health officer within ninety days of starting preliminary planning for school construction that may require a site assessment with local health officer review and approval.

(b) Consult with the local health officer throughout the plan development phase regarding the scope of the site assessment and the timeline for completion of the site assessment.

(c) Have a site assessment completed when required under this section.

(d) Submit a written report to the local health officer assessing the potential impact of health and safety risks presented by the proposed site, including, but not limited to the following:

(i) The findings and results obtained under subsection (3) of this section;

(ii) Analysis of the findings;

(iii) Description of any mitigation proposed to address identified health and safety risks present at the site; and

(iv) Any site assessment-related information requested by the local health officer to complete the site assessment review and approval process.

(e) Obtain site review and written site approval from the local health officer when required under subsection (1) or (2) of this section.

(5) The local health officer shall:

(a) Conduct an inspection of the proposed site;

(b) Review the site assessment for environmental health and safety risk;

(c) For site assessments according to subsection (1) of this section, provide written approval, describe site deficiencies needing mitigation to obtain approval, or deny use of the proposed school facility site within sixty days of receiving a complete request unless the school officials and the local health officer agree to a different timeline; and

(d) For site assessments according to subsection (2) of this section, provide written approval or describe site deficiencies needing mitigation to obtain approval of the proposed school facility site within sixty days of receiving a complete request unless the school officials and the local health officer agree to a different timeline.

(6) If school officials notified the local health officer in writing prior to September 1, 2010, that construction is planned for a particular site, the site review requirements in effect at the time of notification apply, provided that school officials comply with all agreed on timelines for completion.

NEW SECTION

**WAC 246-366A-040 Construction project review.** (1) The following school facility construction projects are subject to review by the local health officer:

(a) Construction of a new school facility;

(b) Schools established in all or part of any existing structures previously used for other purposes;

(c) Additions or alterations consisting of more than five thousand square feet of floor area or having a value of more than ten percent of the total replacement value of an existing school facility;

(d) Any construction of a shop or laboratory for use by students; and

(e) Installation of a portable.

(2) Review and approval requirements for installation of a playground are established in WAC 246-366A-150.

(3) School officials shall:

(a) Consult with the local health officer during preliminary planning for school construction projects that are subject to the requirements of this section;

(b) Invite the local health officer to a predevelopment conference with school officials and project design professionals to participate in the discussion about the preliminary design to highlight health and safety matters and requirements of these rules;

(c) Obtain construction project review and written approval from the local health officer regarding environmental health and safety requirements in these rules before starting construction;

(d) Provide construction documents to the local health officer at the same time as the local building official to facilitate a concurrent and timely review; and

(e) Provide additional documents requested by the local health officer, which may include, but are not limited to, written statements signed by the project's licensed professional engineer verifying that design elements comply with requirements specified by these rules.

(4) The local health officer shall:

(a) Consult with school officials and determine what is required for plan review and approval;

(b) Review construction documents to confirm that the health and safety requirements of these rules are met;

(c) Identify and request any additional documents required to determine compliance with requirements specified by these rules; and

(d) Provide written approval, or describe plan deficiencies needing change to obtain approval, of the construction project within sixty days of receiving all documents needed to complete the review, unless the school officials and the local health officer agree to a different timeline.

NEW SECTION

**WAC 246-366A-050 Preoccupancy inspection of construction projects.** (1) School officials shall:

(a) Obtain a preoccupancy inspection by the local health officer of construction projects subject to WAC 246-366A-040(1), conducted in coordination with a final inspection by the local building official, in order to ensure imminent health hazards are corrected before allowing school facilities to be occupied; and

(b) Notify the local health officer at least five business days before a desired preoccupancy inspection.

(2) The local health officer:

(a) Shall coordinate all construction-related inspections with the on-site project manager or other appropriate person identified by school officials.

(b) May inspect for compliance with these rules during the construction phase.

(c) Shall conduct a preoccupancy inspection for construction projects subject to WAC 246-366A-040(1) to verify compliance with these rules before the building is occupied and not more than five business days after the date requested by school officials.

(i) If an imminent health hazard is identified, a solution must be identified and agreed to by school officials, the local health officer, and the local building official and implemented by school officials before the affected portion of the building is occupied.

(ii) If other conditions of noncompliance with these rules are identified, school officials shall be provided with a written list of items and consulted in developing a correction schedule, based on the level of risk to health and safety.

(d) May reinspect to confirm satisfactory correction of the items identified under (c) of this subsection.

NEW SECTION

**WAC 246-366A-060 General construction requirements.** School officials shall:

(1) Design school facilities to minimize conditions that attract, shelter, and promote the propagation of insects, rodents, bats, birds, and other pests of public health significance. This subsection does not mandate the installation of window screens nor does it prohibit the installation of retention ponds or rain gardens.

(2) Design school facilities with windows in sufficient number, size, and location to enable students to see outside at least fifty percent of the school day. Windows are optional in special purpose instructional areas including, but not limited to, theaters, music areas, multipurpose areas, gymnasiums, auditoriums, shops, laboratories, libraries, and seminar areas.

(3) Provide sun control to exclude direct sunlight from window areas and skylights of instructional areas, assembly rooms and meeting rooms during at least eighty percent of the normal school hours. Each area must be considered as an individual case. Sun control is not required for sun angles less than forty-two degrees up from the horizontal. Sun control is not required if air conditioning is provided or special glass is installed having a total solar energy transmission factor less than sixty percent.

(4) Provide surfaces on steps that reduce the risk of injury caused by slipping.

(5) Provide floors throughout the school facility that are appropriate for the intended use, easily cleanable and can be dried effectively to inhibit mold growth. These floor materials include, but are not limited to, wood, vinyl, linoleum, and tightly woven carpets with water impervious backing.

(6) Provide reasonably sufficient space for the storage of play equipment, instructional equipment, and outdoor clothing. The space must be reasonably accessible, lighted, and ventilated.

(7) Provide measures to reduce potential injury from fall hazards, including but not limited to, retaining walls; performance arts stages and orchestra pits; balconies; mezzanines; and other similar areas of drop-off to a lower floor.

(8) Provide the following items for health rooms, if health rooms are provided:

(a) The means to visually supervise and provide privacy of room occupants;

(b) Surfaces that can be easily cleaned and sanitized;

(c) A handwashing sink in the room;

(d) An adjoining restroom; and

(e) Mechanical exhaust ventilation so that air does not flow from the health room to other parts of the school facility.

NEW SECTION

**WAC 246-366A-065 General operation and maintenance requirements.** School officials shall:

(1) Keep school facilities clean and in good condition.

(2) Mitigate any environmental health and safety hazards.

(3) Control conditions that attract, shelter, and promote the propagation of insects, rodents, bats, birds, and other pests of public health significance. This subsection does not mandate the routine installation of window screens nor does it prohibit the proper operation of retention ponds or rain gardens.

(4) Label, use, store and dispose of hazardous materials to:

(a) Prevent health and safety hazards;

(b) Keep incompatible substances apart from each other;

(c) Prevent unauthorized access and use; and

(d) Follow procedures according to material safety data sheet instructions.

(5) Select supplies and methods of use that reduce exposure to hazardous materials.

(6) Allow only those hazardous materials in schools that school officials have approved for use. Types of commercial

products that may contain hazardous materials include, but are not limited to, cleaners, sanitizers, maintenance supplies, pesticides, herbicides, and instruction-related supplies.

(7) Safely store play equipment, instructional equipment, and outdoor clothing where reasonably accessible.

(8) Use products that comply with American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61 (2007) to coat, line, seal, or patch drinking water contact surfaces, if the interior of water piping or plumbing fixtures is coated or lined.

(9) Immediately clean and sanitize the contaminated area and prevent human exposure when sewage backups occur.

(10) Notify the local health officer when sewage backups:

(a) Result from failure of an on-site sewage system serving the school facility;

(b) Impact student use areas outside restrooms; or

(c) Occur in a food preparation, food storage, or food service area.

(11) Allow upholstered furniture, such as couches and overstuffed chairs, in school facilities only if the furniture has been purchased or approved by school officials.

NEW SECTION

**WAC 246-366A-070 Moisture control, mold prevention, and remediation.** School officials shall:

(1) Visually monitor the school facility for water intrusion and moisture accumulation that may lead to mold growth, especially after severe weather events.

(2) Begin corrective action within twenty-four hours of discovering water intrusion or moisture accumulation to inhibit and limit mold growth by:

(a) Identifying and eliminating the cause of the water intrusion or moisture accumulation; and

(b) Drying the affected portions of the school facility.

(3) When mold growth is observed or suspected, use recognized remediation procedures such as those provided by the Environmental Protection Agency (Mold Remediation in Schools and Commercial Buildings, EPA 402-K-01-001, March 2001). Begin recognized procedures within twenty-four hours to:

(a) Identify and eliminate the cause of the moisture or water contributing to the mold growth;

(b) Dry the affected portions of the school facility;

(c) Investigate the extent of the mold growth, including evaluation of potentially affected materials and surfaces inside walls and under floor coverings, when moisture or water has entered those spaces;

(d) Minimize exposure to indoor mold spores and fragments until mold remediation is complete using methods including, but not limited to, containment and negative air pressure; and

(e) Remediate surfaces and materials contaminated with mold.

(4) When remediation is required under subsection (3) of this section and there is significant risk of exposure, including when the total area affected is greater than ten square feet, promptly inform school facility staff, students, and parents of the conditions and the plans and time frame for the remediation. The extent of this communication will depend on the likelihood of individual exposure, the scope of the remediation project, and the time required to complete it.

NEW SECTION

**WAC 246-366A-080 Safety—Animals in school facilities.** (1) School officials shall allow in school facilities only those animals, other than service animals, approved under written policies or procedures.

(2) School officials shall develop written policies or procedures for any animals allowed in school facilities to prevent:

(a) Injuries caused by wild, dangerous, or aggressive animals;

(b) Spread of diseases from animals known to commonly carry those diseases including, but not limited to, rabies, psittacosis, and salmonellosis;

(c) Allergic reactions;

(d) Exposure to animal wastes; and

(e) Handling animals or their bedding without proper handwashing afterward.

(3) Written policies or procedures required under subsection (2) of this section shall address service animals in the school facility that are not well behaved or present a risk to health and safety.

NEW SECTION

**WAC 246-366A-090 Heating and ventilation—Construction requirements.** School officials shall:

(1) Provide mechanical exhaust ventilation that meets or exceeds the requirements in chapter 51-52 WAC at locations intended for equipment or activities that produce air contaminants of public health importance.

(2) Situate fresh air intakes away from building exhaust vents and other sources of air contaminants of public health importance in a manner that meets or exceeds the requirements in chapter 51-52 WAC. Sources of air contaminants include bus and vehicle loading zones, and might include, but are not limited to, parking areas and areas where pesticides or herbicides are commonly applied.

(3) Use materials that will not deteriorate and contribute particulates to the air stream if insulating the interior of air handling ducts. Insulation materials must be designed to accommodate duct cleaning and exposure to air flow without deteriorating. This subsection does not apply if the local permitting jurisdiction received a complete building permit application prior to September 1, 2013.

(4) Use ducted air returns and not open plenum air returns consisting of the open space above suspended ceilings. This subsection does not apply to:

(a) Alterations to school facilities;

(b) Additions to school facilities that tie into existing ventilation systems that use open plenum air returns; and

(c) Facilities for which the local permitting jurisdiction received a complete building permit application prior to September 1, 2013.

NEW SECTION

**WAC 246-366A-095 Heating and ventilation—Operation and maintenance requirements.** School officials shall:

(1) Heat occupied areas of school buildings during school hours and school-sponsored events to maintain a minimum temperature of sixty-five degrees Fahrenheit except for gymnasiums and hallways, which must be maintained at a minimum temperature of sixty degrees Fahrenheit.

(2) Ventilate occupied areas of school buildings during school hours and school-sponsored events. During periods of ventilation:

(a) For school facilities constructed or sited under a building permit for which the local permitting jurisdiction received a completed building permit application on or after September 1, 2010, provide, as a minimum, outdoor air according to WAC 51-52-0403, Table 403.3, Required Outdoor Ventilation Air.

(b) For school facilities constructed or sited under a building permit for which the local permitting jurisdiction received a completed building permit application before September 1, 2010, conduct standard operation and maintenance best practices including, but not limited to, making timely repairs, removing obstructions, and replacing filters and fan drive belts, and setting system controls so that, to the extent possible given the design of the ventilation system, outdoor air is provided consistent with WAC 51-52-0403, Table 403.3, Required Outdoor Ventilation Air.

(3) Use and maintain mechanical exhaust ventilation installed for equipment or activities that produce air contaminants of public health importance or moisture.

(4) Limit student exposure to air contaminants of public health importance produced by heat laminators, laser printers, photocopiers, and other office equipment by placing such equipment in appropriately ventilated spaces and providing instruction to users on how to operate and maintain equipment as recommended by the manufacturer.

(5) Take preventive or corrective action when pesticides, herbicides, or air contaminants of public health importance are likely to be drawn or are drawn into the building or ventilation system.

NEW SECTION

**WAC 246-366A-100 Noise control—Construction requirements.** (1) School officials shall design ventilation equipment and other mechanical noise sources in classrooms to provide background sound which conforms to a noise criterion curve or equivalent not to exceed NC-35. School officials shall certify, or hire the appropriate person to certify, that ventilation equipment and other mechanical noise sources that have been installed meet the NC-35 noise criterion design standard.

(2) Portable classrooms constructed before January 1, 1990, moved from one site to another on the same school property or within the same school district, are exempt from the requirements of this section if the portable classrooms meet all of the following:

(a) Noise abating or noise generating features are not altered in a manner that may increase noise levels;

(b) The portable classrooms were previously in use for instruction;

(c) Ownership of the portable classrooms remains the same; and

(d) The new site meets the noise standard in WAC 246-366A-030 (3)(c).

NEW SECTION

**WAC 246-366A-105 Noise control—Operation and maintenance requirements.** School officials shall:

(1) Maintain the background noise at any student location within classrooms constructed after January 1, 1990, at or below 45 dBA ($Leq_x$) where $_x$ is 30 seconds or more. Background noise levels must be determined when the ventilation system and the ventilation system's noise generating components, such as the condenser and heat pump, are operating and the room is unoccupied by students.

(2) Maintain the background noise level at any student location in laboratories and shops with local exhaust ventilation systems constructed after January 1, 1990, at or below 65 dBA ($Leq_x$) where $_x$ is 30 seconds or more. Background noise levels must be determined when all ventilation equipment is operating and the room is unoccupied by students.

(3) Maintain noise exposure for students below the maximum levels in Table 1.

**Table 1**
**Maximum Noise Exposures Permissible**

| Duration per day (hours) | Sound level (dBA) |
|---|---|
| 8 | 85 |
| 6 | 87 |
| 4 | 90 |
| 3 | 92 |
| 2 | 95 |
| 1-1/2 | 97 |
| 1 | 100 |
| 1/2 | 105 |
| 1/4 | 110 |

(4) Not allow student exposure to sound levels equal to or greater than 115 dBA.

(5) Provide and require students to use personal protective equipment, for example ear plugs and muffs, where noise levels exceed those specified in Table 1. Personal protective equipment must reduce student noise exposure to comply with the levels specified in Table 1.

NEW SECTION

**WAC 246-366A-110 Lighting—Construction requirements.** School officials shall equip school facilities with lighting systems designed to meet the requirements of WAC 246-366A-115. General, task or natural lighting may be used to achieve the minimum lighting intensities. Energy efficient lighting systems, lighting fixtures, or bulbs that meet the minimum lighting intensities in Table 2 of WAC 246-366A-115(1) may be used.

NEW SECTION

**WAC 246-366A-115 Lighting—Operation and maintenance requirements.** School officials shall:

(1) Provide light intensities that meet or exceed those specified in Table 2. General, task and/or natural lighting may be used to maintain the minimum lighting intensities. Energy efficient lighting systems, lighting fixtures, or bulbs that meet the minimum lighting intensities in Table 2 may be used.

**Table 2**
**Lighting Intensities**

| **Measured 30 inches above the floor or on working or teaching surfaces. Some lighting fixtures may require a start-up period before reaching maximum light output.** | **Minimum foot-candle intensity** |
|---|---|
| General instructional areas, for example, study halls, lecture rooms, and libraries. | 30 |
| Special instructional areas where safety is of prime consideration or fine detail work is done, for example, family and consumer science laboratories, science laboratories (including chemical storage areas), shops, drafting rooms, and art and craft rooms. | 50 |
| Noninstructional areas, for example, auditoriums, lunch rooms, assembly rooms, corridors, stairs, storerooms, and restrooms. | 10 |
| Gymnasiums: Main and auxiliary spaces, shower rooms, and locker rooms. | 20 |

(2) Control excessive brightness and glare in all instructional areas. Surface contrasts and direct or indirect glare must not cause excessive eye accommodation or eye strain problems.

(3) Provide lighting in a manner that minimizes shadows and other lighting deficiencies on work and teaching surfaces.

NEW SECTION

**WAC 246-366A-120 Restrooms and showers—Construction requirements.** School officials shall:

(1) Provide shower facilities at grades nine and above for classes in physical education and for team sports. Showers must supply hot water between one hundred and one hundred twenty degrees Fahrenheit.

(2) Provide floor surfaces in shower areas that are water impervious, slip-resistant, and sloped to floor drains. Walls must be water impervious up to showerhead height. Upper walls and ceilings must have an easily cleanable surface.

(3) Locate drying areas, if provided, adjacent to showers and locker or dressing rooms. Walls and ceilings must have an easily cleanable surface and floor surfaces must be water impervious, slip-resistant, and sloped to floor drains.

(4) Provide locker or dressing rooms adjacent to showers or drying rooms. Walls and ceilings must have an easily cleanable surface. When drying areas are provided, floor surfaces in locker or dressing rooms must be appropriate for the intended use, easily cleanable and dryable to effectively inhibit mold growth. When drying areas are not provided, locker or dressing room floor surfaces must be water impervious, slip-resistant, and sloped to floor drains.

NEW SECTION

**WAC 246-366A-125 Restrooms and showers—Operation and maintenance requirements.** School officials shall:

(1) Provide in each restroom:

(a) Toilet paper in each toilet stall;

(b) Single service handwashing soap near each handwashing sink; and

(c) Single-service towels or an adequate number of warm-air dryers. Common use towels are not allowed.

(2) Provide hot water to all handwashing plumbing fixtures at a maximum temperature of one hundred twenty degrees Fahrenheit.

(3) Provide tempered water for those handwashing plumbing fixtures that do not allow the user to select water temperature.

(4) Provide any hand operated, self-closing handwashing plumbing fixtures with the capability of providing at least ten seconds of running water.

(5) Provide access to restrooms when:

(a) School buildings are in use; and

(b) Outdoor facilities or athletic fields are in use for school-sponsored events. School officials are not required to provide access to restrooms when outdoor facilities and athletic fields are in use after school hours or on weekends unless it is a school-sponsored event.

(6) Provide access to shower facilities with hot water between one hundred and one hundred twenty degrees Fahrenheit for classes in physical education and school-sponsored sports teams at grades nine and above.

(7) When cloth towels are supplied by the school, provide them for individual use and launder them after each use.

NEW SECTION

**WAC 246-366A-130 Water quality monitoring—Lead.** (1) School officials shall:

(a) Sample plumbing fixtures that are regularly used for drinking or cooking.

(b) Use a laboratory to analyze all required water samples that is accredited by the department of ecology, or other appropriate agency if outside Washington state, according to EPA drinking water laboratory certification criteria.

(2) Water sampling protocols. School officials shall:

(a) Collect representative samples, according to the percentages required by subsections (3) and (4) of this section, from each type and age of plumbing fixture regularly used for drinking or cooking.

(i) For type of fixture, use at least the three types: Drinking fountains, water coolers and faucets.

(ii) For age of fixture, use at least two groupings: Those manufactured prior to 1999, and those manufactured since January 1, 1999.

(b) Sample as follows:

(i) Make sure cold water is the last to run through the fixture to be tested.

(ii) Allow water to sit in the plumbing system at least eight hours. No water may pass through the fixture during that time.

(iii) Place the 250 ml sample bottle under the faucet and open the cold water tap. Fill the bottle to the shoulder or the line marked "250 ml," turn off the water and cap the bottle tightly.

(3) Initial monitoring schedule for lead.

(a) School officials shall accomplish initial monitoring by sampling fifty percent of the plumbing fixtures regularly used for drinking or cooking in elementary schools or used by preschool children in K-12 schools by September 1, 2011. This may be either from fifty percent of the fixtures in each school or from all of the fixtures in fifty percent of the schools within a district. School districts shall sample the remaining fifty percent of the fixtures by September 1, 2012.

(b) School officials shall accomplish initial monitoring by sampling at least twenty-five percent of each type and age of plumbing fixture, as specified under subsection (2)(a) of this section, regularly used by students for drinking or cooking in:

(i) Middle and junior high schools by September 1, 2013; and

(ii) High schools by September 1, 2014.

(c) School officials may apply samples collected after September 1, 2003, toward meeting the initial monitoring requirement if all plumbing fixtures with lead results above 0.020 milligrams per liter or 20.0 parts per billion have been removed from service, or have been or are being addressed according to subsection (5) of this section, and samples were:

(i) From plumbing fixtures regularly used for drinking or cooking; and

(ii) Collected consistent with subsection (2) of this section.

(4) Ongoing monitoring for lead.

(a) School officials shall repeat lead monitoring every five years, beginning by:

(i) September 1, 2017, for elementary schools;

(ii) September 1, 2018, for middle and junior high schools; and

(iii) September 1, 2019, for high schools.

(b) School officials shall use sampling protocols in subsection (2) of this section to collect samples in all schools from:

(i) No less than twenty-five percent of each type and age of plumbing fixture which is not a "very low lead" plumbing fixture; and

(ii) No less than ten percent of each type of plumbing fixture which is a "very low lead" plumbing fixture.

(c) Schools that are Group A public water systems are not required to do ongoing lead monitoring required by (a) of this subsection if the schools meet the lead monitoring requirements in chapter 246-290 WAC.

(5) Corrective actions. School officials shall:

(a) For all plumbing fixtures with sample results of lead above 0.020 milligrams per liter or 20.0 parts per billion, immediately shut off these fixtures or make them inoperable.

(b) For all plumbing fixtures of the same type and age as any fixture with results above 0.020 milligrams per liter or 20.0 parts per billion:

(i) Take immediate corrective action according to (a) of this subsection; or

(ii) Collect first draw samples within ten business days. Upon receipt of sample results, immediately shut off or make inoperable all plumbing fixtures with results of lead above 0.020 milligrams per liter or 20.0 parts per billion.

(c) To provide drinking water at the location of these fixtures, take one or more of the following remedies:

(i) Bottled water. If bottled water is used, provide bottled water that is produced by a Washington state department of agriculture-approved bottling operation or out-of-state or international bottler whose product meets federal Food and Drug Administration regulations.

(ii) Manual flushing program. Manual flushing may be used only as a temporary remedy. If manual flushing is used:

(A) Take flush samples from twenty-five percent of each type and age of the fixtures planned to be included in the flushing program to determine the flushing time necessary to reduce lead to below 0.020 milligrams per liter or 20.0 parts per billion. Start by following the sample collection protocol of first-draw samples described in subsection (2)(b) of this section with the addition of letting the water run for thirty seconds before filling the bottle.

(B) Open the tap of every fixture included in the flushing program every morning before the facility opens and let the water run for the length of time established in (c)(ii)(A) of this subsection.

(iii) Automated flushing. If automated flushing is used, take samples from twenty-five percent of each type and age of the fixtures included in the flushing program to demonstrate that the automated system reduces lead to below 0.020 milligrams per liter or 20.0 parts per billion.

(iv) Fixture replacement. If individual plumbing fixtures are replaced:

(A) Precondition the plumbing fixtures by running water through the fixture continuously for twenty-four hours; and

(B) Collect first draw samples after preconditioning and verify sample results of lead below 0.020 milligrams per liter or 20.0 parts per billion. If the preconditioned plumbing fixture does not yield a sample result below this level, (a) of this subsection applies.

(v) Treatment. Before treatment is used, submit an engineering project report to the department, per WAC 246-290-110. Installation of treatment devices will result in the school's designation as a public water supply. School officials shall then ensure they comply with the Group A public water system rules and regulations, chapter 246-290 WAC and water works operator certification rules and regulations, chapter 246-292 WAC.

(6) Notification requirements. School officials shall:

(a) Notify school facility staff, students and parents, and the local health officer within five business days of the school officials receiving lead sampling results above 0.020 milligrams per liter or 20.0 parts per billion.

(b) Make all results available for review upon request.

NEW SECTION

**WAC 246-366A-135 Water quality monitoring—Copper.** (1) School officials shall collect water samples and have them tested for copper following the requirements of WAC 246-366A-130 (1) and (2)(b). The same water samples used for lead testing may be used for copper testing.

(2) School officials shall test water samples for copper from no less than twenty-five percent of each type and age of plumbing fixture regularly used for drinking or cooking.

(a) For type of fixture, use at least the three types: Drinking fountains, water coolers and faucets.

(b) For age of fixture, use at least two groupings: Those manufactured prior to 1999 and those manufactured since January 1, 1999.

(3) School officials shall complete water sampling of plumbing fixtures for copper in:

(a) Elementary schools by September 1, 2012;

(b) Middle and junior high schools by September 1, 2013; and

(c) High schools by September 1, 2014.

(4) If school officials include lead samples collected after September 1, 2003, toward meeting the initial monitoring requirement for lead, as specified in WAC 246-366A-130, they may wait to monitor those plumbing fixtures for copper until they conduct the next ongoing lead monitoring per WAC 246-366A-130(4).

(5) School officials may include samples collected after September 1, 2003, toward meeting monitoring requirements if all plumbing fixtures with copper results above 1.30 milligrams per liter or 1300 parts per billion have been or are being addressed according to subsection (6) of this section, and the samples were:

(a) From plumbing fixtures regularly used for drinking and cooking; and

(b) Collected using the sampling protocol specified in WAC 246-366A-130 (2)(b).

(6) Corrective actions. For all plumbing fixtures with first draw sample results of copper above 1.30 milligrams per liter or 1300 parts per billion, school officials shall:

(a) Within five business days of getting sample results, consult with the department to develop a corrective action plan; and

(b) Implement the corrective action plan.

(7) Notification requirements. School officials shall:

(a) Notify staff, students and parents, and the local health officer within five business days of the school officials receiving copper sampling results above 1.30 milligrams per liter or 1300 parts per billion; and

(b) Make all results available for review upon request.

NEW SECTION

**WAC 246-366A-140 Water quality monitoring—Other drinking water contaminants.** The local health officer may require:

(1) Sampling of drinking water when public health concerns exist about drinking water contaminants other than lead or copper;

(2) Corrective actions in response to sampling results for other contaminants; and

(3) School officials to notify school facility staff, students and parents, and the local health officer about test results.

NEW SECTION

**WAC 246-366A-150 Playgrounds—Construction and installation requirements.** (1) School officials shall:

(a) Consult with the local health officer regarding playground review and approval requirements consistent with the scope of the project when proposing to:

(i) Install new playground equipment or fall protection surfaces;

(ii) Add new playground features or equipment to an existing playground; or

(iii) Modify, other than repair and maintain, existing playground equipment, features, or fall protection surfaces.

(b) If required by the local health officer after consultation:

(i) Provide playground plans and equipment specifications and any additional information the local health officer requests; and

(ii) Obtain plan review and written approval from the local health officer before installing, adding, or modifying playground equipment or fall protection surfaces.

(c) Install playground equipment, including used equipment, and fall protection surfaces:

(i) That meet the ASTM F 1487-01: Standard Consumer Safety Performance Specification for Playground Equipment for Public Use; and

(ii) In a manner that is consistent with the manufacturer's instructions and *Consumer Product Safety Commission Handbook for Public Playground Safety*, 2008.

(d) Prohibit the use of chromated copper arsenate or creosote treated wood to construct or install playground equipment or landscape and other structures on which students may play.

(2) The local health officer shall:

(a) Consult with school officials to determine what is required for playground plan review and approval consistent with the scope of the project.

(b) If playground review and approval is required:

(i) Review playground plans and equipment specifications to confirm that the requirements of these rules are addressed;

(ii) Identify and request any additional documents required to complete the review;

(iii) Provide written approval or denial of the playground plans and equipment specifications within thirty days of receiving all documents needed to complete the review, unless the school officials and the local health officer agree to a different timeline; and

(iv) Verify that playground installation complies with requirements of this section.

(c) Coordinate all playground-related inspections with school officials.

NEW SECTION

**WAC 246-366A-155 Playgrounds—Operation and maintenance requirements.** School officials shall:

(1) Monitor and operate playgrounds so that protective surfacing and use zones are maintained, and equipment is properly anchored and free of puncture, pinching, crushing, shearing, entanglement, and entrapment hazards.

(2) Prohibit the use of chromated copper arsenate or creosote treated wood to repair or maintain playground equipment or landscape and other structures on which students may play.

NEW SECTION

**WAC 246-366A-160 Laboratories and shops—Construction requirements.** School officials shall:

(1) Provide an emergency eyewash fountain for each laboratory and shop where hazardous materials are used or eye irritants are produced.

(2) Provide an emergency shower for each laboratory where hazardous materials are used and the potential for chemical spills exists.

(3) Assure that all emergency eyewash fountains and showers have unobstructed access and are reachable within ten seconds.

(4) Provide handwashing and appropriate drying facilities in an easily accessible location in each laboratory and shop.

(5) Provide emergency shut-offs for gas and for electricity connected to stationary machinery in laboratories and shops. Emergency shut-offs must:

(a) Be located in close proximity to the room exit door;

(b) Have unobstructed access; and

(c) Have signage readable from across the room for immediate identification during an emergency.

(6) Provide all stationary machinery in laboratories and shops with magnetic-type switches to prevent machines from automatically restarting upon restoration of power after an electrical failure or activation of the emergency shut-off.

(7) Provide mechanical exhaust ventilation in hazardous material storerooms, and in laboratories and shops where equipment or activities may produce air contaminants of public health importance.

(8) When activities or equipment in laboratories or shops produce air contaminants of public health importance, provide an appropriate source capture system to prevent those contaminants from entering the student's breathing zone. These activities and equipment include, but are not limited to, spray painting, welding, pottery kilns, chemistry experiments, and wood-working.

(9) Design ventilation systems to operate so that air is not recirculated and does not flow from the laboratory or shop to other parts of the school facility. Open plenum air returns consisting of the space above suspended ceilings in laboratories and shops must not be used to recirculate air to other parts of the school facility.

NEW SECTION

**WAC 246-366A-165 Laboratories and shops—Operation and maintenance requirements.** In laboratories and shops, school officials shall:

(1) Select, label, use, store and dispose of hazardous materials in accordance with WAC 246-366A-065.

(2) Prohibit use and storage of compounds that are:

(a) Considered shock-sensitive explosives, for example, picric acid, dinitro-organics, isopropyl ether, ethyl ether, tetrahydrofuran, dioxane; or

(b) Lethal at low concentrations when inhaled or in contact with skin, for example, pure cyanides, hydrofluoric acid, toxic compressed gases, mercury liquid and mercury compounds, and chemicals identified as the P-list under WAC 173-303-9903.

(3) Adopt safety procedures and processes for instructing students regarding the proper use of hazardous materials and equipment.

(4) Provide and require use of appropriate personal protective equipment when exposure to potential hazards might occur. Potential hazards include, but are not limited to hazardous material exposures, burns, cuts, and punctures.

(5) Provide situation-specific emergency and protective equipment during demonstrations with hazardous materials and with hazardous procedures. Examples of protective equipment include, but are not limited to, safety shields for eyes, protective gloves that are fire retardant and chemical resistant, respiratory protection, and fire extinguishers.

(6) Properly maintain laboratory and shop equipment and mechanical exhaust ventilation.

(7) Provide single-use soap and single-use towels or warm-air dryers at handwashing sinks.

NEW SECTION

**WAC 246-366A-170 Variances.** (1) School officials:

(a) May request a variance from requirements in these rules from the local health officer if they wish to use an alternative to meet the intent of these rules.

(i) The request for a variance must be in writing and describe:

(A) The specific requirement the variance is requested to meet;

(B) The alternative proposed to meet the specific requirement; and

(C) How the proposed alternative will provide at least a comparable level of protection as that provided by the specific requirement.

(ii) The request for a variance must include information as needed to support and clarify the request, such as material descriptions and specifications, engineering reports, photos, drawings, or sketches.

(b) May implement a variance only after obtaining approval from the local health officer.

(2) The local health officer shall:

(a) Initially review documents submitted with the request for a variance and inform school officials if additional information is required.

(b) Compare the health and safety aspects of the specific requirement being addressed and the variance proposal to

determine if the proposal provides at least a comparable level of protection as that provided by the specific requirement.

(c) Provide written approval or denial of a request for a variance within sixty days of receiving a complete written request, unless school officials and the local health officer agree to a different timeline.

(d) Submit an annual written report to the department regarding all variance requests. The report must be submitted by March 1st of each year, beginning in 2013, and cover the calendar period January through December of the previous year.

NEW SECTION

**WAC 246-366A-175 Temporary emergency waivers for disaster situations.** The local health officer may grant to school officials an emergency waiver from some or all of the requirements in these rules for the temporary use of a facility or site as a school when the facility normally used by the school is not safe to be occupied due to a natural or man-made disaster.

NEW SECTION

**WAC 246-366A-180 Appeals.** Decisions or actions of the local health officer may be appealed to the local board of health in a manner consistent with their established procedure.

NEW SECTION

**WAC 246-366A-190 Complaints.** (1) School officials shall establish a written complaint process, if such a written process does not already exist. The complaint process must clearly describe the means for a person to file a written complaint concerning failure of compliance with a provision of these rules that jeopardizes the health and safety of students. At a minimum, the process shall provide for:

(a) Promptly investigating all complaints;

(b) Correcting conditions not in compliance with these rules within an appropriate time frame given the level of risk to health and safety;

(c) Providing notification for imminent health hazards in accordance with WAC 246-366A-020;

(d) Promptly communicating with the complainant regarding the outcome of the investigation, and the actions and time frame proposed to address any verified conditions not in compliance with these rules; and

(e) Communicating with the local health officer about the outcome of complaint investigations referred to school officials by the local health officer.

(2) The local health officer who has received a complaint concerning failure of compliance with a provision of these rules that jeopardizes the health and safety of students shall:

(a) Promptly inform school officials that a complaint has been filed with the local health officer and conduct a preliminary inquiry to determine if an imminent health hazard exists;

(b) Investigate the complaint in consultation with school officials if an imminent health hazard exists;

(c) Either refer the complaint to school officials or investigate the complaint in consultation with school officials if an imminent health hazard does not appear to exist; and

(d) Communicate with the complainant about the outcome of the complaint investigation.

NEW SECTION

**WAC 246-366A-200 Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

## ALTERNATIVE B

## Chapter 246-366A WAC

## ENVIRONMENTAL HEALTH AND SAFETY STANDARDS FOR PRIMARY AND SECONDARY SCHOOLS

NEW SECTION

**WAC 246-366A-001 Introduction and purpose.** (1) The purpose of this chapter is to replace chapter 246-366 WAC with a more modern set of minimum environmental health and safety standards for school facilities to promote healthy and safe school environments.

(2) Implementation of this chapter is subject to the state legislature providing funding to public schools in accordance with section 222 of the 2009-11 biennial operating budget, chapter 564, laws of 2009, or other form of legislative action. Unless and until the legislature approves full or partial implementation of this chapter, chapter 246-366 WAC shall take precedent and this chapter shall not be implemented or enforced in any manner.

(3) It is the intent of the Washington state board of health to work with the legislature to develop a strategy and timeline for funding and implementation of this chapter.

NEW SECTION

**WAC 246-366A-003 Implementation.** (1) Implementation of this chapter, in whole or in part, requires one or more of the following actions by the legislature:

(a) Authorization of expenditures in the Omnibus Appropriations Act for the expressed purpose of funding implementation for public schools;

(b) Repeal, modification or expiration of statutory restrictions on implementation; or

(c) Enactment of any statute or resolution authorizing implementation.

(2) Within thirty-one days after the effective date of any law or legislative resolution that funds or otherwise approves full or partial implementation of this chapter, the state board of health shall provide notice of implementation by submitting an interpretive statement for publication in the *Washington State Register* in accordance with RCW 34.05.230.

(a) The interpretive statement shall identify the legislative action being interpreted, the section or sections of chap-

ter 246-366A WAC being implemented, the implementation date or dates for each section or sections, the corresponding section or sections of chapter 246-366 WAC that will be superseded, and a brief explanation of significant differences between the requirements of this chapter and the corresponding sections of chapter 246-366 WAC.

(b) The state board of health shall maintain a roster of interested persons and shall send an electronic copy of the interpretive statement to each person on the roster as well as to the following agencies and organizations:

(i) The Washington state code reviser;

(ii) The Washington state department of health;

(iii) The Washington state office of superintendent of public instruction;

(iv) Washington state local health jurisdictions;

(v) Washington state professional associations representing school officials;

(vi) The Washington federation of independent schools;

(vii) Washington state labor organizations representing school employees;

(viii) The Washington state association of local public health officials;

(ix) The Washington state PTA; and

(x) The Washington state legislature through the chairs of the fiscal, health, and education committees of both houses.

(c) The office of superintendent of public instruction shall forward the notice of implementation electronically to school districts, school principals and private schools.

(3) Unless otherwise specified in statute or state board of health rule, implementation dates, as set forth in the interpretative statements, shall be:

(a) September 1 of the year following the year in which any statute or resolution allowing for implementation takes effect; or

(b) When an earlier implementation date is necessary to direct the expenditure of funds allocated to implement the rule, no sooner than thirty-one days following publication of an interpretive statement declaring an earlier implementation date, provided that the earlier implementation date shall apply only to schools eligible for the funds.

(4) The state board of health shall maintain a web page showing the sections of this chapter that have been or are scheduled to be implemented, the implementation dates, and the corresponding sections of chapter 246-366 WAC that have been or will be replaced or superseded.

NEW SECTION

**WAC 246-366A-005 Applicability.** (1) To the extent funded or implemented through legislative action, this chapter, or such portions thereof funded or approved as part of a phase-in or partial implementation, shall apply to all school facilities operated for the primary purpose of providing education at the kindergarten through twelfth grade (K-12) levels, and preschools that are part of such facilities except:

(a) Private residences used for home-based instruction as defined by RCW 28A.225.010(4);

(b) Facilities hosting educational programs where educational instruction is not a primary purpose, including, but not limited to, detention centers, jails, hospitals, mental health units, or long-term care facilities;

(c) Private facilities where tutoring is the primary purpose; and

(d) Public or private postsecondary education facilities providing instruction to students primarily enrolled in secondary school.

(2) These rules are in addition to all other requirements that apply to schools and, except as specified, do not affect the applicability of those requirements.

(3) Additional environmental health and safety rules that apply to school facilities include, but are not limited to:

(a) Chapter 246-215 WAC Food services;

(b) Chapter 246-217 WAC Food worker cards;

(c) Chapter 246-260 WAC Water recreation facilities;

(d) Chapter 246-262 WAC Recreational water contact facilities;

(e) Chapter 246-272A WAC On-site sewage systems;

(f) Chapter 246-272B WAC Large on-site sewage system regulations;

(g) Chapter 246-290 WAC Public water supplies; and

(h) Chapter 246-291 WAC Group B public water systems.

(4) This chapter, or portions thereof, are intended to replace or supersede chapter 246-366 WAC, or corresponding portions thereof as identified by the state board of health, once the legislature has provided funding for implementation by public schools or taken other action to authorize implementation.

(5) These rules are not intended to replace or supersede the department of labor and industries' authority and jurisdiction over employee safety and health.

(6) These rules are not intended to replace requirements of the building code council under Title 51 WAC, but may be more stringent to protect health and safety.

(7) For a school undergoing an alteration or addition, WAC 246-366A-040, 246-366A-060, 246-366A-090, 246-366A-100, 246-366A-110, 246-366A-120, 246-366A-150, and 246-366A-160 apply only to:

(a) Areas that are part of the addition;

(b) Areas undergoing alteration; and

(c) Changes to existing building systems, such as heating and ventilation systems, when those changes are included in construction documents or a building permit application describing the alteration or addition.

(8) If the local permitting jurisdiction received a complete building permit application for school construction prior to the implementation date of any construction-related requirements of this chapter, the construction-related requirements of chapter 246-366 WAC in effect at the time of application apply.

NEW SECTION

**WAC 246-366A-010 Definitions.** The following definitions apply to these rules:

(1) "Addition" means an extension or increase in floor area or height of a building or structure.

(2) "Air contaminants of public health importance" means pollutants in the indoor air that could, depending on

dose and circumstances, have health impacts, including but not limited to:

(a) Volatile organic compounds, for example, formaldehyde and benzene;

(b) Combustion by-products, for example, carbon monoxide and nitrogen oxides;

(c) Vapors and gases, for example, chlorine, mercury, and ozone;

(d) Heavy metal dusts and fumes, for example, chromium and lead; and

(e) Particulates, for example, wood and ceramic dust.

(3) "Alteration" means any construction or renovation to an existing structure other than repair or addition.

(4) "Construction" or "construction project" means any activity subject to state or local building codes.

(5) "Construction documents" means written, graphic, and pictorial documents prepared or assembled for describing the design, location, and physical characteristics of the elements of a project necessary for obtaining a building permit.

(6) "Contaminant" means any hazardous material that occurs at greater than natural background levels.

(7) "Decibel (dB)" means a standard unit of measurement of sound pressure.

(8) "Decibel, A-weighted (dBA)" means a decibel measure that has been weighted in accordance with the A-weighting scale. The A-weighting adjusts sound level as a function of frequency to correspond approximately to the sensitivity of human hearing.

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

(10) "Drinking fountain" means the type of plumbing fixture that delivers a stream of water for drinking without actively cooling the water.

(11) "Emergency eye wash" means a hands-free device that:

(a) Irrigates and flushes both eyes simultaneously with tepid potable water;

(b) Activates an on-off valve in one second or less and remains on without user assistance until intentionally turned off; and

(c) Delivers at least 0.4 gallons (1.5 liters) of water per minute for at least fifteen minutes.

(12) "Emergency shower" means a hand-activated shower that delivers tepid potable water to cascade over the user's entire body at a minimum rate of 20 gallons (75 liters) per minute for at least fifteen minutes.

(13) "Equivalent sound level ($L_{eq}$)" means the level of a constant sound that, over a given time period, contains the same amount of sound energy as the measured fluctuating sound.

(14) "Faucet" means a type of plumbing fixture that is a valved outlet device attached to a pipe that normally serves a sink or tub and can discharge hot water, cold water, or both.

(15) "First draw sample" means a water sample collected immediately upon opening a plumbing fixture that has not been used for at least eight hours prior to collection.

(16) "Flush sample" means a water sample collected after allowing cold water to run for at least thirty seconds from a plumbing fixture that has not been used for at least eight hours prior to collection.

(17) "Foot-candle" means a unit of measure of the intensity of light falling on a surface, equal to one lumen per square foot.

(18) "Hazardous materials" means toxic, corrosive, flammable, explosive, persistent, or chemically reactive substances that, depending on dose and circumstances, pose a threat to human health.

(19) "Imminent health hazard" means a significant threat or significant danger to health or safety that requires immediate action to prevent serious illness, injury, or death.

(20) "Implementation" or "implemented" means being given or having the force of law, requiring compliance, and being subject to enforcement.

(21) "Laboratory" means instructional areas of the school facility where students might be exposed to greater potential health and safety hazards than typically exist in general academic classrooms. Such laboratories may include, but are not limited to, chemistry, physics, material science, and biology laboratories or art studios (for example: Darkrooms, ceramic studios, and print making studios).

(22) "Local board of health" means the county or district board of health as defined in RCW 70.05.010(3).

(23) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the county or district public health department as defined in RCW 70.05.010, or his or her authorized representative, including, but not limited to, the environmental health director.

(24) "Mechanical exhaust ventilation" means the removal of indoor air to the outside of the building by mechanical means.

(25) "Noise criterion (NC)" means a system for rating the noise level in an occupied area by comparing actual or calculated sound level spectra with a series of established octave band spectra.

(26) "Noise criterion 35 (NC35)" means the curve for specifying the maximum permissible sound pressure level for each frequency band.

(27) "Preschool" means an instructional curriculum and portion of a school facility designed to instruct children not old enough to attend kindergarten.

(28) "Portable" means any relocatable structure that is transported to a school site and is placed or assembled there for use by students as part of a school facility.

(29) "Repair" means the reconstruction or renewal of any part of an existing school facility for the purpose of its maintenance.

(30) "School" means any public, religious-affiliated, or private institution for instructing students in any grade from kindergarten through twelfth grade.

(31) "School board" means an appointed or elected board whose primary responsibility is to operate schools or to contract for school services and includes the governing body or owner of a private school.

(32) "School facility" means buildings or grounds owned or leased by the school or donated to the school for the primary purpose of student use including, but not limited to, portables, playgrounds and sports fields.

(33) "School officials" means those persons designated by the school board as responsible for planning, policy devel-

opment, budgeting, management, or other administrative functions.

(34) "Shop" means instructional areas of the school facility where students are exposed to greater health and safety hazards than typically exist in general academic classrooms. Shops include, but are not limited to, industrial and agricultural shops, including career and technical education (for example: Metal-working, wood-working, construction, automotive, and horticulture).

(35) "Site" means any real property used or proposed to be used as a location for a school facility.

(36) "Source capture system" means a mechanical exhaust system designed and constructed to capture air contaminants at their source and release air contaminants to the outdoor atmosphere.

(37) "Tempered water" means water having a temperature range between eighty-five degrees Fahrenheit and one hundred ten degrees Fahrenheit.

(38) "Tepid water" means water having a temperature range between sixty degrees Fahrenheit and ninety-five degrees Fahrenheit.

(39) "Toxic" means having the properties to cause or significantly contribute to death, injury, or illness.

(40) "Variance" means an alternative to a specific requirement in these rules, approved by the local health officer, that provides a comparable level of protection.

(41) "Very low lead plumbing fixture" means plumbing fittings or fixtures used in the installation or repair of any plumbing providing water for human consumption that contain less than 0.3% lead by weight.

(42) "Water cooler" means a type of mechanical plumbing fixture that actively cools the water.

NEW SECTION

**WAC 246-366A-015 Guidance.** (1) The department, in cooperation with the office of superintendent of public instruction, shall:

(a) Update the *Health and Safety Guide for K-12 Schools in Washington* (the guide) at least every four years; and

(b) Make the guide available on the department's web site.

(2) The guide is the primary source of guidance for local health officers and school officials implementing these rules.

NEW SECTION

**WAC 246-366A-020 Responsibilities—General.** (1) Responsibilities of school officials. School officials shall:

(a) Maintain conditions within the school environment that will not endanger health and safety.

(b) Identify, assess, and mitigate or correct environmental health and safety hazards in their school facilities, establish necessary protective procedures, use appropriate controls, and take action to protect or separate those at risk from identified hazards, consistent with the level of risk presented by the specific hazard, until mitigation or correction is complete.

(c) When conditions are identified that pose an imminent health hazard:

(i) Take immediate action to mitigate hazards and prevent exposure;

(ii) Promptly notify the local health officer; and

(iii) Promptly inform school facility staff, students, and parents about the conditions and actions taken in response.

(d) Retain for at least six years, unless otherwise required by other state or federal laws, records pertaining to:

(i) Health and safety inspections of the school facilities, including the final report findings, correction schedules established in consultation with the local health officer, and recommended actions;

(ii) Imminent health hazards identified under this section and WAC 246-366A-190, and actions taken in response;

(iii) Site assessment, review, and approval as required under WAC 246-366A-030;

(iv) Construction project plan review and approval as required under WAC 246-366A-040; and

(v) Playground plan review and approval as required under WAC 246-366A-150.

(e) Have the records described in this subsection available to the public, except where otherwise provided by applicable public disclosure law.

(f) Prepare a report to the public and the school board at least annually about environmental health and safety conditions in the schools. The report must include an explanation of:

(i) Variances obtained from the local health officer regarding requirements of these rules;

(ii) Dates of environmental health and safety inspections conducted under requirements of these rules and any deficiencies not corrected within the time frame established by the local health officer in accordance with subsection (2) of this section;

(iii) Any imminent health hazards identified; and

(iv) A method for school officials to receive public comment about the report.

(2) Responsibilities of the local health officer.

(a) Except as provided in (b) of this subsection, the local health officer shall:

(i) Periodically conduct an environmental health and safety inspection of each school facility within his or her jurisdiction. Beginning one year after the implementation date of this section, those inspections must be conducted at least once each year.

(ii) Notify school officials at the time of discovery or immediately following the inspection if conditions that pose an imminent health hazard are identified, and recommend actions to mitigate the hazards and prevent exposure.

(iii) Consult with school officials upon completion of the inspection about findings and recommended follow-up actions and, if necessary, develop a correction schedule. Approaches and timelines used to address noncompliant conditions will depend on the level of risk to health and safety presented by the condition, and may include consideration of low-cost alternatives.

(iv) Develop draft and final inspection reports, in consultation with school officials, within sixty days after conducting an inspection. The report must include inspection findings related to this rule and any required correction schedule.

(v) Confirm, as needed, that corrections are accomplished.

(vi) Retain for at least six years, unless otherwise required by other state or federal laws, records pertaining to:

(A) Health and safety inspections of the school facilities performed by the local health officer, including, but not limited to, the final inspection report and correction schedules; and

(B) Imminent health hazards identified under this section and WAC 246-366A-190, and local health officer actions taken in response.

(vii) Have the records described in this subsection available to the public, except where otherwise provided by applicable public disclosure law.

(b) The local health officer may allow a school official or qualified designee to conduct a required inspection under a program approved by the local health officer not more than two out of every three years. The program must include provisions for:

(i) Assuring that the school official or designee conducting the inspection has attended training in the standards, techniques, and methods used to conduct an environmental health and safety inspection;

(ii) Completing a standardized checklist at each inspection;

(iii) Providing a written report to the local health officer about the findings of the inspection;

(iv) Notifying the local health officer regarding any identified imminent health hazards and coordinating with the local health officer to mitigate hazards and prevent exposure; and

(v) Consulting with the local health officer on follow-up and corrective actions needed to address noncompliant conditions that do not pose an imminent health hazard.

(3) Responsibilities of the department.

(a) The department shall:

(i) Report to the state board of health once every three years. The report must include a summary of:

(A) Variances granted by local health officers; and

(B) Status of local rule implementation.

(ii) Make technical assistance and training available to local health jurisdictions, educational service districts, school districts, and school personnel for implementation of these rules, including:

(A) Inspection techniques and procedures;

(B) Inspection materials and checklists;

(C) Variance request evaluations; and

(D) Model environmental health and safety programs for schools and local health jurisdictions.

(b) The department, at the request of the local health officer, may assist in investigating environmental health and safety incidents at schools.

(c) Establish a school rule technical advisory committee to help promote consistent statewide interpretation and implementation of these rules.

NEW SECTION

**WAC 246-366A-030 Site assessment, review, and approval.** (1) A full site assessment and local health officer review and approval to determine environmental health and safety risk, is required for:

(a) Constructing a new school facility on a site that was previously undeveloped or developed for other purposes; or

(b) Converting an existing structure for primary use as a school facility.

(2) The local health officer shall determine, in consultation with school officials, the need for and scope of the site assessment, review, and approval process for:

(a) Constructing a new school facility on an existing school site;

(b) Constructing an addition to an existing school facility; or

(c) Converting part of an existing structure primarily used for other purposes into a school facility.

(3) A full site assessment must include:

(a) A Phase 1 Environmental Site Assessment (ESA) that meets the requirements of the *American Society for Testing and Materials (ASTM) Standard #1527-05* (published November 2005);

(b) Sampling and analysis of potential contaminants if the Phase 1 ESA indicates that hazardous materials may be present. Sampling and analysis must comply with applicable rules of the Washington state department of ecology;

(c) A noise assessment. Noise from any source must not exceed an hourly average of 55 dBA (the mean sound energy level for a specified time ($Leq_{60\ minutes}$)) and must not exceed an hourly maximum (the maximum sound level recorded during a specified time period (Lmax)) of 75 dBA during the time of day the school is in session. Sites exceeding these sound levels are acceptable if a plan for noise reduction is included in the new construction proposal and the plan for noise reduction is approved by the local health officer.

(4) School officials shall:

(a) Notify the local health officer within ninety days of starting preliminary planning for school construction that may require a site assessment with local health officer review and approval.

(b) Consult with the local health officer throughout the plan development phase regarding the scope of the site assessment and the timeline for completion of the site assessment.

(c) Have a site assessment completed when required under this section.

(d) Submit a written report to the local health officer assessing the potential impact of health and safety risks presented by the proposed site, including, but not limited to the following:

(i) The findings and results obtained under subsection (3) of this section;

(ii) Analysis of the findings;

(iii) Description of any mitigation proposed to address identified health and safety risks present at the site; and

(iv) Any site assessment-related information requested by the local health officer to complete the site assessment review and approval process.

(e) Obtain site review and written site approval from the local health officer when required under subsection (1) or (2) of this section.

(5) The local health officer shall:

(a) Conduct an inspection of the proposed site;

(b) Review the site assessment for environmental health and safety risk;

(c) For site assessments according to subsection (1) of this section, provide written approval, describe site deficiencies needing mitigation to obtain approval, or deny use of the proposed school facility site within sixty days of receiving a complete request unless the school officials and the local health officer agree to a different timeline; and

(d) For site assessments according to subsection (2) of this section, provide written approval or describe site deficiencies needing mitigation to obtain approval of the proposed school facility site within sixty days of receiving a complete request unless the school officials and the local health officer agree to a different timeline.

(6) If school officials notified the local health officer in writing prior to the implementation date of this section that construction is planned for a particular site, the site review requirements in effect at the time of notification apply, provided that school officials comply with all agreed on timelines for completion.

NEW SECTION

**WAC 246-366A-040 Construction project review.** (1) The following school facility construction projects must be reviewed by the local health officer:

(a) Construction of a new school facility;

(b) Schools established in all or part of any existing structures previously used for other purposes;

(c) Additions or alterations consisting of more than five thousand square feet of floor area or having a value of more than ten percent of the total replacement value of an existing school facility;

(d) Any construction of a shop or laboratory for use by students; and

(e) Installation of a portable.

(2) Review and approval requirements for installation of a playground are established in WAC 246-366A-150.

(3) School officials shall:

(a) Consult with the local health officer during preliminary planning for school construction projects that are subject to the requirements of this section;

(b) Invite the local health officer to a predevelopment conference with school officials and project design professionals to participate in the discussion about the preliminary design to highlight health and safety matters and requirements of these rules;

(c) Obtain construction project review and written approval from the local health officer regarding environmental health and safety requirements in these rules before starting construction;

(d) Provide construction documents to the local health officer at the same time as the local building official to facilitate a concurrent and timely review; and

(e) Provide additional documents requested by the local health officer, which may include, but are not limited to, written statements signed by the project's licensed professional engineer verifying that design elements comply with requirements specified by these rules.

(4) The local health officer shall:

(a) Consult with school officials and determine what is required for plan review and approval;

(b) Review construction documents to confirm that the health and safety requirements of these rules are met;

(c) Identify and request any additional documents required to determine compliance with requirements specified by these rules; and

(d) Provide written approval, or describe plan deficiencies needing change to obtain approval, of the construction project within sixty days of receiving all documents needed to complete the review, unless the school officials and the local health officer agree to a different timeline.

NEW SECTION

**WAC 246-366A-050 Preoccupancy inspection of construction projects.** (1) School officials shall:

(a) Obtain a preoccupancy inspection by the local health officer of construction projects subject to WAC 246-366A-040(1), conducted in coordination with a final inspection by the local building official, in order to ensure imminent health hazards are corrected before allowing school facilities to be occupied; and

(b) Notify the local health officer at least five business days before a desired preoccupancy inspection.

(2) The local health officer:

(a) Shall coordinate all construction-related inspections with the on-site project manager or other appropriate person identified by school officials.

(b) May inspect for compliance with these rules during the construction phase.

(c) Shall conduct a preoccupancy inspection for construction projects subject to WAC 246-366A-040(1) to verify compliance with these rules before the building is occupied and not more than five business days after the date requested by school officials or as otherwise agreed to by the school officials and the local health officer.

(i) If an imminent health hazard is identified, a solution must be identified and agreed to by school officials, the local health officer, and the local building official and implemented by school officials before the affected portion of the building is occupied.

(ii) If other conditions of noncompliance with these rules are identified, school officials shall be provided with a written list of items and consulted in developing a correction schedule, based on the level of risk to health and safety.

(d) May reinspect to confirm satisfactory correction of the items identified under (c) of this subsection.

NEW SECTION

**WAC 246-366A-060 General construction requirements.** School officials shall:

(1) Design school facilities to minimize conditions that attract, shelter, and promote the propagation of insects, rodents, bats, birds, and other pests of public health significance. This subsection does not mandate the installation of window screens nor does it prohibit the installation of retention ponds or rain gardens.

(2) Design school facilities with windows in sufficient number, size, and location to enable students to see outside at least fifty percent of the school day. Windows are optional in special purpose instructional areas including, but not limited to, theaters, music areas, multipurpose areas, gymnasiums, auditoriums, shops, laboratories, libraries, and seminar areas.

(3) Provide sun control to exclude direct sunlight from window areas and skylights of instructional areas, assembly rooms and meeting rooms during at least eighty percent of the normal school hours. Each area must be considered as an individual case. Sun control is not required for sun angles less than forty-two degrees up from the horizontal. Sun control is not required if air conditioning is provided or special glass is installed having a total solar energy transmission factor less than sixty percent.

(4) Provide surfaces on steps that reduce the risk of injury caused by slipping.

(5) Provide floors throughout the school facility that are appropriate for the intended use, easily cleanable and can be dried effectively to inhibit mold growth. These floor materials include, but are not limited to, wood, vinyl, linoleum, and tightly woven carpets with water impervious backing.

(6) Provide reasonably sufficient space for the storage of play equipment, instructional equipment, and outdoor clothing. The space must be reasonably accessible, lighted, and ventilated.

(7) Provide measures to reduce potential injury from fall hazards, including but not limited to, retaining walls; performance arts stages and orchestra pits; balconies; mezzanines; and other similar areas of drop-off to a lower floor.

(8) Provide the following items for health rooms, if health rooms are provided:

(a) The means to visually supervise and provide privacy of room occupants;

(b) Surfaces that can be easily cleaned and sanitized;

(c) A handwashing sink in the room;

(d) An adjoining restroom; and

(e) Mechanical exhaust ventilation so that air does not flow from the health room to other parts of the school facility.

NEW SECTION

**WAC 246-366A-065 General operation and maintenance requirements.** School officials shall:

(1) Keep school facilities clean and in good condition.

(2) Mitigate any environmental health and safety hazards.

(3) Control conditions that attract, shelter, and promote the propagation of insects, rodents, bats, birds, and other pests of public health significance. This subsection does not mandate the routine installation of window screens nor does it prohibit the proper operation of retention ponds or rain gardens.

(4) Label, use, store and dispose of hazardous materials to:

(a) Prevent health and safety hazards;

(b) Keep incompatible substances apart from each other;

(c) Prevent unauthorized access and use; and

(d) Follow procedures according to material safety data sheet instructions.

(5) Select supplies and methods of use that reduce exposure to hazardous materials.

(6) Allow only those hazardous materials in schools that they have approved for use. Types of commercial products that might contain hazardous materials include, but are not limited to, cleaners, sanitizers, maintenance supplies, pesticides, herbicides, and instruction-related supplies.

(7) Safely store play equipment, instructional equipment, and outdoor clothing where reasonably accessible.

(8) Use products that comply with American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61 (2007) to coat, line, seal, or patch drinking water contact surfaces, if the interior of water piping or plumbing fixtures is coated or lined.

(9) Immediately clean and sanitize the contaminated area and prevent human exposure when sewage backups occur.

(10) Notify the local health officer when sewage backups:

(a) Result from failure of an on-site sewage system serving the school facility;

(b) Impact student use areas outside restrooms; or

(c) Occur in a food preparation, food storage, or food service area.

(11) Allow upholstered furniture, such as couches and overstuffed chairs, in school facilities only if the furniture has been purchased or approved by school officials.

NEW SECTION

**WAC 246-366A-070 Moisture control, mold prevention, and remediation.** School officials shall:

(1) Visually monitor the school facility for water intrusion and moisture accumulation that may lead to mold growth, especially after severe weather events.

(2) Begin corrective action within twenty-four hours of discovering water intrusion or moisture accumulation to inhibit and limit mold growth by:

(a) Identifying and eliminating the cause of the water intrusion or moisture accumulation; and

(b) Drying the affected portions of the school facility.

(3) When mold growth is observed or suspected, use recognized remediation procedures such as those provided by the Environmental Protection Agency (Mold Remediation in Schools and Commercial Buildings, EPA 402-K-01-001, March 2001). Begin recognized procedures within twenty-four hours to:

(a) Identify and eliminate the cause of the moisture or water contributing to the mold growth;

(b) Dry the affected portions of the school facility;

(c) Investigate the extent of the mold growth, including evaluation of potentially affected materials and surfaces inside walls and under floor coverings, when moisture or water has entered those spaces;

(d) Minimize exposure to indoor mold spores and fragments until mold remediation is complete using methods including, but not limited to, containment and negative air pressure; and

(e) Remediate surfaces and materials contaminated with mold.

(4) When remediation is required under subsection (3) of this section and there is significant risk of exposure, including when the total area affected is greater than ten square feet, promptly inform school facility staff, students, and parents of the conditions and the plans and time frame for the remediation. The extent of this communication will depend on the likelihood of individual exposure, the scope of the remediation project, and the time required to complete it.

NEW SECTION

**WAC 246-366A-080 Safety—Animals in school facilities.** (1) School officials shall allow in school facilities only those animals, other than service animals, approved under written policies or procedures.

(2) School officials shall develop written policies or procedures for any animals allowed in school facilities to prevent:

(a) Injuries caused by wild, dangerous, or aggressive animals;

(b) Spread of diseases from animals known to commonly carry diseases including, but not limited to, rabies, psittacosis, and salmonellosis;

(c) Allergic reactions;

(d) Exposure to animal wastes; and

(e) Handling animals or their bedding without proper handwashing afterward.

(3) Written policies or procedures required under subsection (2) of this section shall address service animals in the school facility that are not well behaved or present a risk to health and safety.

NEW SECTION

**WAC 246-366A-090 Heating and ventilation—Construction requirements.** School officials shall:

(1) Provide mechanical exhaust ventilation that meets or exceeds the requirements in chapter 51-52 WAC at locations intended for equipment or activities that produce air contaminants of public health importance.

(2) Situate fresh air intakes away from building exhaust vents and other sources of air contaminants of public health importance in a manner that meets or exceeds the requirements in chapter 51-52 WAC. Sources of air contaminants include bus and vehicle loading zones, and might include, but are not limited to, parking areas and areas where pesticides or herbicides are commonly applied.

(3) Use materials that will not deteriorate and contribute particulates to the air stream if insulating the interior of air handling ducts. Insulation materials must be designed to accommodate duct cleaning and exposure to air flow without deteriorating. This subsection does not apply if the local permitting jurisdiction received a complete building permit application within three years after the implementation date of this section.

(4) Use ducted air returns and not open plenum air returns consisting of the open space above suspended ceilings. This subsection does not apply to:

(a) Alterations to school facilities;

(b) Additions to school facilities that tie into existing ventilation systems that use open plenum air returns; or

(c) Facilities for which the local permitting jurisdiction received a complete building permit application within three years after the implementation date of this section.

NEW SECTION

**WAC 246-366A-095 Heating and ventilation—Operation and maintenance requirements.** School officials shall:

(1) Heat occupied areas of school buildings during school hours and school-sponsored events to maintain a minimum temperature of sixty-five degrees Fahrenheit except for gymnasiums and hallways, which must be maintained at a minimum temperature of sixty degrees Fahrenheit.

(2) Ventilate occupied areas of school buildings during school hours and school-sponsored events. During periods of ventilation:

(a) For school facilities constructed or sited under a building permit for which the local permitting jurisdiction received a completed building permit application on or after the implementation date of this section, provide, as a minimum, outdoor air according to WAC 51-52-0403, Table 403.3, Required Outdoor Ventilation Air.

(b) For school facilities constructed or sited under a building permit for which the local permitting jurisdiction received a completed building permit application before the implementation date of this section, conduct standard operation and maintenance best practices including, but not limited to, making timely repairs, removing obstructions, and replacing filters and fan drive belts, and setting system controls so that, to the extent possible given the design of the ventilation system, outdoor air is provided consistent with WAC 51-52-0403, Table 403.3, Required Outdoor Ventilation Air.

(3) Use and maintain mechanical exhaust ventilation installed for equipment or activities that produce air contaminants of public health importance or moisture.

(4) Limit student exposure to air contaminants of public health importance produced by heat laminators, laser printers, photocopiers, and other office equipment by placing such equipment in appropriately ventilated spaces and providing instruction to users on how to operate and maintain equipment as recommended by the manufacturer.

(5) Take preventive or corrective action when pesticides, herbicides, or air contaminants of public health importance are likely to be drawn or are drawn into the building or ventilation system.

NEW SECTION

**WAC 246-366A-100 Noise control—Construction requirements.** (1) School officials shall design ventilation equipment and other mechanical noise sources in classrooms to provide background sound which conforms to a noise criterion curve or equivalent not to exceed NC-35. School officials shall certify, or hire the appropriate person to certify, that ventilation equipment and other mechanical noise sources that have been installed meet the NC-35 noise criterion design standard.

(2) Portable classrooms constructed before January 1, 1990, moved within the same school property or within the same school district, are exempt from the requirements of this

section if the portable classrooms meet all of the following criteria:

(a) Noise abating or noise generating features are not altered in a manner that may increase noise levels;

(b) The portable classrooms were previously in use for instruction;

(c) Ownership of the portable classrooms remains the same; and

(d) The new site meets the noise standard in WAC 246-366A-030 (3)(c).

NEW SECTION

**WAC 246-366A-105 Noise control—Operation and maintenance requirements.** School officials shall:

(1) Maintain the background noise at any student location within classrooms constructed after January 1, 1990, at or below 45 dBA ($Leq_x$) where $_x$ is 30 seconds or more. Background noise levels must be determined when the ventilation system and the ventilation system's noise generating components, such as the condenser and heat pump, are operating and the room is unoccupied by students.

(2) Maintain the background noise level at any student location in laboratories and shops with local exhaust ventilation systems constructed after January 1, 1990, at or below 65 dBA ($Leq_x$) where $_x$ is 30 seconds or more. Background noise levels must be determined when all ventilation equipment is operating and the room is unoccupied by students.

(3) Maintain noise exposure for students below the maximum levels in Table 1.

**Table 1**
**Maximum Noise Exposures Permissible**

| Duration per day (hours) | Sound level (dBA) |
|---|---|
| 8 | 85 |
| 6 | 87 |
| 4 | 90 |
| 3 | 92 |
| 2 | 95 |
| 1-1/2 | 97 |
| 1 | 100 |
| 1/2 | 105 |
| 1/4 | 110 |

(4) Not allow student exposure to sound levels equal to or greater than 115 dBA.

(5) Provide and require students to use personal protective equipment, for example ear plugs or muffs, where noise levels exceed those specified in Table 1. Personal protective equipment must reduce student noise exposure to comply with the levels specified in Table 1.

NEW SECTION

**WAC 246-366A-110 Lighting—Construction requirements.** School officials shall equip school facilities with lighting systems designed to meet the requirements of WAC 246-366A-115. General, task or natural lighting may be used to achieve the minimum lighting intensities. Energy efficient lighting systems, lighting fixtures, or bulbs that meet the minimum lighting intensities in Table 2 of WAC 246-366A-115(1) may be used.

NEW SECTION

**WAC 246-366A-115 Lighting—Operation and maintenance requirements.** School officials shall:

(1) Provide light intensities that meet or exceed those specified in Table 2. General, task and/or natural lighting may be used to maintain the minimum lighting intensities. Energy efficient lighting systems, lighting fixtures, or bulbs that meet the minimum lighting intensities in Table 2 may be used.

**Table 2**
**Lighting Intensities**

| Measured 30 inches above the floor or on working or teaching surfaces. Some lighting fixtures may require a start-up period before reaching maximum light output. | Minimum foot-candle intensity |
|---|---|
| General instructional areas, for example, study halls, lecture rooms, and libraries. | 30 |
| Special instructional areas where safety is of prime consideration or fine detail work is done, for example, family and consumer science laboratories, science laboratories (including chemical storage areas), shops, drafting rooms, and art and craft rooms. | 50 |
| Noninstructional areas, for example, auditoriums, lunch rooms, assembly rooms, corridors, stairs, storerooms, and restrooms. | 10 |
| Gymnasiums: Main and auxiliary spaces, shower rooms, and locker rooms. | 20 |

(2) Control excessive brightness and glare in all instructional areas. Surface contrasts and direct or indirect glare must not cause excessive eye accommodation or eye strain problems.

(3) Provide lighting in a manner that minimizes shadows and other lighting deficiencies on work and teaching surfaces.

NEW SECTION

**WAC 246-366A-120 Restrooms and showers—Construction requirements.** School officials shall:

(1) Provide shower facilities for grades nine and above for classes in physical education and for team sports. Showers must supply hot water between one hundred and one hundred twenty degrees Fahrenheit.

(2) Provide floor surfaces in shower areas that are water impervious, slip-resistant, and sloped to floor drains. Walls must be water impervious up to showerhead height. Upper walls and ceilings must have an easily cleanable surface.

(3) Locate drying areas, if provided, adjacent to showers and locker or dressing rooms. Walls and ceilings must have an easily cleanable surface and floor surfaces must be water impervious, slip-resistant, and sloped to floor drains.

(4) Provide locker or dressing rooms adjacent to showers or drying rooms. Walls and ceilings must have an easily cleanable surface. When drying areas are provided, floor surfaces in locker or dressing rooms must be appropriate for the intended use, easily cleanable and dryable to effectively inhibit mold growth. When drying areas are not provided, locker or dressing room floor surfaces must be water impervious, slip-resistant, and sloped to floor drains.

NEW SECTION

**WAC 246-366A-125 Restrooms and showers—Operation and maintenance requirements.** School officials shall:

(1) Provide in each restroom:

(a) Toilet paper in each toilet stall;

(b) Single service handwashing soap near each handwashing sink; and

(c) Single-service towels or an adequate number of warm-air dryers. Common use towels are not allowed.

(2) Provide hot water to all handwashing plumbing fixtures at a maximum temperature of one hundred twenty degrees Fahrenheit.

(3) Provide tempered water for those handwashing plumbing fixtures that do not allow the user to select water temperature.

(4) Provide any hand operated, self-closing handwashing plumbing fixtures with the capability of providing at least ten seconds of running water.

(5) Provide access to restrooms when:

(a) School buildings are in use; or

(b) Outdoor facilities or athletic fields are in use for school-sponsored events. School officials are not required to provide access to restrooms when outdoor facilities and athletic fields are in use after school hours or on weekends unless it is a school-sponsored event.

(6) Provide access to shower facilities with hot water between one hundred and one hundred twenty degrees Fahrenheit for classes in physical education and school-sponsored sports teams at grades nine and above.

(7) When cloth towels are supplied by the school, provide them for individual use and launder them after each use.

NEW SECTION

**WAC 246-366A-130 Water quality monitoring—Lead.** (1) School officials shall:

(a) Sample plumbing fixtures that are regularly used for drinking or cooking.

(b) Use a laboratory to analyze all required water samples that is accredited by the department of ecology, or other appropriate agency if outside Washington state, according to EPA drinking water laboratory certification criteria.

(2) Water sampling protocols. School officials shall:

(a) Collect representative samples, according to the percentages required by subsections (3) and (4) of this section, from each type and age of plumbing fixture regularly used for drinking or cooking.

(i) For type of fixture, use at least the three types: Drinking fountains, water coolers and faucets.

(ii) For age of fixture, use at least two groupings: Those manufactured prior to 1999, and those manufactured since January 1, 1999.

(b) Sample as follows:

(i) Make sure cold water is the last to run through the fixture to be tested.

(ii) Allow water to sit in the plumbing system at least eight hours. No water may pass through the fixture during that time.

(iii) Place the 250 ml sample bottle under the faucet and open the cold water tap. Fill the bottle to the shoulder or the line marked "250 ml," turn off the water and cap the bottle tightly.

(3) Initial monitoring schedule for lead.

(a) School officials shall conduct initial monitoring by sampling fifty percent of the plumbing fixtures regularly used for drinking or cooking in elementary schools or used by preschool children in K-12 schools within one year after the implementation date of this section. This may be either from fifty percent of the fixtures in each school or from all of the fixtures in fifty percent of the schools within a district. School districts shall sample the remaining fifty percent of the fixtures within two years after the implementation date of this section.

(b) School officials shall conduct initial monitoring by sampling at least twenty-five percent of each type and age of plumbing fixture, as specified under subsection (2)(a) of this section, regularly used by students for drinking or cooking in:

(i) Middle and junior high schools within three years after the implementation date of this section; and

(ii) High schools within four years after the implementation date of this section.

(c) School officials, with local health officer approval, may apply samples collected after September 1, 2003, toward meeting the initial monitoring requirement if all plumbing fixtures with lead results above 0.020 milligrams per liter or 20.0 parts per billion have been removed from service, or have been or are being addressed according to subsection (5) of this section, and samples were:

(i) From plumbing fixtures regularly used for drinking or cooking; and

(ii) Collected consistent with subsection (2) of this section.

(4) Ongoing monitoring for lead.

(a) School officials shall repeat lead monitoring every five years, beginning within:

(i) Seven years after the implementation date of this section for elementary schools;

(ii) Eight years after the implementation date of this section for middle and junior high schools; and

(iii) Nine years after the implementation date of this section for high schools.

(b) School officials shall use sampling protocols in subsection (2) of this section to collect samples in all schools from:

(i) No less than twenty-five percent of each type and age of plumbing fixture which is not a "very low lead" plumbing fixture; and

(ii) No less than ten percent of each type of plumbing fixture which is a "very low lead" plumbing fixture.

(c) Schools that are Group A public water systems are not required to do ongoing lead monitoring required by (a) of this subsection if the schools meet the lead monitoring requirements in chapter 246-290 WAC.

(5) Corrective actions. School officials shall:

(a) For all plumbing fixtures with sample results of lead above 0.020 milligrams per liter or 20.0 parts per billion, immediately shut off these fixtures or make them inoperable.

(b) For all plumbing fixtures of the same type and age as any fixture with results above 0.020 milligrams per liter or 20.0 parts per billion:

(i) Take immediate corrective action according to (a) of this subsection; or

(ii) Collect first draw samples within ten business days. Upon receipt of sample results, immediately shut off or make inoperable all plumbing fixtures with results of lead above 0.020 milligrams per liter or 20.0 parts per billion.

(c) To provide drinking water at the location of these fixtures, take one or more of the following remedies:

(i) Bottled water. If bottled water is used, provide bottled water that is produced by a Washington state department of agriculture-approved bottling operation or out-of-state or international bottler whose product meets federal Food and Drug Administration regulations.

(ii) Manual flushing. Manual flushing may be used only as a temporary remedy. If manual flushing is used:

(A) Take flush samples from twenty-five percent of each type and age of the fixtures planned to be included in the flushing program to determine the flushing time necessary to reduce lead to below 0.020 milligrams per liter or 20.0 parts per billion. Start by following the sample collection protocol of first-draw samples described in subsection (2)(b) of this section with the addition of letting the water run for thirty seconds before filling the bottle.

(B) Open the tap of every fixture included in the flushing program every morning before the school facility opens and let the water run for the length of time established in (c)(ii)(A) of this subsection.

(iii) Automated flushing. If automated flushing is used, take samples from twenty-five percent of each type and age of the fixtures included in the flushing program to demonstrate that the automated system reduces lead to below 0.020 milligrams per liter or 20.0 parts per billion.

(iv) Fixture replacement. If individual plumbing fixtures are replaced:

(A) Precondition the new plumbing fixtures by running water through the fixture continuously for twenty-four hours; and

(B) Collect first draw samples after preconditioning and verify sample results of lead below 0.020 milligrams per liter or 20.0 parts per billion. If the preconditioned plumbing fixture does not yield a sample result below this level, (a) of this subsection applies.

(v) Treatment. Before treatment is used, submit an engineering project report to the department, per WAC 246-290-110. Installation of treatment devices will result in the school's designation as a public water supply. School officials shall then ensure they comply with the Group A public water system rules and regulations, chapter 246-290 WAC and water works operator certification rules and regulations, chapter 246-292 WAC.

(6) Notification requirements. School officials shall:

(a) Notify school facility staff, students, parents, and the local health officer within five business days of the school officials receiving lead sampling results above 0.020 milligrams per liter or 20.0 parts per billion.

(b) Make all results available for review upon request.

NEW SECTION

**WAC 246-366A-135 Water quality monitoring—Copper.** (1) School officials shall collect water samples and have them tested for copper following the requirements of WAC 246-366A-130 (1) and (2)(b). The same water samples used for lead testing may be used for copper testing.

(2) School officials shall test water samples for copper from no less than twenty-five percent of each type and age of plumbing fixture regularly used for drinking or cooking.

(a) For type of fixture, use at least the three types: Drinking fountains, water coolers and faucets.

(b) For age of fixture, use at least two groupings: Those manufactured prior to 1999 and those manufactured since January 1, 1999.

(3) School officials shall complete water sampling of plumbing fixtures for copper in:

(a) Elementary schools within two years after the implementation date of this section;

(b) Middle and junior high schools within three years after the implementation date of this section; and

(c) High schools within four years after the implementation date of this section.

(4) If school officials, with local health officer approval, include lead samples collected after September 1, 2003, toward meeting the initial monitoring requirement for lead, as specified in WAC 246-366A-130, they may wait to monitor those plumbing fixtures for copper until they conduct the next ongoing lead monitoring per WAC 246-366A-130(4).

(5) School officials, with local health officer approval, may include samples collected after September 1, 2003, toward meeting monitoring requirements if all plumbing fixtures with copper results above 1.30 milligrams per liter or 1300 parts per billion have been or are being addressed according to subsection (6) of this section, and the samples were:

(a) From plumbing fixtures regularly used for drinking and cooking; and

(b) Collected using the sampling protocol specified in WAC 246-366A-130 (2)(b).

(6) Corrective actions. For all plumbing fixtures with first draw sample results of copper above 1.30 milligrams per liter or 1300 parts per billion, school officials shall:

(a) Within five business days of getting sample results, consult with the department to develop a corrective action plan; and

(b) Implement the corrective action plan.

(7) Notification requirements. School officials shall:

(a) Notify staff, students and parents, and the local health officer within five business days of the school officials receiving copper sampling results above 1.30 milligrams per liter or 1300 parts per billion; and

(b) Make all results available for review upon request.

NEW SECTION

**WAC 246-366A-140 Water quality monitoring—Other drinking water contaminants.** The local health officer may require:

(1) Sampling of drinking water when public health concerns exist about drinking water contaminants other than lead or copper;

(2) Corrective actions in response to sampling results for other contaminants; and

(3) School officials to notify school facility staff, students and parents, and the local health officer about test results.

NEW SECTION

**WAC 246-366A-150 Playgrounds—Construction and installation requirements.** (1) School officials shall:

(a) Consult with the local health officer regarding playground review and approval requirements consistent with the scope of the project when proposing to:

(i) Install new playground equipment or fall protection surfaces;

(ii) Add new playground features or equipment to an existing playground; or

(iii) Modify, other than repair and maintain, existing playground equipment, features, or fall protection surfaces.

(b) If required by the local health officer after consultation:

(i) Provide playground plans and equipment specifications and any additional information the local health officer requests; and

(ii) Obtain plan review and written approval from the local health officer before installing, adding, or modifying playground equipment or fall protection surfaces.

(c) Install playground equipment, including used equipment, and fall protection surfaces:

(i) That meet the ASTM F 1487-01: Standard Consumer Safety Performance Specification for Playground Equipment for Public Use; and

(ii) In a manner that is consistent with the manufacturer's instructions and *Consumer Product Safety Commission Handbook for Public Playground Safety*, 2008.

(d) Prohibit the use of chromated copper arsenate or creosote treated wood to construct or install playground equipment, landscape structures, or other structures on which students may play.

(2) The local health officer shall:

(a) Consult with school officials to determine what is required for playground plan review and approval consistent with the scope of the project.

(b) If playground review and approval is required:

(i) Review playground plans and equipment specifications to confirm that the requirements of these rules are addressed;

(ii) Identify and request any additional documents required to complete the review;

(iii) Provide written approval or denial of the playground plans and equipment specifications within thirty days of receiving all documents needed to complete the review, unless the school officials and the local health officer agree to a different timeline; and

(iv) Verify that playground installation complies with requirements of this section.

(c) Coordinate all playground-related inspections with school officials.

NEW SECTION

**WAC 246-366A-155 Playgrounds—Operation and maintenance requirements.** School officials shall:

(1) Monitor and operate playgrounds so that protective surfacing and use zones are maintained, and equipment is properly anchored and free of puncture, pinching, crushing, shearing, entanglement, and entrapment hazards.

(2) Prohibit the use of chromated copper arsenate or creosote treated wood to repair or maintain playground equipment, landscape structures, or other structures on which students may play.

NEW SECTION

**WAC 246-366A-160 Laboratories and shops—Construction requirements.** School officials shall:

(1) Provide an emergency eyewash fountain for each laboratory and shop where hazardous materials are used or eye irritants are produced.

(2) Provide an emergency shower for each laboratory where hazardous materials are used and the potential for chemical spills exists.

(3) Assure that all emergency eyewash fountains and showers have unobstructed access and are reachable within ten seconds.

(4) Provide handwashing and appropriate drying facilities in an easily accessible location in each laboratory and shop.

(5) Provide emergency shut-offs for gas and electricity connected to stationary machinery in laboratories and shops. Emergency shut-offs must:

(a) Be located in close proximity to the room exit door;

(b) Have unobstructed access; and

(c) Have signage readable from across the room for immediate identification during an emergency.

(6) Provide all stationary machinery in laboratories and shops with magnetic-type switches to prevent machines from automatically restarting upon restoration of power after an electrical failure or activation of the emergency shut-off.

(7) Provide mechanical exhaust ventilation in hazardous material storerooms, and in laboratories and shops where equipment or activities may produce air contaminants of public health importance.

(8) When activities or equipment in laboratories or shops produce air contaminants of public health importance, pro-

vide an appropriate source capture system to prevent those contaminants from entering the student's breathing zone. These activities and equipment include, but are not limited to, spray painting, welding, pottery kilns, chemistry experiments, and wood-working.

(9) Design ventilation systems to operate so that air is not recirculated and does not flow from the laboratory or shop to other parts of the school facility. Open plenum air returns consisting of the space above suspended ceilings in laboratories and shops must not be used to recirculate air to other parts of the school facility.

NEW SECTION

**WAC 246-366A-165 Laboratories and shops—Operation and maintenance requirements.** In laboratories and shops, school officials shall:

(1) Select, label, use, store and dispose of hazardous materials in accordance with WAC 246-366A-065.

(2) Prohibit use and storage of compounds that are:

(a) Considered shock-sensitive explosives, for example, picric acid, dinitro-organics, isopropyl ether, ethyl ether, tetrahydrofuran, dioxane; or

(b) Lethal at low concentrations when inhaled or in contact with skin, for example, pure cyanides, hydrofluoric acid, toxic compressed gases, mercury liquid and mercury compounds, and chemicals identified as the P-list under WAC 173-303-9903.

(3) Adopt safety procedures and processes for instructing students regarding the proper use of hazardous materials and equipment.

(4) Provide and require use of appropriate personal protective equipment when exposure to potential hazards might occur. Potential hazards include, but are not limited to hazardous material exposures, burns, cuts, and punctures.

(5) Provide situation-specific emergency and protective equipment during demonstrations with hazardous materials and with hazardous procedures. Examples of protective equipment include, but are not limited to, safety shields for eyes, protective gloves that are fire retardant and chemical resistant, respiratory protection, and fire extinguishers.

(6) Properly maintain laboratory and shop equipment and mechanical exhaust ventilation.

(7) Provide single-use soap and single-use towels or warm-air dryers at handwashing sinks.

NEW SECTION

**WAC 246-366A-170 Variances.** (1) School officials:

(a) May request a variance from requirements in these rules from the local health officer if they wish to use an alternative to meet the intent of these rules.

(i) The request for a variance must be in writing and describe:

(A) The specific requirement the variance is requested to replace;

(B) The alternative proposed to meet the specific requirement; and

(C) How the proposed alternative will provide at least a comparable level of protection as that provided by the specific requirement.

(ii) The request for a variance must include information as needed to support and clarify the request, such as material descriptions and specifications, engineering reports, photos, drawings, or sketches.

(b) May implement a variance only after obtaining approval from the local health officer.

(2) The local health officer shall:

(a) Initially review documents submitted with the request for a variance and inform school officials if additional information is required.

(b) Compare the health and safety aspects of the specific requirement being addressed and the variance proposal to determine if the proposal provides at least a comparable level of protection as that provided by the specific requirement.

(c) Provide written approval or denial of a request for a variance within sixty days of receiving a complete written request, unless school officials and the local health officer agree to a different timeline.

(d) Submit an annual written report to the department regarding all variance requests. The report must be submitted by March 1st of each year, beginning in 2013, and cover the calendar period January through December of the previous year.

NEW SECTION

**WAC 246-366A-175 Temporary emergency waivers for disaster situations.** The local health officer may grant school officials an emergency waiver from some or all of the requirements in these rules for the temporary use of a facility or site as a school when the facility normally used by the school is not safe to be occupied due to a natural or man-made disaster.

NEW SECTION

**WAC 246-366A-180 Appeals.** Decisions or actions of the local health officer may be appealed to the local board of health in a manner consistent with their established procedure.

NEW SECTION

**WAC 246-366A-190 Complaints.** (1) School officials shall establish a written complaint process, if such a written process does not already exist. The complaint process must clearly describe the means for a person to file a written complaint concerning failure to comply with a provision of these rules that jeopardizes the health and safety of students. At a minimum, the process shall provide for:

(a) Promptly investigating all complaints;

(b) Correcting conditions not in compliance with these rules within an appropriate time frame given the level of risk to health and safety;

(c) Providing notification for imminent health hazards in accordance with WAC 246-366A-020;

(d) Promptly communicating with the complainant regarding the outcome of the investigation, and the actions and time frame proposed to address any verified conditions not in compliance with these rules; and

(e) Communicating with the local health officer about the outcome of complaint investigations referred to school officials by the local health officer.

(2) The local health officer who receives a complaint concerning failure to comply with a provision of these rules that jeopardizes the health and safety of students shall:

(a) Promptly inform school officials that a complaint was filed with the local health officer;

(b) Conduct a preliminary inquiry to determine if an imminent health hazard exists;

(c) Investigate the complaint in consultation with school officials if an imminent health hazard exists;

(d) Either refer the complaint to school officials or investigate the complaint in consultation with school officials if an imminent health hazard does not appear to exist; and

(e) Communicate with the complainant about the outcome of the complaint investigation.

NEW SECTION

**WAC 246-366A-200 Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

## WSR 09-14-138
### PROPOSED RULES
## LIQUOR CONTROL BOARD

[Filed July 1, 2009, 11:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-07-105.

Title of Rule and Other Identifying Information: Chapter 314-37 WAC amending the chapter title, WAC 314-37-010, 314-37-020, and 314-37-030.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Lacey, WA 98504, on August 12, 2009, at 10:00 a.m.

Date of Intended Adoption: August 26, 2009.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 664-9689, by August 12, 2009.

Assistance for Persons with Disabilities: Contact Karen McCall by August 12, 2009, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As part of the liquor control board's on-going rules review process, chapter 314-37 WAC is being reviewed for relevance, clarity, and accuracy.

Reasons Supporting Proposal: The existing rules include language that is no longer relevant and needs to be revised.

Statutory Authority for Adoption: RCW 66.08.030.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Randy Simmons, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1671; and Enforcement: Pat Parmer, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no impact to contract liquor stores.

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

July 1, 2009
Lorraine Lee
Chairman

### Chapter 314-37 WAC

### CONTRACT LIQUOR ((~~VENDORS~~)) STORES

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-37-010 Liquor sales in Indian country—Appointment of tribal contract liquor ((~~vendors~~)) stores—Qualifications.** (1) The Washington state liquor control board deems it necessary and advisable to adopt this rule for the following reasons:

(a) The decision of the United States Supreme Court in the case of *Rice v. Rehner* (filed July 1, 1983) has established that the state of Washington has licensing jurisdiction over tribal liquor sales in Indian country and that those sales, when made in conformity with federal law, are subject to both tribal and state liquor regulatory requirements.

(b) It is contrary to state law (see chapter 66.44 RCW) for purchasers of Indian liquor to remove that liquor from the reservation and into the state of Washington in those instances where the tribal liquor sellers are not authorized by the board to sell liquor.

(2) Accordingly, pursuant to RCW 66.08.050(2), the Washington state liquor control board will appoint qualifying Indian tribes, which have entered into negotiated business agreements with the board, as contract liquor ((~~vendors~~)) stores which will authorize those ((~~vendor~~)) tribes to sell liquor by the bottle to such persons, firms or corporations as may be sold liquor from a state liquor store. All such appointments will be subject to the following conditions:

(a) The tribe must enter into a business agreement with the Washington state liquor control board for the purchase and sale of liquor which will insure that the state's control over liquor traffic will be maintained while taking into consideration the unique nature of a tribal contract liquor ((~~vendor~~)) store operation.

(b) The tribe must purchase all of its spirituous liquor for resale in Indian country from the board at a negotiated price: Provided, That a quota of spirituous liquor will be sold by the board each year to the ((~~vendor~~)) tribe without the payment of state taxes, which quota shall be negotiated between the board and the qualified tribes and approved by the department of revenue.

(c) The tribe must have in force a tribal ordinance governing liquor sales, which ordinance must have been certified by the Secretary of the Interior and published in the Federal Register as required by 18 U.S.C. §1161.

(d) The tribe must make all liquor sales in Indian country in conformity with both state and federal law.

(3) Should a tribe which has been appointed as a contract liquor ((~~vendor~~)) store pursuant to this section fail to comply with all the above enumerated conditions, which shall be construed as continuing requirements to maintain the status of contract liquor ((~~vendor~~)) store, the appointment of that tribe as a contract liquor ((~~vendor~~)) store may be revoked by the board.

(4) A tribe, whether or not it has status as an Indian contract liquor ((~~vendor~~)) store, which desires to sell beer and wine purchased from a licensed distributor must obtain state licenses for the sale of beer and wine and must abide by all state laws and rules applicable to sale of beer and wine by state licensees. Tribes selling beer and wine shall collect and remit to the state department of revenue the retail sales tax imposed by RCW 82.08.020 on retail sales of beer and wine to nontribal members.

(5) "Indian country" as used herein shall have the meaning ascribed to it in Title 18 U.S.C. §1151 as qualified by Title 18 U.S.C. §1154 as of July 1, 1983.

AMENDATORY SECTION (Amending Order 180, Resolution No. 189, filed 3/13/86)

**WAC 314-37-020 Manufacturer's on-site ((~~vending~~)) contract liquor store appointment—Qualifications.** (1) Pursuant to RCW 66.08.050, the board, in its discretion, may appoint a domestic winery which also manufactures liquor products other than wine pursuant to a license under Title 66 RCW, as a ((~~vendor~~)) contract liquor store for the purpose of sale of liquor products of its own manufacture on the licensed premises only.

(2) Such appointment may not be made to domestic wineries located inside incorporated cities or towns in which there is a state liquor store.

(3) Such appointment shall only be made after a contract has been entered into between the board and the domestic winery. Such contract shall contain the following:

(a) A designation of the location on the licensed premises from which the sales will be made;

(b) A designation of the nonwine products manufactured by the winery which will be sold under the appointment;

(c) That the manufacturer/((~~vendor~~)) contract liquor store shall not be considered an employee of the state for any purpose;

(d) That the manufacturer/((~~vendor~~)) contract liquor store shall agree to hold the state harmless from any and all claims resulting from operation of the manufacturer's on-site ((~~vendorship~~)) contract liquor store; and

(e) Such other aspects of the appointment relationship as the parties may agree to.

(4) All sales made under a manufacturer's on-site ((~~vending~~)) contract liquor store appointment shall be made at the prices established by the board for sales of the same product through state liquor stores and agencies.

(5) All sales made under a manufacturer's on-site ((~~vending~~)) contract liquor store appointment shall be subject to all applicable state taxes.

AMENDATORY SECTION (Amending WSR 99-04-114, filed 2/3/99, effective 3/6/99)

**WAC 314-37-030 Bank credit cards and debit cards.** (1) **May contract liquor ((~~vendors~~)) stores accept bank credit cards and debit cards?** Yes. Per RCW 66.16.041, contract liquor ((~~vendors~~)) stores may accept bank credit cards and debit cards for liquor purchases from nonlicensees. Any equipment provided by the board to ((~~an agency~~)) a contract liquor ((~~vendor~~)) store may be used only for the sale of liquor obtained from the board.

(2) **What are the procedures for accepting bank credit cards and debit cards for liquor purchases?** The procedures for accepting bank credit cards and debit cards for liquor purchases are as follows:

(a) **Sales transactions.**

(i) All credit/debit card sales transactions will be made in accordance with liquor control board and ((~~SPS~~)) PCI procedures.

(ii) Cash back is not allowed.

(iii) Batch closing must be done nightly in order to ensure transactions are processed in a timely manner.

(b) **Recording transactions.** Contract liquor ((~~vendors~~)) stores will record transactions on forms provided by the liquor control board.

(c) **Reporting.** Contract liquor ((~~vendors~~)) stores will report all credit/debit card sales to the administrative services division of the liquor control board.

(d) **Retention of records.**

(i) All credit/debit card receipts and balancing reports will be kept for the current fiscal year, in addition to the prior two complete fiscal years.

(ii) Contract liquor ((~~vendors~~)) stores are responsible for the security of all credit/debit card records.