WSR 09-15-017
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed July 6, 2009, 8:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-091.

Title of Rule and Other Identifying Information: Apple commission, chapter 24-12 WAC, Assessments.

Hearing Location(s): W. L. Hansen Building, Conference Room, 105 South 18th Street, Yakima, WA 98902, on August 27, 2009, at 11:30 a.m.; and at the Washington Apple Commission, Conference Room, 2900 Euclid Avenue, Wenatchee, WA 98801, on August 28, 2009, at 9:00 a.m.

Date of Intended Adoption: September 16, 2009.

Submit Written Comments to: Kelly Frost, P.O. Box 42560, Olympia, WA 98504-2560, e-mail kfrost@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., August 31, 2009.

Assistance for Persons with Disabilities: Contact WSDA receptionist by August 14, 2009, TTY 1-800-833-6388 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The change will align the assessment rate found in WAC 24-12-010 with the rate listed in RCW 15.24.100, which is the accurate amount currently being assessed. WAC 24-12-010 is revised to reflect the current containers used in packing fresh apples. WAC 24-12-012 clarifies the requirement for reporting to the commission the net weight of fresh apples designated for slicing for internal fresh apple slicing operations. Other housekeeping changes are being made to update existing language to increase its clarity and readability.

Reasons Supporting Proposal: The proposal will align the assessment rate and requirements for reporting the net weight of fresh apples when designated for slicing as required in chapter 15.24 RCW. Container descriptions used in packing fresh apples are updated to reflect current practices within the industry. General updates are being made to existing language to increase its clarity and readability.

Statutory Authority for Adoption: Chapter 15.24 RCW.

Statute Being Implemented: Chapter 15.24 RCW.

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

Name of Proponent: Washington state apple commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Todd Fryhover, P.O. Box 18, Wenatchee, WA 98807, (509) 663-9600.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule is being made consistent with the requirements of chapter 15.24 RCW. Small businesses are not impacted by adoption of the rule.

A cost-benefit analysis is not required under RCW 34.05.328. The department of agriculture and the Washington apple commission are not named agencies in RCW 34.05.328 (5)(a)(i).

July 6, 2009
Todd Fryhover
President

AMENDATORY SECTION (Amending Promulgation, filed 1/26/67)

WAC 24-12-001 Promulgation. Under and by virtue of chapter 15.24 RCW as amended and chapter 11, Laws of 1961, the Washington ((~~state~~)) apple ((~~advertising~~)) commission does hereby adopt and prescribe the following amended and restated rules ((~~and regulations~~)).

AMENDATORY SECTION (Amending WSR 00-23-064, filed 11/15/00, effective 12/16/00)

WAC 24-12-010 Amount of assessments. (1) There is hereby levied upon all fresh apples grown annually in this state, and upon all apples packed as Washington apples, ((~~an assessment of 86.96 cents on each one hundred pounds gross billing weight until September 30, 2001. On and after October 1, 2001 the assessment on fresh apples shall be 54.3 cents on each one hundred pounds gross billing weight. For the period October 1, 1998 through September 30, 2001, 32.66 cents of the assessment on each one hundred pounds gross billing weight shall be used only for direct consumer advertising~~)) including fresh sliced, an assessment of eight and seventy-five one-hundredths cents per one hundred pounds of apples, based on net shipping weight or reasonable equivalent net product assessment measurement as determined by the commission.

(2) Assessments shall be payable as provided in WAC 24-12-012, whether in bulk or loose in boxes or any other container, or packed in any style package. The ((~~gross billing~~)) net shipping weights for the following containers shall apply for the purpose of computing ((~~said~~)) the assessments:

((~~DESCRIPTION OF CONTAINER~~)	~~GROSS BILLING WEIGHTS~~
~~1/3 Bushel box (packed or loose)~~	~~15 lbs.~~
~~1/2 Bushel box (loose)~~	~~23 lbs.~~
~~Bulk bushel container (loose)~~	~~Net weight plus 3 lbs. tare~~
~~9/4 and 12/3 Bag containers~~	~~41 lbs.~~
~~13/3 Bag container~~	~~44 lbs.~~
~~10/4 and 8/5 Bag containers~~	~~45 lbs.~~
~~12/4 Bag container~~	~~53 lbs.~~
~~Standard tray pack container~~	~~46 lbs.~~
~~Pocket cell tray pack container~~	~~46 lbs.~~
~~Cell pack containers, all counts~~	~~46 lbs.~~
~~2-Layer tray pack container~~	~~23 lbs.~~
~~Single-layer tray pack container~~	~~12 lbs.~~))

DESCRIPTION OF CONTAINER	NET SHIPPING WEIGHT RANGE
Tray Carton	37-52 lbs.
Cell Carton	37-52 lbs.
1 Layer Carton AKA Euro Carton	10-15 lbs.
2 Layer Carton AKA Euro Carton	20-30 lbs.
3 Layer Carton AKA Euro Carton	30-40 lbs.

DESCRIPTION OF CONTAINER	NET SHIPPING WEIGHT RANGE
Euro Carton 1-3 Layers	10-45 lbs.
Master Carton (Bags in Box/Clamshell)	10-50 lbs.
Master Bin (Bags in Bin/Clamshell)	300-600 lbs.
Bin (Loose/Jumble/Bulk)	500-900 lbs.
Loose Carton (Jumble/Bulk)	10-40 lbs.
Carton (2/3 Bushel)	25-35 lbs.
1/2 Carton	18-25 lbs.
1/3 Bushel Carton	10-15 lbs.
Overwrap Carton	30-40 lbs.

AMENDATORY SECTION (Amending Order 11, filed 8/12/82)

WAC 24-12-011 Referendum mail ballot voting eligibility. (1) In the conduct of a referendum mail ballot pursuant to the provisions of RCW 15.24.090 the commission shall require that each returned ballot be accompanied by a completed apple grower eligibility certificate in substantially the following form:

WASHINGTON ((~~STATE~~)) APPLE ((~~ADVERTISING~~)) COMMISSION
APPLE GROWER ELIGIBILITY CERTIFICATE

(Note: All appropiate spaces on this certificate must be completed to properly qualify your vote.)

I HEREBY CERTIFY THAT:

1. My name and address are as follows (please print):
   Name: . . . .
   Mailing Address: . . . .
   ((~~Residence~~)) Orchard Address: . . . .
   City: . . . . State: . . . .
2. I am qualified to vote for one of the following reasons (please check the appropriate space):
   a. . . . . I am an individual owner-operator or an individual lessee-operator of commercially producing apple orchard/orchards.
   b. . . . . I am a member of and have been designated to cast the single ballot for (please fill in name), a partnership, joint venture or corporation owning/leasing and operating commercially producing apple orchard/orchards.
3. The orchard/orchards for which I am casting a vote represents. . . . . . acres of commercially producing apple trees situated in the county/counties of. . . . . . within the state of Washington. (Please combine the total commercially producing apple acreage for which you are voting in the space above.)

. . . .
Signature of Voter

Name (print) . . . .
Date . . . .

Note: A completed apple grower eligibility certificate must accompany each ballot.

(2) The commission and the director of the department of agriculture may, in counting and validating ballots, rely on and accept the representations of eligibility to vote and the representations of acreage as set forth in ((~~said~~)) the certificate.

(3) Apple growers entitled to vote in a referendum mail ballot pursuant to the provisions of RCW 15.24.090 are defined to be each grower who operates a commercial producing apple orchard, whether an individual proprietor, partnership, joint venture, or corporation, being entitled to one vote. As to bona fide leased or rented orchards, only the lessee-operator, if otherwise qualified, shall be entitled to vote. Individual commercial orchard operator, if otherwise qualified, shall be entitled to vote as such, even though he is also a member of a partnership or corporation ((~~which~~)) that votes for other apple acreage.

(4) A commercial producing apple orchard means an apple orchard currently producing or growing apples in sufficient quantity so that ((~~said~~)) the apples are or will be marketed through prevailing commercial channels and are or will be subject to assessment pursuant to the provisions of chapter 15.24 RCW.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 17, filed 12/18/85)

WAC 24-12-012 Collection of accounts. (1) The commission shall obtain from the department of agriculture a record of all shipments of fresh apples, including fresh apples designated for slices, and shall from this record periodically invoice all apple dealers and handlers shown thereon for assessments on apples levied pursuant to WAC 24-12-010. The date of the invoice shall be known as the billing date.

(2) ((~~Assessments not paid within twenty days from the billing date shall be delinquent.~~)) For fresh apples designated for slices:

(a) The department of agriculture does not require a certificate of compliance for fresh apples designated for slicing that are moved and produced internally by a shipper.

(b) All shippers (first handlers) with internal fresh apple slicing operations will be required to remit and report quarterly the net weight in pounds of all fresh apples packed or unpacked designated for slicing. The reporting period dates and forms will be determined and created by the commission.

(c) All payments and reports are due thirty-five days from the end of the reporting period established by the commission.

(3) If the ((~~delinquent~~)) assessments are not paid within thirty-five days from the billing date, a notice of delinquency shall be sent to the dealer or handler involved, with a copy to the district inspection office of the department of agriculture ((~~stating~~)). The notice shall state that if the delinquent assess-

ments are not paid within forty-five days from the billing date, the dealer or handler involved will thereafter be put on a cash basis until the delinquent assessments are paid, and that the *Compliance Certificate Book* will be removed by the department of agriculture((~~, and~~)). The notice shall also advise that if the delinquent assessments are not paid within sixty days from the billing date, the inspection service ((~~will~~)) may be withdrawn.

If at any time an account thereafter is again unpaid in the same crop year shipping season for more than thirty-five days from the billing date, the commission may((~~, without further notice, immediately~~)) place the dealer or handler on a cash basis for the remainder of the crop year shipping season, or such shorter period as the commission may at its option specify, and the *Compliance Certificate Book* ((~~will~~)) may be removed by the department of agriculture. If ((~~said~~)) the subsequent delinquency shall continue more than sixty days from the billing date, inspection service ((~~will~~)) may be withdrawn.

Once withdrawn, inspection service will be reinstated only upon mutual agreement of the department of agriculture and the commission and after all delinquent assessments have been paid.

((~~(3)~~)) (4) Delinquent assessments not paid within thirty-five days of the billing date shall bear interest at the maximum legal rate, not to exceed 1-1/2% per month, and in case of suit to collect ((~~said~~)) the delinquent assessments, the prevailing party shall, in addition to any other relief granted, be allowed an attorneys fee in such amount as the court in its discretion deems reasonable, together with costs of suit.

AMENDATORY SECTION (Amending Regulation No. 8, filed 1/26/67)

WAC 24-12-070 Seal. The seal of the commission shall be circular in form and contain the following inscription: "WASHINGTON ((~~STATE~~)) APPLE ((~~ADVERTISING~~)) COMMISSION SEAL."

AMENDATORY SECTION (Amending Regulation No. 1, filed 1/26/67)

WAC 24-12-080 Effect of law. These revised ((~~regulations~~)) rules, as provided in ((~~said~~)) the act, have the force and effect of law, and any person who shall violate or aid in the violation of any of these ((~~regulations~~)) rules is in violation of Washington state law and is guilty of a misdemeanor. These ((~~regulations~~)) rules hereby repeal and supersede all previous ((~~regulations~~)) rules. Definitions of terms in ((~~said~~)) the act are applicable to these ((~~regulations~~)) rules.

WSR 09-15-020
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed July 6, 2009, 11:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-04-092.

Title of Rule and Other Identifying Information: The department is amending chapter 388-825 WAC, DDD service rules.

Amending WAC 388-825-020 Definitions, adds or amends definitions used in this chapter, WAC 388-825-081, housekeeping changes, WAC 388-825-083, housekeeping changes, WAC 388-825-084, housekeeping change to remove the family support references that are now located in chapter 388-832 WAC, WAC 388-825-089, corrects terminology to state operated instead of state-only, WAC 388-825-100, removes the requirement to send mailings to both parents and under age children separately, WAC 388-825-103, updates WAC references and adds "denial or termination of the provider of your choice" as a reason you will receive notice from DDD, WAC 388-825-120, housekeeping changes and clarification of language, WAC 388-825-140, clarifies language, WAC 388-825-165, clarifies language, WAC 388-825-325, adds the CIIBS Waiver, WAC 388-825-330, changes "wait" list to "request" list, WAC 388-825-365, changes "wait" list to "request" list and allows a client to remain on the request list if in a temporary placement with plans top [to] return home, and WAC 388-825-375, changes "wait" list to "request" list; and repealing WAC 388-825-160, 388-825-200, 388-825-205, 388-825-210, 388-825-220, 388-825-222, 388-825-224, 388-825-226, 388-825-228, 388-825-230, 388-825-232, 388-825-234, 388-825-236, 388-825-238, 388-825-240, 388-825-242, 388-825-244, 388-825-246, 388-825-248, 388-825-250, 388-825-252, 388-825-253, 388-825-254, 388-825-256, 388-825-500, 388-825-505, 388-825-510, 388-825-512, 388-825-513, 388-825-514, 388-825-516, 388-825-520, 388-825-524, 388-825-528, 388-825-532, 388-825-534, 388-825-536, 388-825-538, 388-825-540, 388-825-544, 388-825-548, 388-825-552, 388-825-554, 388-825-558, 388-825-560, 388-825-562, 388-825-564, 388-825-572, 388-825-575, 388-825-576, 388-825-578, 388-825-581, 388-825-584, 388-825-586, 388-825-588, 388-825-591, and 388-825-595.

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 25, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 26, 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 25, 2009.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by August 11, 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: These proposed rules amend chapter 388-825 WAC to repeal the family support program rules. The family support rules have been adopted in chapter 388-832 WAC, the individual and family

services program. These amendments also clarify existing language and update sections to maintain consistency with other WAC chapters.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040.

Statute Being Implemented: Title 71A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail roberdx@dshs.wa.gov, (360) 725-3400, fax (360) 404-0955; Implementation: Shannon Manion, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail manionsk @dshs.wa.gov, (360) 725-3454, fax (360) 404-0955; and Enforcement: Don Clintsman, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail ClintDL@dshs.wa.gov, (360) 725-3452, fax (360) 404-0955.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has analyzed these rules and concluded that they do not impact small businesses or small nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt from the preparation of a cost-benefit analysis pursuant to RCW 34.05.328 (5)(b)(ii) and (vii) as they incorporate RCW 71A.12.161, clarify rules without changing their effect and relate only to client medical or financial eligibility.

June 23, 2009
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-020 Definitions. "Authorization" means DDD approval of funding for a service as identified in the individual support plan or evidence of payment for a service.

"Client or person" means a person who has a developmental disability as defined in RCW 71A.10.020(3) who also has been determined eligible to receive services by the division under chapter 71A.16 RCW.

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

"Director" means the director of the division of developmental disabilities.

"Division or DDD" means the division of developmental disabilities within the aging and disability services administration of the department of social and health services.

"Family" means relatives who live in the same home with the eligible client. Relatives include spouse or registered domestic partner; natural, adoptive or step parent((~~s~~)); grandparent((~~s~~)); ((~~brother; sister; stepbrother; stepsister~~)) child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"ICF/MR" means a facility certified as an intermediate care facility for the mentally retarded by Title XIX to provide diagnosis, treatment and rehabilitation services to the mentally retarded or persons with related conditions.

"ICF/MR eligible" for admission to an ICF/MR means a person is determined by DDD as needing active treatment as defined in CFR 483.440. Active treatment requires:

(1) Twenty-four hour supervision; and

(2) Continuous training and physical assistance in order to function on a daily basis due to deficits in the following areas: Toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication.

"Individual support plan (ISP)" is a document that authorizes and identifies the DDD paid services to meet a client's assessed needs.

"Medicaid personal care" is the provision of medically necessary personal care tasks as defined in chapter 388-106 WAC.

"Residential habilitation center" or **"RHC"** means a state-operated facility certified to provide ICF/MR and/or nursing facility level of care for persons with developmental disabilities.

"Residential programs" means provision of support for persons in community living situations. Residential programs include DDD certified community residential services and support, both facility-based such as licensed group homes, and nonfacility based, such as supported living and state-operated living alternatives (SOLA). Other residential programs include alternative living (as described in chapter 388-829A WAC, companion homes (as described in chapter 388-829C WAC), adult family homes, adult residential care services, children's foster homes, group care and staffed residential homes.

"Respite care" means short-term intermittent relief for persons normally providing care for the individuals.

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

"State supplementary payment (SSP)" is the state paid cash assistance program for certain DDD eligible SSI clients.

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-081 Can I receive state-only funded services that are not available in a DDD HCBS waiver? You may be authorized to receive state-only funded services that are available in other DSHS rules as defined below:

(1) Adult day care (WAC 388-106-0800);

(2) Attendant care (WAC 388-825-082);

(3) Childcare for foster children (chapter 388-826 WAC);

(4) Chore services (chapter 388-106 WAC);

(5) ((~~Supported living allowance (chapter 388-101 WAC);~~

~~(6)~~)) Individual and family assistance by the county (WAC 388-825-082);

((~~(7)~~)) (6) Information and education by the county (WAC 388-825-082);

((~~(8)~~)) (7) Medical and dental services (WAC 388-825-082);

((~~(9)~~)) (8) Psychological counseling (WAC 388-825-082);

((~~(10)~~)) (9) Reimbursement through ((~~a~~)) the individual and family support program to families for the purchase of approved items or service (((~~WAC 388-825-242~~)) (chapter 388-832 WAC);

((~~(11)~~)) (10) State supplementary payments (chapter 388-827 WAC); and

((~~(12)~~)) (11) Transportation reimbursement for an escort (WAC 388-825-082).

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-083 Is there a comprehensive list of waiver and state-only DDD services? For medicaid state plan services authorized by DDD, see WAC 388-825-068. The following is a list of waiver and state-only services that DDD can authorize and those services that can be either a waiver or a state-only service:

(1) **Waiver personal care services that are not available with state-only funds include:**

(a) In-home services;

(b) Adult family home; and

(c) Adult residential care.

(2) **Waiver services that can be funded as state-only services:**

(a) Behavior management and consultation;

(b) Community transition;

(c) Environmental accessibility adaptations;

(d) Medical equipment and supplies;

(e) Occupational therapy;

(f) Physical therapy;

(g) Respite care;

(h) Sexual deviancy evaluation;

(i) Skilled nursing;

(j) Specialized medical equipment or supplies;

(k) Specialized psychiatric services;

(l) Speech, hearing and language therapy;

(m) Staff/family consultation and training;

(n) Transportation/mileage;

(o) Residential habilitation services (RHS), including:

(i) Alternative living;

(ii) Companion homes;

(iii) Supported living;

(iv) Group home;

(v) Child foster care;

(vi) Child group care;

(vii) Staffed residential; and

(viii) State operated ((~~SL~~)) living alternative (SOLA);

(p) Employment/day programs, including:

(i) Community access;

(ii) Community guide;

(iii) Person-to-person;

(iv) Prevocational services; and

(v) Supported employment;

(q) ITEIP/County programs, including child development services;

(r) Mental health stabilization services, including:

(i) Behavior management and consultation;

(ii) Mental health crisis; and

(iii) Skilled nursing; and

(s) Specialized psychiatric services.

(3) **State-only services that are not available as a waiver service:**

(a) Adult day care;

(b) Architectural and vehicle modification;

(c) Attendant care;

(d) Child care for foster children;

(e) Chore services;

(f) Community services grant;

(g) Individual and family assistance;

(h) Information/education;

(i) Medical and dental services;

(j) Medical insurance copays and costs exceeding other coverage;

(k) Parent and sibling education;

(l) Parent training and counseling;

(m) Psychological counseling;

(n) Recreational opportunities;

(o) State supplementary payments;

(p) Specialized clothing;

(q) Specialized nutrition;

(r) ((~~Supported living;~~

~~(s)~~)) Training of the client;

((~~(t)~~)) (s) Transportation - cost of escort service or travel time; and

((~~(u)~~)) (t) Reimbursement to families for the purchase of approved items or services.

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-084 What are the limitations of state-only funded services or programs? In addition to any limitations for state-only funded services or programs that are contained in the program specific rules, the following limitations apply to state-only funded services and programs.

(1) All state-only funded services are limited by available funding.

(2) The following programs are closed to new admissions:

(a) Adult day care; and

(b) Attendant care.

(3) Chore services are limited to persons who were receiving the service in 1998 and who have continued to receive this service monthly.

((~~(4) Traditional family support (TFS) is limited to persons enrolled in the program as of May 31, 1996. This program ends on June 30, 2008.~~

~~(5) Family support opportunity (FSO) is limited to persons enrolled in the program from June 1, 1996 through March 27, 2006. This program ends on June 30, 2008.~~

~~(6) Family support pilot (FSP) is limited to persons enrolled in the program March 28, 2006 or later. This program ends on June 30, 2008.~~))

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-089 What is a residential habilitation center (RHC)? A residential habilitation center or RHC is a ((~~state-only~~)) state-operated facility certified to provide ICF/MR services (see chapter 388-837 WAC) and/or nursing facility services (chapter 388-97 WAC) for persons who are eligible clients of DDD. RHCs include:

(1) Rainier School in Buckley, Washington;

(2) Francis Hadden Morgan Center in Bremerton, Washington;

(3) Fircrest School in Shoreline, Washington;

(4) Yakima Valley School in Selah, Washington; and

(5) Lakeland Village in Medical Lake, Washington.

AMENDATORY SECTION (Amending WSR 08-16-122, filed 8/5/08, effective 9/5/08)

WAC 388-825-100 How will I be notified of decisions made by DDD? (1) Whenever possible, DDD will notify all parties affected by the decision by phone or in person.

(2) If you are under the age of eighteen, written notifications will be mailed to:

(a) ((~~You; and~~

~~(b)~~)) Your parent; or

((~~(c)~~)) (b) Your guardian or other legal representative.

(3) If you are age eighteen or older, written notifications will be mailed to you and:

(a) Your guardian or other legal representative; or

(b) A person identified by you to receive these notices in addition to yourself if you do not have a guardian or legal representative. Unless the person identified by you is a relative of yours, he or she cannot be an employee of DDD, a contractor with DDD or an employee of a contractor with DDD.

AMENDATORY SECTION (Amending WSR 08-04-072, filed 2/4/08, effective 3/6/08)

WAC 388-825-103 When will I receive written notice of decisions made by DDD? You will receive written notice from DDD of the following decisions:

(1) The denial or termination of eligibility for services under WAC ((~~388-825-030 and 388-825-035~~)) 388-825-057;

(2) Denial or termination of the provider of your choice for any reason listed in WAC 388-825-375 through 388-825-390;

(3) The authorization, denial, reduction, or termination of services or the payment of SSP set forth in chapter 388-827 WAC that are authorized by DDD;

((~~(3)~~)) (4) The admission or readmission to, or discharge from a residential habilitation center((~~.~~)) set forth in WAC 388-825-155; or

((~~(4)~~)) (5) Disenrollment from a DDD home and community based services waiver under WAC 388-845-0060, including a disenrollment from a waiver and enrollment in a different waiver.

AMENDATORY SECTION (Amending WSR 06-19-037, filed 9/13/06, effective 10/14/06)

WAC 388-825-120 When can I appeal department decisions through an administrative hearing process? (1) Administrative hearings are governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 71A.10.050, the rules in this chapter and by chapter 388-02 WAC. If any provision in this chapter conflicts with chapter 388-02 WAC or WAC 388-440-0001(3), the provision in this chapter shall prevail.

(2) A client, former client, or applicant acting on the applicant's own behalf or through an authorized representative has the right to an administrative hearing.

(3) You have the right to an administrative hearing to dispute the following department actions:

(a) Authorization, denial, reduction, or termination of services;

(b) Reduction or termination of a service that was initially approved through an exception to rule;

(c) Authorization, denial, or termination of eligibility;

(d) Authorization, denial, reduction, or termination of payment of SSP authorized by DDD set forth in chapter 388-827 WAC;

(e) Admission or readmission to, or discharge from, a residential habilitation center set forth in WAC 388-825-155;

(f) Refusal to abide by your request not to send notices to any other person;

(g) Refusal to comply with your request to consult only with you;

(h) A decision to move you to a different type of residential service;

(i) Denial or termination of the provider of your choice or the denial of payment for any reason listed in WAC 388-825-375 through 388-825-390;

(j) An unreasonable delay to act on an application for eligibility or service;

(k) A claim the client, former client, or applicant owes an overpayment debt.

(4) If you are not enrolled in a waiver and your request to be enrolled in a waiver is denied, your appeal rights are limited to the decision that you are not eligible to have your request documented in a statewide data base because you do not need ICF/MR level of care per WAC 388-845-0070, 388-828-8040 or 388-828-8060.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-140 Who else can help me appeal a department decision? Department staff may assist you in requesting an administrative hearing. ((~~However, you can~~)) You may authorize anyone except an employee of the department to represent you at an administrative hearing.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-165 ((~~Can I appeal the initial order of the administrative law judge~~)) Where can I find additional information about the appeal process? You may

((~~file a petition for administrative review, pursuant to~~)) find additional information governing the appeal process in chapter 388-02 WAC.

AMENDATORY SECTION (Amending WSR 07-23-062, filed 11/16/07, effective 12/17/07)

WAC 388-825-325 What are required skills and abilities for individuals and agencies contracted to provide respite care, personal care services through the medicaid personal care program or the DDD HCBS Basic, Basic Plus, CIIBS, or ((~~CORE~~)) Core waivers, or attendant care services? (1) As a provider of respite care, personal care services through the medicaid personal care program or the DDD HCBS Basic, Basic Plus, CIIBS, or ((~~CORE~~)) Core waivers, or attendant care services, you must be able to:

(a) Adequately maintain records of services performed and payments received;

(b) Read and understand the person's service plan. Translation services may be used if needed;

(c) Be kind and caring to the DSHS client for whom services are authorized;

(d) Identify problem situations and take the necessary action;

(e) Respond to emergencies without direct supervision;

(f) Understand the way your employer wants you to do things and carry out instructions;

(g) Work independently;

(h) Be dependable and responsible;

(i) Know when and how to contact the client's representative and the client's case resource manager;

(j) Participate in any quality assurance reviews required by DSHS;

(2) If you are working with an adult client of DSHS as a provider of attendant care, you must also:

(a) Be knowledgeable about the person's preferences regarding the care provided;

(b) Know the resources in the community the person prefers to use and enable the person to use them;

(c) Know who the person's friends are and enable the person to see those friends; and

(d) Enable the person to keep in touch with his/her family as preferred by the person.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-330 What is required for agencies wanting to provide care in the home of a person with developmental disabilities? (1) Agencies providing personal care or respite services must be licensed as a home care agency or a home health agency through the department of health per chapter 246-335 WAC.

(2) If a residential agency certified per ((~~chapter 388-820 WAC~~)) chapter 388-101 WAC wishes to provide medicaid personal care or respite care in the client's home, the agency must have home care agency certification or a home health license.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-365 Are providers expected to report abuse, neglect, exploitation or financial exploitation? Providers ((~~are expected to~~)) must report any abuse or suspected abuse immediately to child protective services, adult protective services or local law enforcement and make a follow-up call to the person's case manager.

AMENDATORY SECTION (Amending WSR 07-23-062, filed 11/16/07, effective 12/17/07)

WAC 388-825-375 When will the department deny payment for services of an individual or home care agency providing respite care, attendant care, or personal care services? (1) The department will deny payment for the services of an individual or home care agency providing respite care, attendant care, or personal care who:

(a) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC 388-478-0030;

(b) Is providing services under this chapter to their natural/step/adoptive minor client aged seventeen or younger;

(c) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;

(d) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;

(e) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations;

(f) Does not successfully complete the training requirements within the time limits required in WAC 388-71-05665 through 388-71-05909; or

(g) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

(2) In addition, the department may deny payment to or terminate the contract of an individual provider as provided under WAC 388-825-380, ((~~388-825-381,~~)) 388-825-385 and 388-825-390.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-825-160	When will a decision on my appeal be made?
WAC 388-825-200	What is the purpose of the family support opportunity program?
WAC 388-825-205	Who is eligible to participate in the family support opportunity program?

WAC 388-825-210	What basic services can my family receive from the family support opportunity program?
WAC 388-825-220	What is the purpose of community guide services?
WAC 388-825-222	Who can become a community guide?
WAC 388-825-224	Does my family have a choice in selecting its community guide?
WAC 388-825-226	Can the family support opportunity program help my family obtain financial assistance for community guide services?
WAC 388-825-228	How can short-term intervention services through the family support opportunity program help my family?
WAC 388-825-230	Specifically how can short-term intervention funds be used?
WAC 388-825-232	How can serious need funds help my family?
WAC 388-825-234	How can my family qualify for serious need funds?
WAC 388-825-236	How does my family request serious need funds?
WAC 388-825-238	What amount of serious need funding is available to my family?
WAC 388-825-240	Who determines what family support services my family can receive?
WAC 388-825-242	What department restrictions apply to family support payments?
WAC 388-825-244	What are regional family support advisory councils?
WAC 388-825-246	What are community service grants?
WAC 388-825-248	Who is covered under these rules?
WAC 388-825-250	Continuity of family support services.
WAC 388-825-252	Family support services.
WAC 388-825-253	Family support service restrictions.
WAC 388-825-254	Service need level rates.
WAC 388-825-256	Service need levels.
WAC 388-825-500	What is the family support pilot?
WAC 388-825-505	What is the statutory authority for the family support pilot?
WAC 388-825-510	Who is eligible to participate in the family support pilot?
WAC 388-825-512	What is the definition of family?
WAC 388-825-513	What is the definition of an "award"?
WAC 388-825-514	If I participate in the FSP, will I be eligible for services through the DDD home and community based services (HCBS) waiver?
WAC 388-825-516	If I receive other DDD funded services do I qualify for the FSP?
WAC 388-825-520	If I qualify for and receive an FSP award, will my name remain on the family support waitlist?
WAC 388-825-524	How do I apply for the FSP?
WAC 388-825-528	What will DDD do with the FSP questionnaire that you return?
WAC 388-825-532	How does DDD determine the federal poverty level (FPL) for my household?
WAC 388-825-534	What are the annual federal poverty levels?
WAC 388-825-536	What is "gross annual household income"?
WAC 388-825-538	What is the definition of household?
WAC 388-825-540	Who must declare their income?
WAC 388-825-544	If I meet eligibility for FSP, will I receive paid services?
WAC 388-825-548	What is the amount of the FSP awards?
WAC 388-825-552	What if there are two or more family members who qualify for FSP?
WAC 388-825-554	How will DDD determine who will receive awards for FSP?

WAC 388-825-558	What FSP services can my family and I receive?
WAC 388-825-560	What department restrictions apply to FSP?
WAC 388-825-562	What is an FSP plan?
WAC 388-825-564	Does my family have a choice of FSP services?
WAC 388-825-572	What if I have needs that exceed my FSP award limit?
WAC 388-825-575	What are one-time awards?
WAC 388-825-576	How do I apply for a one-time award?
WAC 388-825-578	What amount of one-time funding is available for my family?
WAC 388-825-581	How long do I remain eligible for the FSP?
WAC 388-825-584	Can I be terminated from FSP?
WAC 388-825-586	When are changes in my circumstances considered effective?
WAC 388-825-588	How will the department notify me of their decisions?
WAC 388-825-591	What are my appeal rights under the FSP?
WAC 388-825-595	How do I appeal a department action?

WSR 09-15-021
PROPOSED RULES
SECRETARY OF STATE
(Elections Division)

[Filed July 6, 2009, 4:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-07-065.

Title of Rule and Other Identifying Information: Rules necessary to implement new legislation passed by the 2009 Washington state legislature.

Hearing Location(s): Office of the Secretary of State, Elections Division, 520 Union Avenue S.E., Olympia, WA, on August 25, 2009, at 11:00 a.m.

Date of Intended Adoption: August 26, 2009.

Submit Written Comments to: Katie Blinn, P.O. Box 40220, Olympia, WA 98504-0220, e-mail kblinn@ secstate.wa.gov, fax (360) 586-5629, by August 25, 2009.

Assistance for Persons with Disabilities: Contact Carolyn Berger by August 25, 2009, TTY (800) 422-8683 or (360) 902-4182.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are regarding a number of issues needed for preparation and implementation of upcoming elections. Topics include declaration of candidacy, presidential primary, ballots, service and overseas voters, election reviews and the certification and training program, counting center procedures, recounts, and the statewide voter registration database. These rules implement ESHB 1018, SSB 5270, SSB 5271, HB 1517, SB 5359, SSB 6122 and repeal outdated language regarding appointment of clerks.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: RCW 29A.04.321, 29A.04.330, 29A.04.163, 29A.08.010, 29A.08.030, 29A.08.105, 29A.08.107, 29A.08.110, 29A.08.125, 29A.08.140, 29A.08.210, 29A.08.230, 29A.08.350, 29A.08.410, 29A.08.430, 29A.08.440, 29A.08.510, 29A.08.520, 29A.08.620, 29A.08.630, 29A.08.720, 29A.24.070, 29A.24.091, 29A.80.041, 29A.60.040, 29A.40.061, 29A.04.530, 29A.04.540, and 29A.04.570.

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

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

Name of Agency Personnel Responsible for Drafting: Joanie Deutsch, P.O. Box 40220, Olympia, WA 98504-0220, (360) 902-4182; Implementation and Enforcement: Katie Blinn, P.O. Box 40220, Olympia, WA 98504-0220, (360) 902-4168.

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

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

July 6, 2009
Steve Excell
Assistant Secretary of State

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-208-040	Appointment of clerks.

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

WAC 434-215-020 Declaration of candidacy—Precinct committee officer. Declarations of candidacy for the position of precinct committee officer shall be filed in substantially the following form:

((~~STRICKEN GRAPHIC~~

Filing Data ***For Office Use Only***

Date ________________ Fee Paid $__________ Filing No. _________________ Precinct # __________

Paid by: ☐ Check ☐ Cash Staff Initials __________ Voter Registration ID ______________

DECLARATION OF CANDIDACY
PRECINCT COMMITTEE OFFICER

1. I, ____, declare that I am a registered voter residing at:
(PRINT NAME AS YOU ARE REGISTERED TO VOTE)

____ WA __________
(STREET ADDRESS OR RURAL ROUTE) (CITY) (ZIP)

that I am a registered voter in____________________ precinct, that I declare myself a candidate for the position of Precinct Committee Officer for the ______________________________ Party,
(DEMOCRATIC / REPUBLICAN)
to be elected at the Primary Election, and I am paying the filing fee of one dollar required by RCW 29A.24.091.

Further, I declare, under penalty of perjury, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.

X ____
(SIGNATURE OF CANDIDATE) (DATE)

Contact Information: ____
(TELEPHONE NUMBER) (EMAIL ADDRESS)

____
(MAILING ADDRESS, IF DIFFERENT FROM RESIDENTIAL ADDRESS)

2. Please print my name on the ballot exactly as follows:

____

4/16/08

~~STRICKEN GRAPHIC~~))

Filing Data ***For Office Use Only***

Date ____________________ Filing No. ____________________ Precinct # ________________

Voter Registration ID ____________________ Staff Initials __________

DECLARATION OF CANDIDACY
PRECINCT COMMITTEE OFFICER

1. I, ____, declare that I am a registered voter residing at:
(PRINT NAME AS YOU ARE REGISTERED TO VOTE)

____ WA ____________
(STREET ADDRESS OR RURAL ROUTE) (CITY) (ZIP)

that I am a registered voter in ________________ precinct, that I declare myself a candidate for the position of Precinct Committee Officer for the ________________________ Party,
(DEMOCRATIC / REPUBLICAN)

to be elected at the Primary Election.

Further, I declare, under penalty of perjury, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.

X ____
(SIGNATURE OF CANDIDATE) (DATE)

Contact Information: ____
(TELEPHONE NUMBER) (EMAIL ADDRESS)

____
(MAILING ADDRESS, IF DIFFERENT FROM RESIDENTIAL ADDRESS)

2. Please print my name on the ballot exactly as follows:

____

NOTICE: This document, upon filing, is a public record.

4/10/09

County auditors may design and use a declaration of candidacy different in form and style from that specified by this rule as long as it contains all of the information required by this rule.

NEW SECTION

WAC 434-215-040 Filing notification. Declarations of candidacy for legislative, court of appeals, and superior court districts located within one county must be filed with the county auditor. All information listed on the declaration of candidacy for these offices must be set electronically to the secretary of state within one business day.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-215-080 Electronic filing—Eligible jurisdictions.

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

WAC 434-219-190 Special election held in conjunction with the presidential primary. If a ((~~special election~~)) presidential primary is scheduled concurrently with ((~~the presidential primary~~)) a special election under RCW 29A.04.321 or 29A.04.330, all measures or candidates for office for which the voters are eligible to vote at that special election shall be listed on the ballot in such a manner that each voter can identify and vote on those candidates or measures separately from the presidential primary candidates.

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

WAC 434-230-015 Ballot format. (1) Each ballot shall specify the county, the date, and whether the election is a primary, special or general.

(2) Each ballot must include instructions directing the voter how to mark the ballot, including write-in votes.

(3) Each ballot must explain, either in the general instructions or in the heading of each race, the number of candidates for whom the voter may vote (e.g., "vote for one").

(4)(a) If the ballot includes a partisan office, the ballot must include the following notice in bold print immediately above the first partisan congressional, state or county office: "READ: Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(b) When the race for president and vice-president appears on a general election ballot, instead of the notice required by (a) of this subsection, the ballot must include the following notice in bold print after president and vice-president but immediately above the first partisan congressional, state or county office: "READ: Each candidate for president and vice-president is the official nominee of a political party. For other partisan offices, each candidate may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(c) The same notice may also be listed in the ballot instructions.

(5) Counties may use varying sizes and colors of ballot cards if such size and color is used consistently throughout a region, area or jurisdiction (e.g., legislative district, commissioner district, school district, etc.). Varying color and size may also be used to designate absentee ballots, poll ballots, or provisional ballots.

(6) Ballots shall be formatted as provided in RCW 29A.36.170. Ballots shall not be formatted as stated in RCW 29A.04.008 (6) and (7), 29A.36.104, 29A.36.106, 29A.36.121, 29A.36.161(4), and 29A.36.191.

(7) Removable stubs are not considered part of the ballot.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-235-020 Voter registration. (1) A uniformed, service, or overseas voter may register to vote by providing:

(a) A voter registration application issued by the state of Washington;

(b) A federal post card application issued by the federal voting assistance program;

(c) A federal write-in absentee ballot issued by the federal voting assistance program;

(d) A national mail voter registration form issued by the election assistance commission; or

(e) An absentee ballot with a valid signature on the return envelope oath.

(2) Pursuant to RCW 29A.40.010, a uniformed, service, or overseas voter does not have be registered in order to request an absentee ballot. Consequently, a uniformed, service, or overseas voter may request a ballot and be registered after the registration deadlines of RCW 29A.08.140((~~, 29A.08.145, and WAC 434-324-075~~)) have passed.

(a) If the voter is not ((~~previously~~)) currently registered, the county auditor must register the voter immediately. The voter must be flagged in the voter registration system accordingly.

(b) ((~~A voter who registers to vote by signing the return envelope of the absentee ballot is not required to provide a driver's license number, Social Security number or other form of identification as outlined in RCW 29A.08.113.~~)) A uniformed, service, or overseas voter must use his or her most recent residential address in Washington, or the most recent residential address in Washington of a family member.

(c) If the county auditor is unable to precinct the voter due to ((~~an~~)) a missing or incomplete residential address on the application, the county auditor must attempt to contact the voter to clarify the application. If, in the judgment of the county auditor, there is insufficient time to correct the application before the next election or primary, the county auditor must issue the absentee ballot as if the voter had listed the county auditor's office as his or her residence. A special pre-

cinct for this purpose may be created. Upon its return, the ballot must be referred to the county canvassing board. The only offices and issues that may be tabulated are those common to the entire county and congressional races based on the precinct encompassing the auditor's office. Such registrations are only valid for the primary or election for which the ballot was issued. If the actual precinct is not determined before the next primary or election, the registration must be canceled.

(d) A voter who registers to vote by signing the return envelope of the absentee ballot is not required to provide a driver's license number, Social Security number or other form of identification as required in RCW 29A.08.107.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-235-030 Absentee voting. (1) A uniformed, service, or overseas voter may request or return an absentee ballot by:

(a) Any manner authorized by WAC 434-250-030;

(b) A federal post card application issued by the federal voting assistance program; or

(c) A federal write-in absentee ballot issued by the federal voting assistance program.

(2) Pursuant to RCW 29A.40.070, absentee ballots issued to registered uniformed, service, or overseas voters must be mailed at least thirty days prior to the election or primary. Requests for absentee ballots received after that day must be processed immediately.

(3) The county auditor may issue an absentee ballot by mail, e-mail, fax, or other means as specifically requested by the voter.

(4) ((~~If a voters' pamphlet for that primary or election is available, the county auditor must include a voters' pamphlet with the absentee ballot.~~)) Pursuant to RCW 29A.40.061, the county auditor shall provide the appropriate web site information with the absentee ballot.

(5) If the county auditor is unable to issue an absentee ballot due to insufficient information, the county auditor must attempt to contact the voter to clarify the request. If the county auditor is unable to obtain sufficient information to issue the absentee ballot, the county auditor must attempt to notify the voter of the reason that the ballot was not issued.

(6) Pursuant to RCW 29A.40.150, ((~~the secretary of state must furnish envelopes and instructions for absentee ballots issued to uniformed, overseas and service voters. Absentee ballots issued to voters in these categories must be mailed postage-free, and~~)) return envelopes must be ((~~marked~~)) printed to indicate that they may be returned postage-free. ((~~For purposes of RCW 29A.40.150, service voters do not include participants of the address confidentiality program established in chapter 40.24 RCW.~~))

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-260-010 Intent. It is the intent of this chapter to provide procedures to be followed in the conduct of election reviews and procedures to be followed for the certification and training of election administrators ((~~and~~)), assistant election administrators, and ((~~the training of~~)) county canvassing board members((~~, and election observers~~)) as required by chapter 29A.04 RCW.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-260-020 Definitions. As used in this chapter:

(1) "Election review" means the process of examining all or a part of a county's election policies and procedures and includes the review of any documentation of those procedures;

(2) "Election review staff" means the person or persons employed by the secretary of state for the purpose of conducting election reviews;

(3) "Special election review" means an election review conducted in a county or counties whenever the unofficial returns of a primary or election indicate that a mandatory recount is likely in a race for the state legislature, congress, or statewide office;

(4) "Preliminary review report of findings and recommendations" means that draft report made by the election review staff to the county auditor and which contains any recommendations made by the review staff and a preliminary conclusion regarding the county's election procedures;

(5) "Draft election review report" means that report made by the election review staff to the county auditor and the designated members of the county canvassing board. The auditor and/or county canvassing board must respond to the draft election review report in writing and may appeal the report to the election administration and certification board;

(6) "Final election review report" means that report made by the election review staff which contains a copy of the recommendations made by the review staff, the response to those recommendations made by the county auditor or the county canvassing board, and a conclusion written by the staff;

(7) "Special review recommendations" means recommendations made by the review staff to the county auditor and the county canvassing board following the conduct of any special review;

(8) "County auditor designee" is that person designated by the county auditor to participate in the review process, pursuant to the provisions of RCW 29A.04.580. Such a designee must be certified as required by chapter 29A.04 RCW.

(9) "Election administrator" means the person or persons appointed by the county auditor to election management positions as required by RCW 36.22.220 and the state director of elections, assistant directors of elections, certification and training program staff members, and any other secretary of state election division employees designated by the director of elections;

(10) "Assistant election administrator" means any person involved in the administration of elections at the state or county level who has been designated as an assistant election administrator by the state director of elections or the county auditor as applicable;

(11) "County canvassing board members" means those officers designated as such pursuant to the provision of chapter 29A.60 RCW;

(12) ((~~"Election observers" means those persons designated by the county political party central committee chair person to observe the counting of ballots and related elections procedures;~~

~~(13)~~)) "Election administration and certification board" means that board created pursuant to the provisions of RCW 29A.04.510;

((~~(14)~~)) (13) "Creditable training hours" means each creditable training hour contemplated in WAC 434-260-230 and shall consist of a minimum of fifty minutes of instructional activity programmed for the purpose of mastering information beneficial to the performance of the duties of administering elections.

AMENDATORY SECTION (Amending WSR 07-09-035, filed 4/11/07, effective 5/12/07)

WAC 434-260-040 Election reviews—Secretary of state to designate. Not later than May 15 the secretary of state shall notify, in writing, the counties selected for an election review and the chairs of the state committees of any major political party. ((~~The notification shall include the date and time the review is scheduled to begin.~~)) Whenever possible, election reviews shall be conducted on dates that are mutually agreeable to the secretary and to the county auditor, except that those parts of the review process dealing with the actual conduct and canvassing of the election itself must be conducted between election day and the certification of the election returns. In designating counties to be reviewed, the secretary shall take into consideration any complaints filed with his or her office pursuant to the provisions of RCW 29A.04.570 (1)(b).

AMENDATORY SECTION (Amending WSR 99-12-004, filed 5/19/99, effective 6/19/99)

WAC 434-260-110 Election review checklist. The secretary of state shall develop an election review checklist, which shall be the basis for any election review and which shall also serve, in whole or in part, as the basis for any special review. The checklist for a regular review shall be provided to ((~~every~~)) the county auditor ((~~and~~)) at least one week prior to the beginning of the reviews. A checklist shall be provided to the chairs of the state central committees of each major political party((~~. The checklist shall be provided to any other person requesting it at actual reproduction cost~~)) at least once per year.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-260-145 Response to draft election review report. The county auditor and/or county canvassing board must respond, in writing, to the draft election review report, listing the steps that will be taken to correct any problems listed in the report. Such response shall be submitted to the review staff not later than ((~~ten~~)) fifteen business days following the issuance of the draft election review report.

Nothing in this section shall prevent the review staff from modifying or amending its recommendations, based on the response received from the county auditor or canvassing board.

Any county auditor or other member of the county canvassing board may appeal the recommendations or the conclusion of any draft election review report to the election administration and certification board. Any appeal must be in writing, must detail specific exceptions made to the draft election review report, and must be filed with the board not later than thirty days following the issuance of the report.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-260-150 Final election review report. As soon as practicable, but in any event not later than ((~~forty-five~~)) thirty days after the issuance of the draft election review report, the review staff shall issue a final election review report. ((~~The final election review report shall be available for public inspection and copying.~~)) The report shall be made to the county canvassing board, and shall include, but not be limited to, the following:

(1) A narrative description of any general observations by the review staff;

(2) A narrative description of any recommendations made by the review staff;

(3) A response by the county auditor or the county canvassing board;

(4) A conclusion by the review staff.

A copy of the final review report shall be provided to the chairperson of the election administration and certification board and a copy shall also be kept on file by the secretary of state.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-260-155 County review follow-up. Within one year following the issuance of the final review report, the secretary of state shall ((~~visit the county before the next state primary or general election to~~)) verify that the county has taken the steps listed in the response to correct the problems noted in the report. If steps have not been taken, the secretary of state shall send a letter to the county canvassing board listing the areas needing correction. A copy of the letter shall be ((~~made a part of the county's review report~~)) provided to the county auditor and kept on file with the secretary of state.

AMENDATORY SECTION (Amending WSR 99-12-004, filed 5/19/99, effective 6/19/99)

WAC 434-260-160 Special review recommendations. After conducting a special review, the review staff shall make any recommendations to the county auditor and the county canvassing board that they deem necessary to minimize the possibilities of any administrative errors being made either prior to or during the conduct of a mandatory recount. Such recommendations shall be made orally to the county auditor not later than twenty-four hours in advance of the conduct of a mandatory recount. A draft report of findings and recommendations shall be issued to the county auditor and the other members of the canvassing board not later than ten ((~~work-~~

~~ing~~)) business days after the completion of the mandatory recount.

AMENDATORY SECTION (Amending WSR 01-11-111, filed 5/21/01, effective 6/21/01)

WAC 434-260-305 Maintaining certification as an assistant election administrator. After attaining initial certification the assistant election administrator is responsible for maintaining his or her certification. Maintenance of certification shall consist of:

(1) Continuous service as an assistant election administrator during the year for which maintenance is required;

(2) Participation in an annual minimum of six hours of continuing education, at least two hours of which shall be on election-specific training. This training may be received at an election oriented workshop or conference sponsored by any of the organizations listed in WAC 434-260-220. In addition to receiving credit for participation in workshops and conferences, assistant election administrators may also receive a maximum of two hours for visiting other county election departments for training purposes and for any other training approved by the elections administration and certification board.

AMENDATORY SECTION (Amending WSR 06-02-028, filed 12/28/05, effective 1/28/06)

WAC 434-260-310 ((~~Application for initial certification and~~)) Maintenance of certification. The secretary of state shall make available certification application and maintenance forms to the county auditors. Applications to maintain certification must be submitted to the secretary of state by the county auditor by January ((~~1~~)) 31 each year.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-260-120	Adoption of election review checklist.
WAC 434-260-165	Response to draft special review recommendations.
WAC 434-260-170	Distribution of special review recommendations and response.
WAC 434-260-330	Training program for election observers.
WAC 434-260-340	Training video tapes available.

AMENDATORY SECTION (Amending WSR 09-12-078, filed 5/29/09, effective 6/29/09)

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

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

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

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

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

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

(b) A mark witnessed by two people.

(6) "Overvote" is votes cast for more than the permissible number of selections allowed in a race or measure. An overvoted race or measure does not count in the final tally of that race or measure. Example of an overvote would be voting for two candidates in a single race with the instruction, "vote for one."

(7) "Undervote" is no selections made for a race or measure.

(8) "Election observers" means those persons designated by the county political party central committee chairperson to observe the counting of ballots and related elections procedures.

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

WAC 434-261-086 Statewide standards on what is a vote. (1) Pursuant to 42 U.S.C. § 15481(a)(6) and *Bush v. Gore*, 531 U.S. 98 (2000), the following standards determine whether irregular marks on a ballot constitute a valid vote that may be counted.

(a) Target area. Any marks made in the target area shall be counted as valid votes, with the exceptions below. Any marks made outside of the target area ((~~will only~~)) shall be valid only if they fulfill the consistent pattern requirements in (b) of this subsection. Marks that trace or outline the target area are not valid votes unless they fulfill the consistent pattern requirements in (b) of this subsection. Exceptions:

(i) Obvious stray marks.

(ii) Hesitation marks.

(iii) Parts of written notes.

(iv) Corrected votes, ((~~according to the instructions printed on the ballot or written instructions provided by the~~

voter, which may include arrows, circles, and written words)) as described in (c) and (e) of this subsection.

(b) Consistent pattern. Marks made outside of the target area shall only be counted as valid votes if a consistent pattern of marks is used throughout the whole ballot. This means that all races and issues for which the voter has indicated a choice must have the same mark. If some marks are in the target area and some are not, but the same *type* of mark is used in a consistent pattern throughout the whole ballot, ((they)) all such marks shall ((all)) be counted as valid votes. If the marks strike through candidate names or ballot measure responses in a consistent pattern throughout the whole ballot, all such marks shall be counted as valid votes.

(c) Corrected votes.

(i) If the voter has followed the instructions for correcting a vote, the stricken vote shall not be counted.

(ii) If a second choice is marked, it shall be counted as a valid vote((;

(ii))). If a second choice is not marked, the race shall be considered undervoted((;)).

(iii) If the voter has marked two target areas and placed an 'X' over one of the marked areas, the choice without the 'X' shall be counted as a valid vote.

(d) Not a correction. If the voter has both marked a choice correctly and ((*also*)) placed an 'X' in the same target area, but has not marked a second target ((area as if attempting to correct the vote)), it shall be counted as a valid vote. Changes made by the voter to wording printed on the ballot will not invalidate votes cast for that race or measure.

(e) Written instructions. If the voter has attempted to correct a vote and provides written instruction ((on)) regarding his or her intent, it shall be counted as the voter instructed. Written instruction includes words, circles, or arrows.

(f) Identifying marks. ((Ballots that have a legible signature, address sticker or address stamp anywhere on the ballot, other than a write-in line, must be rejected. Initials or illegible signatures)) Marks identifying the voter, such as initials, signatures, or addresses do not disqualify a ballot.

(g) Overvotes. Races or issues that have more target areas marked than are allowed are overvotes. No votes for that race or issue shall be counted. An exception is write-in votes for a candidate already printed on the ballot, as provided in (i) of this subsection.

(h) ((No bubble.)) Write-in: Blank target area. If a name is written on a write-in line, it shall be counted as a valid write-in vote regardless of whether the corresponding target area is marked.

(i) Write-in: Already on the ballot. If the name of a candidate who is already printed on the ballot is written in, that vote shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate. This applies even if both target areas are marked or no target areas are marked.

(j) Write-in: Name variations. If a write-in vote is cast for a *declared* write-in candidate using a commonly recognizable nickname or spelling variation, it shall be counted as a valid vote for that candidate.

(k) ((Mystery)) Write-in: Blank line. If the write-in target area is marked, but no name is written on the line, it shall not be counted as a valid vote, even though it may be tallied as a write-in vote by the tabulation system.

(l) ((Mystery)) Write-in ((with a)): Blank line and candidate. If a candidate's target area is marked, *and* the write-in target area is marked but no name is written on the line, it shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate.

(m) Write-in: Name combinations. If a write-in vote is cast for a candidate with a combination of names already on the ballot, it shall NOT be counted as a vote for either printed candidate, but rather shall be counted as a valid vote for the name as written.

(n) Write-in: Overvotes. If a candidate's target area is marked and something other than that candidate's name is written in the write-in response area, it shall be counted as an overvote and not a valid vote for any candidate. This applies whether or not the target area for the write-in is marked.

(o) Write-in: Not eligible. A write-in vote for a race ((that does not appear on the ballot is for a race on which the voter is not eligible to vote, and)) not appearing on the voter's ballot shall not be counted.

Exception: If a provisional ballot has been cast and the voter has written in an office or measure that is not on the ballot, that vote shall be counted if it is determined, based on the voter's registration, that he or she is eligible to vote for that office or measure.

(p) Write-in: Vote in the wrong place. A write-in vote for a race appearing elsewhere on the ballot shall be counted as a valid vote, as long as all other requirements are fulfilled and the office, position number and political party, if applicable, are clearly indicated.

(q) Messy marks. When otherwise valid votes marked for a candidate partially extend into the response area of another candidate, it shall be counted as a vote if most of the mark is in the proper area and intent can easily be discerned.

(r) Pattern of partisan voting. Voter intent in any single contest shall not be determined based on a pattern of partisan voting on the ballot.

(s) Anything else. Voter intent on ((any)) questionable marks not ((explicitly falling within the parameters of)) covered by the rules in this manual must be determined by county canvassing boards((, operating under)) according to all applicable laws of the state of Washington and the ((rules of the)) canvassing board manual. Where more than one rule may apply, the county canvassing board has authority to determine which rule is most appropriate.

(2) The secretary of state shall publish an illustrated version of these standards in each optical scan and digital scan voting system used in the state. The secretary of state shall distribute the illustrated version to each county canvassing board and post it on the web site.

(3) The secretary of state shall periodically review and update the manual as necessary, and seek input from county canvassing boards and other interested parties to ensure that the standards remain current and comprehensive.

AMENDATORY SECTION (Amending WSR 09-03-110, filed 1/21/09, effective 2/21/09)

WAC 434-264-020 Recount—Restrictions. All questions of voter registration, voter qualification, and voter intent previously considered during the original count shall

not be reconsidered during a recount ((~~of the original ballots~~)).

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

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

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

WAC 434-324-005 Definitions. As used in this chapter:

(1) "Active status" means a designation assigned to voters with complete voter registration records signifying that the voter is eligible to vote.

(2) "Applicant" means a person who has applied, or is applying, to become a registered voter in the state of Washington.

(3) "Auditor" means "county auditor" and means the county auditor in a noncharter county or the officer in a charter county, irrespective of title, having the overall responsibility to maintain voter registration to conduct state and local elections.

(4) "County election management system" means software used by county auditors to manage computer files pertaining to elections and includes, but is not limited to, voter registration records.

(5) "County registration number" means an identifier assigned to each registered voter by the county auditor.

(6) ((~~"Motor voter data" means computer information concerning an applicant that is common to both driver's license and voter registration records. This includes name, address, date of birth, sex, the date of the application, the location of the office where the application was submitted, the applicant's driver's license number, the applicant's Social Security number (if provided), and the applicant's previous driver's license number if the applicant has changed names.~~

~~(7)~~)) "Electronic registration" means the electronic submission of voter registration applications.

((~~(8)~~)) (7) "Extraction," as used in this chapter, means the creation of an electronic list of specific information from the entire official statewide voter registration data base.

((~~(9) "Late registration absentee ballot" means an absentee ballot cast by a voter who registered pursuant to RCW 29A.08.145 after the close of the regular registration period.~~

~~(10) "Licensing agent" or "agent" means the employees serving the public at driver's licensing offices operated by the department of licensing.~~

~~(11)~~)) (8) "New county" means a county in Washington state that a registered voter is moving to from another county within Washington state.

((~~(12)~~)) (9) "Previous county" means a county in Washington state that a registered voter lived in prior to moving to a new county.

((~~(13)~~)) (10) "Pending status" means a voter registration record is not yet complete, and the applicant is not yet a registered voter.

((~~(14)~~)) (11) "Pending cancellation" means the registered voter's registration record must be canceled within a specified amount of time and he or she is not eligible to vote.

((~~(15)~~)) (12) "Registered voter" means any elector who has completed the statutory registration procedures established by Title 29A RCW.

((~~(16)~~)) (13) "Secretary" means secretary of state or any other person authorized by the secretary of state to act on his or her behalf.

((~~(17)~~)) (14) "State registration number" means a unique identifier assigned to each registered voter by the state, pursuant to RCW 29A.08.651.

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

WAC 434-324-008 Review of county election management systems. (1) Each auditor must notify the secretary of the intent to purchase or install a new county election management system. The county election management system must be approved by the secretary to ensure it meets the technical specifications promulgated by the secretary to interface with the official statewide voter registration data base. This approval must be obtained prior to the purchase or installation of the system.

(2) A county election management system must have the capability to:

(a) Store information required in WAC 434-324-010;

(b) Generate a list of registered voters in a county and their registration statuses;

(c) Track information specific to single elections, including the issuance and return of vote by mail and absentee ballots;

(d) Scan voter registration forms; and

(e) Store and provide access to images of signatures of registered voters.

(3) A county's election management system must conform to all of the requirements of state law and of these regulations, and if it does not, the secretary must notify the auditor of the nature of the nonconformity. The auditor must correct the nonconforming aspects of the county election management system and provide to the secretary such evidence of the change or changes in the system as ((~~that office~~)) the secretary may deem appropriate.

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

WAC 434-324-010 County election management system—Applications for voter registration. (1) Each auditor must enter and maintain voter registration records in the official statewide voter registration data base by using a county election management system. Each record must contain at least the following information from the voter registration application in a format compatible with the official statewide voter registration data base:

(a) Name;

(b) Complete residential address;

(c) Complete mailing address;

(d) County registration number;

(e) State registration number;

(f) Gender;

(g) Date of birth;

(h) Date of registration;

(i) Applicable district and precinct codes;

(j) ((~~Dates upon~~)) Elections in which the individual has voted, if available;

(k) Washington state driver license number, Washington state identification card number, and/or the last four digits of the applicant's Social Security number; and

(l) A scanned image file (format .tiff) of the applicant's signature.

(2) In the case of an applicant who ((~~applies for voter registration by mail and sends~~)) provides a copy of one of the alternative forms of identification listed in RCW ((~~29A.08.113~~)) 29A.08.107 for registration purposes, the auditor must either maintain a scanned image of the identifying document or make a notation in the registration record indicating which alternative form of identification was provided to the auditor. Pursuant to RCW 29A.08.710, a scanned image of the identification is not available for public inspection or copying.

(3) Upon entry of an applicant's information, the auditor must check for duplicate entries.

(4) Each auditor must have a quality assurance program to maintain accurate data entry into the statewide voter registration data base.

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

WAC 434-324-040 Data transfer to secretary and registration status. (1) Following entry into the county election management system, all information in the application for voter registration must be transferred electronically to the secretary for identity verification. The secretary must assign the application a state identification number.

(2) If the applicant provided a Washington driver's license number or state identification card number, the applicant's identity is verified with the department of licensing. If the applicant provided the last four digits of his or her Social Security number, the applicant's identity is verified with the Social Security Administration through the department of licensing.

(3) If the applicant's identity is not verified in the computerized verification process, the secretary must notify the county election management system accordingly. The county auditor must first confirm the accuracy of the information entered in the county election management system from the voter registration application. The county auditor must correct any errors and again attempt to verify the applicant's identity automatically.

(4) If the applicant provided a Washington driver's license number or state identification number and the identity is not verified in the computerized verification process, the information on the application may be considered a "match" if the number on the application exactly matches a number issued by the department of licensing, and it is clear to the county auditor that the information on the application describes the person on the department of licensing record. Reasons that the county auditor may conclude that the information on the application describes the person on the department of licensing record include, but are not limited to, the following:

(a) The first, middle, or last name on the application is a variation of the first, middle, or last name in the department of licensing record;

(b) The first, middle, or last name has transposed letters or another typographical error on the application or in the department of licensing record;

(c) The first and last names are transposed on the application or in the department of licensing record;

(d) The first and middle names are transposed on the application or in the department of licensing record;

(e) The applicant has a compound or hyphenated name which is not accurately or completely set forth on the application or in the department of licensing record;

(f) The first or middle name is abbreviated with initials on the application or in the department of licensing record;

(g) The last name on the application and the last name in the department of licensing record are not the same but, based on other information, the county auditor concludes that one of the names is a maiden name or a former name of the same person; or

(h) The month and day of the applicant's date of birth are transposed on the application or in the department of licensing record.

If the county auditor concludes that the information on the application describes the person on the department of licensing record, the county auditor must override the computerized failure to verify and must note the reason it is considered a match. The county auditor must place the applicant on the official list of registered voters in active status.

(5) If the applicant's identity is not verified in the computerized verification process, either because the information did not match or because the applicant claimed he or she did not have a driver's license or Social Security number, the applicant must be provisionally registered pursuant to RCW 29A.08.107. The registration record must be flagged as still requiring verification of the applicant's identity before the applicant's ballot may be counted.

AMENDATORY SECTION (Amending WSR 09-12-078, filed 5/29/09, effective 6/29/09)

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

(2) If, after these attempts, the county auditor is still unable to verify the applicant's identity, the county auditor must send the applicant an ((~~identity verification~~)) identification notice that includes a postage prepaid, preaddressed form

by which the applicant may verify or send information. The ((~~identity verification~~)) identification notice must include:

(a) A statement explaining that because the applicant's identity cannot be verified with the information provided on the application, he or she is provisionally registered to vote.

(b) A statement explaining that if this information is not provided, the applicant's ballot will not be counted.

(c) A statement explaining that federal law requires the applicant to provide a copy of one of the following forms of identification either before or when they vote:

(i) A Washington driver's license or state ID card;

(ii) The last four digits of his or her Social Security number;

(iii) Valid photo identification;

(iv) A valid enrollment card of a federally recognized tribe in Washington;

(v) A current utility bill, or a current bank statement;

(vi) A current government check;

(vii) A current paycheck; or

(viii) A government document, other than a voter registration card, that shows both the registrant's name and current address.

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

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

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

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

WAC 434-324-085 Acknowledgment notice ((~~of new registration or transfer~~)). (1) The auditor must send an ((~~acknowledgement~~)) acknowledgment notice to an individual by nonforwardable, address correction requested mail if an individual:

(a) Registers to vote;

(b) Transfers his or her registration record within the county;

(c) Transfers his or her registration record from another county within Washington state; or

(d) Changes from one precinct to another because of a change in precinct boundaries.

(2) The ((~~notice must acknowledge that the request of the individual has been processed and~~)) acknowledgment notice must include:

(a) Voter's full name;

(b) Mailing address;

(c) County name;

(d) Precinct name and/or number; and

(e) The date the voter registered.

AMENDATORY SECTION (Amending WSR 06-11-041, filed 5/10/06, effective 6/10/06)

WAC 434-324-090 Cancellation due to death—Process ((~~and notification~~)). (1) An auditor must cancel the voter registration records of a deceased voter as authorized by RCW 29A.08.510.

(2) In addition to comparing a list of deceased persons prepared by the registrar of vital statistics with voter registration records pursuant to RCW 29A.08.510, the secretary may also compare voter registration records with deceased persons information from the Social Security Administration. Comparisons must be conducted on a monthly basis. For any potential matches identified through the registrar of vital statistics or Social Security Administration, the secretary must confirm that the dates of birth are identical. The secretary must generate a county list of matching names, identified as potentially deceased voters, and ((~~deliver it to the~~)) provide the names to each auditor electronically. The auditor must review the list within five days and approve or reject the proposed cancellations. The secretary may assist the auditor with this review.

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

WAC 434-324-095 Cancellation due to death—Forms ((~~to cancel voter registration~~)). Pursuant to RCW 29A.08.510, the auditor must ((~~maintain a supply of,~~)) furnish to the public upon request((~~, and include in the supplies sent to each precinct for use by the precinct election officials,~~)) forms for the purpose of permitting registered voters to request that the voter registration record of any person, whom they personally know to be deceased, be canceled.

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

WAC 434-324-106 Felony conviction—Secretary's quarterly comparisons. (1) Once a quarter, the secretary must perform comparisons with the department of corrections, as authorized in RCW 29A.08.520, to search for registration records of felons who are under the ((~~legal custody~~)) authority of the department of corrections due to an adult felony conviction. The secretary must create a list of felon voters by matching the first name, last name, date of birth, and other identifying information.

(2) For each felon voter, the secretary must change the voter's registration status to "pending cancellation." This change of status must be entered prior to the first extraction or pull of absentee or mail ballots. The official statewide voter registration data base must automatically notify the county election management system of the change. Voters with pending cancellation status must not be included in a poll book or be mailed an absentee or mail ballot.

(3) The secretary must mail a notification letter to each felon whose status is pending cancellation. The notification

letter must be sent to the felon's last known registration mailing address and to the department of corrections indicating that his or her voter registration is about to be canceled. The letter must contain language notifying the felon that he or she ((may)) must contact the auditor's office to ((correct the information or request a hearing if the felon status is not correct or the right to vote has been restored)) contest the pending cancellation. The letter must also inform the felon that he or she may request a provisional ballot for any pending elections. The notification letter must ((contain substantially the following language:

Dear . . . . ,

According to the Washington state Constitution, a person who has been convicted of a felony is disqualified from voting until the right has been restored. State law requires that the right be restored only after all conditions of all felony sentences have been fulfilled or by a certificate of restoration issued by the governor.

Based on name, date of birth, and other identifying information maintained in state voter registration records and department of corrections records, you have been found ineligible to vote due to a felony conviction. The felony conviction record information includes:

Felon's name
Felon's date of birth
County of conviction
Case/cause number

Your voter registration is pending cancellation. If you would like to dispute this finding, you have 30 days from the postmark date on the envelope to provide documentation that this is incorrect or request a hearing.You must contact:

County auditor
County auditor's address
County auditor's phone number

You may also request a provisional ballot for any election scheduled to occur prior to the resolution of your registration status.

If you do not contact the county elections department within 30 days to dispute the finding, your voter registration will be canceled.

Voting before the right is restored is a class C felony. The right to vote may be restored by proof of one of the following for each felony conviction:

1. A certificate of discharge, issued by the sentencing court;

2. A court order restoring civil right, issued by the sentencing court;

3. A final discharge and restoration of civil rights, issued by the indeterminate sentence review board; or

4. A certificate of restoration, issued by the clemency and pardons board; or

5. A pardon, issued by the governor.

Further information about how to get the right to vote restored may be found at www.secstate.wa.gov/elections/faq.aspx.

Sincerely,

Elections Division
Office of the Secretary of State

The secretary must provide an explanation of the requirements for restoring the right to vote.)) include:

(a) An explanation that a felon loses the right to vote until the right is restored;

(b) For a conviction in a Washington state court, the right to vote is restored as long as the felon is not serving a sentence of confinement or subject to community custody with the department of corrections;

(c) The reason the felon has been identified as ineligible to vote;

(d) An explanation that the felon's voter registration will be canceled due to the felony conviction; and

(e) How to contest the pending cancellation. The secretary must send to each auditor the voter registration and conviction information for each matched felon registered in that county.

(4) If the felon fails to contact the auditor within thirty days, the felon's voter registration must be canceled. If an election in which the felon would otherwise be eligible to vote is scheduled to occur during the thirty days, the felon must be allowed to vote a provisional ballot.

(5) The felon's eligibility status may be resolved and the pending cancellation status reversed without scheduling a hearing if the felon provides satisfactory documentation that the felon's civil rights have been restored, the conviction is not a felony, the person convicted is not the registered voter, or the felon is otherwise eligible to vote. The auditor must notify the voter, retain a scanned copy of all documentation provided, and notify the secretary. The secretary must flag the voter registration record to prevent future cancellation ((based on the same felony conviction)) on the same basis.

(6) If the felon requests a hearing, the auditor must schedule a public hearing to provide the felon an opportunity to dispute the finding. In scheduling the hearing, the auditor may take into account whether an election in which the felon would otherwise be eligible to vote is scheduled. The notice must be mailed to the felon's last known registration mailing address and must be postmarked at least seven calendar days prior to the hearing date. Notice of the hearing must also be provided to the prosecuting attorney.

(7) The auditor must provide the prosecuting attorney a copy of all relevant registration and felony conviction information. The prosecuting attorney must obtain documentation, such as a copy of the judgment and sentence, or custody or supervision information from the department of corrections, sufficient to prove ((the felony conviction)) by clear and convincing evidence that the felon is ineligible to vote. It is not necessary that the copy of the document be certified.

(8) If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility in time to hold a hearing prior to certification of an election in which the felon would otherwise be eligible to vote, the prosecuting attorney must request that the auditor dismiss the current cancellation proceedings. The auditor must reverse the voter's pending cancellation status, cancel the hearing, and notify the voter. A provisional ballot voted in the pending

election must be counted if otherwise valid. The prosecuting attorney must continue to research the felon's voting eligibility. If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility prior to the next election in which the felon would otherwise be eligible to vote, the prosecuting attorney must notify the auditor. The auditor must notify the secretary, who must flag the voter registration record to prevent future cancellation ((~~based~~)) on the same ((~~felony conviction~~)) basis.

(9) A hearing to determine voting eligibility is an open public hearing pursuant to chapter 42.30 RCW. If the hearing occurs within thirty days before, or during the certification period of, an election in which the felon would otherwise be eligible to vote, the hearing must be conducted by the county canvassing board. If the hearing occurs at any other time, the county auditor conducts the hearing. Before a final determination is made that the felon is ineligible to vote, the prosecuting attorney must show by clear and convincing evidence that the voter is ineligible to vote due to a felony conviction. The felon must be provided a reasonable opportunity to respond. The hearing may be continued to a later date if continuance is likely to result in additional information regarding the felon's voting eligibility. If the felon is determined to be ineligible to vote due to felony conviction and lack of rights restoration, the voter registration must be canceled. If the voter is determined to be eligible to vote, the voter's pending cancellation status must be reversed and the secretary must flag the voter registration record to prevent future cancellation ((~~based~~)) on the same ((~~felony convictions~~)) basis. The felon must be notified of the outcome of the hearing and the final determination is subject to judicial review pursuant to chapter 34.05 RCW.

(10) If the felon's voter registration is canceled after the felon fails to contact the auditor within the thirty day period, the felon may contact the auditor at a later date to request a hearing to dispute the cancellation. The auditor must schedule a hearing in substantially the same manner as provided in subsections (6) through (9) of this section.

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

WAC 434-324-113 ((~~Voter registration list maintenance.~~)) Lacking the qualifications necessary to vote. ((~~In addition to conducting searches to identify felons, duplicate registration records, and deceased voters as outlined in this chapter, the following applies:~~

~~(1) Each even-numbered year, maintenance of the voter registration list, as required by RCW 29A.08.605, must be completed ninety days prior to the date of the primary in that year. If a county conducts all elections by mail and receives address change information from each ballot mailing, additional list maintenance is not required. The voter registration list maintenance program is complete upon mailing the required notices. Counties have discretion to also run the voter registration list maintenance in odd-numbered years.~~

~~(2)~~)) (1) If, at any time, the secretary finds that a registered voter does not possess the qualifications required by state law to exercise his or her right to vote for reasons not listed in this chapter, the secretary must refer such information to the appropriate county auditor and county prosecutor.

((~~(3)~~)) (2) If, at any time, the auditor finds that a registered voter does not possess the qualifications required by state law to exercise his or her right to vote for reasons not listed in this chapter, the auditor must notify the county prosecutor.

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

WAC 434-324-130 Lists of registered voters for the public. (1) Pursuant to the provisions of RCW 29A.08.710, 29A.08.720 and 29A.08.740, the auditor or secretary must furnish to any person, upon request, the current list of registered voters at actual reproduction cost. The auditor or secretary may also provide a list of canceled voters. Auditors may combine these lists. The auditor or secretary may, upon request, select names and addresses from the voter registration records on the basis of the precinct code, the district code, date of registration, or voting history of each individual voter in that portion of the voter registration file. Such lists must contain the information prescribed in RCW 29A.08.710 for each registered voter and may be in ((~~the form of computer printouts, microfilm duplicates, or electronic media copies of such information~~)) printed or electronic form.

(2) Such voter registration lists may not be used for commercial purposes. The person making the request must be provided a copy of RCW 29A.08.740.

AMENDATORY SECTION (Amending WSR 06-11-041, filed 5/10/06, effective 6/10/06)

WAC 434-324-165 Disaster recovery and security plans. The secretary must maintain disaster recovery and security plans for the voter registration data base. A copy of the plans must be stored offsite. Both plans are exempt from public disclosure pursuant to RCW ((~~42.17.310 (1)(ddd)~~)) 42.56.420.

((~~MOTOR VOTER~~))

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-324-075	Timelines for new and transfer registrations.
WAC 434-324-100	Felony conviction—Notice from county clerk.
WAC 434-324-190	Voter registration at driver's license facilities.
WAC 434-324-200	Registration procedure.
WAC 434-324-210	Oaths and warnings.
WAC 434-324-220	Transfer of information from the department of licensing to the secretary of state.

WAC 434-324-230	Weekly transmittal of data from the department of licensing to the secretary of state.
WAC 434-324-240	Transfer of data, and reports from the secretary of state to the county auditors.
WAC 434-324-250	Transfer of voter registration forms to counties.
WAC 434-324-260	Processing records received from the secretary of state.

WSR 09-15-025
WITHDRAWAL OF PROPOSED RULES
GAMBLING COMMISSION
(By the Code Reviser's Office)
[Filed July 7, 2009, 8:20 a.m.]

WAC 230-15-135, proposed by the gambling commission in WSR 09-01-067 appearing in issue 09-01 of the State Register, which was distributed on January 7, 2009, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 09-15-026
WITHDRAWAL OF PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION
(By the Code Reviser's Office)
[Filed July 7, 2009, 8:20 a.m.]

WAC 392-121-108, proposed by the superintendent of public instruction in WSR 09-01-092 appearing in issue 09-01 of the State Register, which was distributed on January 7, 2009, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 09-15-028
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed July 7, 2009, 9:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-07-057.

Title of Rule and Other Identifying Information: WAC 308-63-010 General definitions, 308-63-090 Vehicle wrecker—Records and procedures for monthly reports, 308-56A-500 Definitions, and 308-56A-460 Destroyed or wrecked vehicle—Reporting—Rebuilt.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on August 27, 2009, at 10:00 a.m.

Date of Intended Adoption: September 22, 2009.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48205, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-7821 or 902-7822.

Assistance for Persons with Disabilities: Contact Dale R. Brown by August 26, 2009, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to update the rule to comply with the "market value threshold amount" required in RCW 46.12.005.

Reasons Supporting Proposal: To make the market value threshold amount comply with the law.

Statutory Authority for Adoption: RCW 36.12.005 [46.12.005].

Statute Being Implemented: RCW 46.12.005.

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

Name of Proponent: None.

Name of Agency Personnel Responsible for Drafting: Dale Brown, 1125 Washington Street S.E., Olympia, WA, (360) 902-4020; Implementation and Enforcement: Jennifer Dana, 1125 Washington Street S.E., Olympia, WA, (360) 902-3673.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

July 7, 2008
Mykel D. Gable
Assistant Director
Driver and Vehicle Services

AMENDATORY SECTION (Amending WSR 04-08-080, filed 4/6/04, effective 5/7/04)

WAC 308-56A-460 Destroyed or wrecked vehicle—Reporting—Rebuilt. (1) **What are total loss, destroyed, salvage, and wrecked vehicles?** For the purposes of this section:

(a) A total loss vehicle is one whose destruction has been reported to the department as described in RCW 46.12.070 by an insurer (insurance companies and self-insurers as described in RCW 46.29.630);

(b) A destroyed vehicle is one whose destruction has been reported to the department as described in RCW 46.12.070 by the vehicle's owner;

(c) A salvage vehicle as defined in RCW 46.12.005;

Note: When used in this section, the terms "destroyed" and "destroyed vehicle" include total loss, destroyed, and salvage vehicles.

(d) A wrecked vehicle as defined in RCW 46.80.010(6).

Note: A vehicle may be considered destroyed or wrecked when the evidence of ownership is a salvage certificate/title, insurance company bill of sale, or wrecker bill of sale from any jurisdiction, or when the evidence of ownership indicates the vehicle may be a destroyed vehicle not reported to the department.

(2) **How are vehicles reported to the department as total loss, destroyed, salvage, or wrecked?**

(a) Insurers may report total loss vehicles to the department:

(i) Electronically through the department's on-line reporting system. Insurers must destroy ownership documents for a vehicle reported this way; or

(ii) By submitting the certificate of ownership or affidavit in lieu of title indicating the vehicle is "DESTROYED"; or

(iii) By submitting a completed total loss claim settlement form (TD 420-074).

Note: Reports of total loss vehicles must include the insurer's name, address, and the date of loss.

(b) Registered or legal owners report a vehicle as destroyed by submitting the certificate of ownership or affidavit in lieu of title indicating the vehicle is "DESTROYED," and must include the registered owner's name, address, and date of loss.

(c) Licensed wreckers report wrecked vehicles as required in RCW 46.80.090.

(d) For vehicles six through twenty years old a statement whether or not the vehicle meets the market value threshold amount as defined in RCW 46.12.005 is also required.

(3) **What is the current market value threshold amount?** The current market value threshold amount is six thousand seven hundred ninety dollars.

(4) **How is the market value threshold amount determined?** Using the current market value threshold amount described in RCW 46.12.005 each year the department will add the increased value if the increase is equal to or greater than fifty dollars.

(5) **What if the "market value threshold amount" is not provided as required?** If the market value threshold amount is not provided when required, the department would treat the report of destruction as if the market value threshold as described in RCW 46.12.005 has been met. The certificate of ownership will be branded according to WAC 308-56A-530**.**

(((4))) (6) **What documentation is required to obtain a certificate of ownership after a vehicle is destroyed?** After a vehicle has been reported destroyed or wrecked and is rebuilt, you must submit the following documentation to the department in order to obtain a new certificate of ownership:

(a) Application for certificate of ownership as described in RCW 46.12.030;

(b) Certificate of vehicle inspection as described in WAC 308-56A-150;

(c) Bill of sale from the insurer, owner, or wrecker who reported the vehicle's destruction to the department.

(i) Bills of sale from insurers must include a representative's signature and title of office;

(ii) Bills of sale from insurers and wreckers do not need to be notarized;

(iii) Bills of sale from owners shown on department records must be notarized or certified;

(iv) A bill of sale is not required when owners shown on department records retain a destroyed vehicle and apply for a new certificate of ownership;

(v) Releases of interest from lien holders are not required since liens are presumed to have been satisfied at the time of settlement of the claim.

(d) Odometer disclosure statement, if applicable.

(((5))) (7) **What is required of a Washington licensed vehicle dealer prior to selling a destroyed or wrecked vehicle?** Except as permitted by RCW 46.70.101 (1)(b)(viii), before a dealer may sell a destroyed or wrecked vehicle under their Washington vehicle dealer license, the dealer must:

(a) Rebuild the vehicle to standards set by the state of Washington or the federal government pertaining to the construction and safety of vehicles; and

(b) Obtain a vehicle inspection by the Washington state patrol; and

(c) Apply for and receive a certificate of ownership for the vehicle, issued in the name of the vehicle dealer.

(((6))) (8) **Once a destroyed or wrecked vehicle is rebuilt, do the license plates remain with the vehicle?** Whether or not the license plates remain with the vehicle depends on the circumstance:

(a) Standard issue license plates may remain with a destroyed vehicle unless they are severely damaged or the vehicle was issued a department temporary permit described in WAC 308-56A-140;

(b) Replacement license plates are required for wrecked vehicles since Washington licensed wreckers are required by WAC 308-63-070 to remove them;

(c) Special license plates may remain with or be transferred to a destroyed or wrecked vehicle;

(d) Applicants may retain the current license plate number as provided for in RCW 46.16.233, unless the vehicle was issued a department temporary permit as described in WAC 308-56A-140.

(((7))) (9) **Will the certificate of ownership or registration certificate indicate "WA REBUILT"?** Salvage or wrecked vehicles meeting the criteria described in WAC 308-56A-530 will be branded "WA REBUILT."

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

WAC 308-56A-500 Definitions. The following definitions apply to terms used in chapters 46.12 and 46.16 RCW and chapter 308-56A WAC:

(1) "Affidavit in lieu of title" is a written declaration confirming the certificate of ownership((, registration certificate, validation tab are)) is unavailable, lost, stolen, destroyed or mutilated. The affidavit in lieu of title may be used to release interest in the vehicle. The signature of the owner completing the affidavit in lieu of title must be notarized or certified as described in WAC 308-56A-270.

(2) "Affidavit of loss" is a written statement confirming the certificate of ownership, registration certificate, validation tab or decal has been lost, stolen, destroyed or mutilated. The affidavit of loss release of interest form may be used to release interest in the vehicle and transfer gross weight license for that vehicle to a new owner. The signature of the owner completing the affidavit of loss release of interest must be notarized or certified as described in WAC 308-56A-270.

(3) "Affixed" means attached.

(4) "Brands" means a permanent notation on the electric vehicle record which prints on the certificate of ownership and vehicle registration certificate that records a circumstance or condition involving a vehicle.

(5) "Brands incident date" is the date that a brand was first applied to a vehicle. For states/jurisdictions participating in the National Motor Vehicle Title Information System (NMVTIS), it's the date the brand was first reported. For all ((~~other~~)) states((~~/~~)) or jurisdictions, it is established by using the date the current title was issued. Brands on Washington records prior to the effective date of this rule will reflect a brand incident date equal to the date the last Washington certificate of ownership was issued.

(6) "Certificate of ownership" (also referred to as "certificate of title" or "title") is a legal document indicating proof of ownership and will establish a fact or sustain a judgment unless contradictory evidence is produced. A certificate of ownership may be a document other than a title when a title document is not issued by a jurisdiction. For example, for Canadian vehicles, the certificate of ownership is the registration.

(7) "Comment" means an indication on the certificate of ownership, vehicle title((~~/~~)) or registration application or vehicle registration certificate that relates to tax liability, type of ownership, title transaction type or a previous condition of the vehicle.

(8) "Commercial parking company" means any business directly engaged in providing vehicle parking upon property owned or controlled by the business and approved for public parking of vehicles.

(9) "Current license plate registration" means the current registration or one that has been expired less than one year.

(10) ((~~"Declaration in lieu of title" is a written statement confirming the certificate of ownership, registration certificate, validation tab is unavailable, lost, stolen, destroyed, or mutilated. The declaration in lieu of title may be used to release interest in the vehicle. The signature of the owner completing the declaration in lieu of title must be signed under penalty of perjury, as described in WAC 308-56A-270.~~

~~(11) "Declaration of loss" is a written statement confirming the certificate of ownership, registration certificate, validation tab or decal has been lost, stolen, destroyed, or mutilated. The declaration of loss release of interest form may be used to release interest in the vehicle and transfer gross weight license for that vehicle to a new owner. The signature of the owner completing the declaration of loss release of interest must be signed under penalty of perjury, as described in WAC 308-56A-270.~~

~~(12)~~)) "Department" means the same as described in RCW 46.04.162.

((~~(13)~~)) (11) "Department temporary permit" is a permit issued temporarily in lieu of permanent registration and license plates when required documentation is unavailable.

((~~(14)~~)) (12) "Electronic/electronically filing" is ((~~the use of an electronic~~)) a method to transmit information to the department that may include, but is not limited to, the use of the internet ((~~and~~)) or facsimile.

((~~(15)~~)) (13) "Involuntary divestiture" means a change in vehicle ownership without the registered owner's involvement.

((~~(16)~~)) (14) "Joint tenancy with rights of survivorship" (JTWROS) means two or more people who own a vehicle in joint tenancy with the right to own individually if one of them dies.

((~~(17)~~)) (15) "Jurisdiction code" means an abbreviation ((~~assigned~~)) used by the department ((~~generally based on the U.S. Postal Service designation~~)) that indicates state, province, district, or country.

((~~(18)~~)) (16) "Legal owner" means the same as described in RCW 46.04.270.

((~~(19)~~)) (17) "Lien holder" means a person or entity that has a legal right or interest in another's property until a debt or duty that it secures is satisfied.

((~~(20)~~)) (18) "Market value threshold amount" is the amount assigned to vehicles which includes a motor vehicle having a designation that is at least six years before the calendar year in which the vehicle was wrecked, destroyed, or damaged. For vehicles six through twenty years old a statement whether or not the vehicle meets the market value threshold amount as defined in RCW 46.12.005 is required.

(19) "Natural person" means a human being.

((~~(21)~~)) (20) "Not eligible for road use" (NEFRU) means a vehicle that does not meet Federal Motor Vehicle Safety standards, other federal ((~~and/~~))or state standards for public road use as adopted, applied, and enforced by the Washington state patrol described in RCW 46.37.005.

((~~(22)~~)) (21) "A declaration under penalty of perjury" means a statement signed by the applicant to the effect - "I declare under penalty of perjury under the laws of the state of Washington that the information I have provided on this form is true and correct." Anyone who knowingly makes a false statement may be guilty of a crime under state law.

((~~(23)~~)) (22) "Person" means the same as described in RCW 46.04.405.

((~~(24)~~)) (23) "Personal representative" means:

(a) An individual appointed by the court; or

(b) An individual named in the last will and testament and confirmed by the court to manage the estate of a deceased person.

Personal representative may also include executor, administrator, special administrator, and guardian or limited guardian and special representative as defined in RCW 11.02.005(1).

((~~(25)~~)) (24) "Registered owner" means the same as described in RCW 46.04.460.

((~~(26)~~)) (25) "Security interest" means a property interest created by agreement or by operation of law to secure performance of an obligation (repayment of a debt).

((~~(27)~~)) (26) "Security interest holders" means in this instance, the same as "lien holder" as defined in subsection (16) of this section.

((~~(28)~~)) (27) "Secured party" means in this instance the same as "lien holder" as defined in subsection (16) of this section.

((~~(29)~~)) (28) "Standard brand" is a brand found on the brands list maintained by the National Motor Vehicle Title Information System (NMVTIS) program.

((~~(30)~~)) (29) "Transferee" means a person to whom a vehicle is transferred, by purchase, gift, or any means other than by creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferee, when applicable.

((~~(31)~~)) (30) "Transferor" means a person who transfers ownership in a vehicle by sale, gift, or any means other than by creation of a security interest and any person who, as agent, signs an odometer disclosure statement for the transferor, when applicable.

((~~(32)~~)) (31) "Unique brand" means a brand issued by a state that is not participating in the National Motor Vehicle Title Information System (NMVTIS) program and does not appear on the brands list maintained by NMVTIS.

((~~(33)~~)) (32) "Vehicle seller's report of sale" is a document or electronic record transaction that protects the seller of a vehicle from certain criminal and civil liabilities arising from use of the vehicle by another person after the vehicle has been sold or a change of ownership has occurred.

((~~(34)~~)) (33) A "vehicle" is a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

((~~(35)~~)) (34) "Washington vehicle licensing office" means an office that is operated by the department or an agent or subagent appointed under RCW 46.01.140 for the purpose of carrying out the vehicle titling and registration provisions in Title 46 RCW.

AMENDATORY SECTION (Amending WSR 09-08-065, filed 3/27/09, effective 4/27/09)

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

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

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

(4) Market value threshold amount is the amount assigned to vehicles which includes a motor vehicle having a designation that is at least six years before the calendar year in which the vehicle was wrecked, destroyed, or damaged. For vehicles six through twenty years old a statement whether or not the vehicle meets the market value threshold amount as defined in RCW 46.12.005 and WAC 308-56A-500 is also required.

(5) Acquire - means the physical custody together with proof of ownership as provided under WAC 308-63-080.

((~~(5)~~)) (6) Custody - means the possession of a vehicle that the wrecker owns but for which ownership documents required in WAC 308-63-080 have not been received, or a vehicle placed for safekeeping by a law enforcement officer or others.

((~~(6)~~)) (7) Obscure - means to screen the wrecker activity from public view.

((~~(7)~~)) (8) Segregated area - means an area within the wrecking yard, which must be designated by a physical barrier. The physical barrier may be portable, made of substantial posts and connected by rope, chain, cable, or of other equally strong construction.

AMENDATORY SECTION (Amending WSR 09-08-065, filed 3/27/09, effective 4/27/09)

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

(a) A record of each vehicle or part acquired giving:

(i) A description of the vehicle or part by make, model, year, and for major component parts, except core parts, the vehicle identification number and "yard number" assigned at the time the vehicle or major component part was placed in the wrecking yard;

(ii) The date purchased or acquired by the vehicle wrecker, and the name of the person, firm or corporation from which the vehicle or part was obtained;

(iii) The certificate of ownership number if registered in a title state, or registration number if a nontitling state; or description of the document used in lieu of title, such as an affidavit of sale, a bill of sale for a vehicle or vehicle part;

(iv) The name of the state and license number in the state that a vehicle was last registered; and

(v) A statement indicating whether any used car or truck at least six years but not more than twenty years old met the market value threshold amount prior to the vehicle being wrecked, destroyed or damaged, as required by RCW 46.12.070 and WAC 308-56A-460((~~(3)~~)). If this statement is not provided, when required, the department will treat the vehicle as if the wrecker indicated that the market value threshold was met prior to the vehicle being wrecked.

What is "market value threshold amount?" The current market value threshold amount is six thousand seven hundred ninety dollars. For vehicles six through twenty years old a statement whether or not the vehicle meets the market value threshold amount as defined in RCW 46.12.005 and WAC 308-56A-500 is also required.

How is the market value threshold amount determined? Using the current market value threshold amount described in RCW 46.12.005 each year the department will add the increased value if the increase is equal to or greater than fifty dollars.

<u>If the value is less than fifty dollars the department will track the increased value amount each year until the amount is equal to or greater than fifty dollars.</u>

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

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

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

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

WSR 09-15-033
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Filed July 7, 2009, 2:37 p.m.]

The department of ecology (ecology) withdraws WSR 09-02-079 (filed January 7, 2009), Upper Kittitas ground water rule, chapter 173-539A WAC.

The agency has decided to withdraw this rule making due to the following:

- In its public comments on WSR 09-02-079, Kittitas County demonstrated it did not support the memorandum of agreement between ecology and Kittitas County.
- Ecology and Kittitas County mutually invoked the MOA's dispute resolution process, but the process has not resolved the parties' differences regarding questions of legal authority for specific portions of the proposed rule.
- Ecology and Kittitas County continue to negotiate in good faith.

Polly Zehm
Deputy Director

WSR 09-15-059
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD
[Filed July 10, 2009, 11:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-10-068.

Title of Rule and Other Identifying Information: Amends WAC 181-78A-105 (3)(a)(iii)(B), technical change permitting educator preparation programs that add an approved program administrator program are not required to have a site visit until the next regularly scheduled visit and still offer the program.

Hearing Location(s): Red Lion at the Park, 201 West North River Drive, Spokane, WA 99201, on September 23, 2009, at 8:30 a.m.

Date of Intended Adoption: September 23, 2009.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by September 18, 2009.

Assistance for Persons with Disabilities: Contact David Brenna by September 18, 2009, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes permit preparation programs to participate in regularly scheduled reviews if they add administrative preparation programs without being in violation of the two-year review requirement.

Reasons Supporting Proposal: Reduces administrative cost to both the preparation program and the state professional educator standards board and avoids duplication of effort.

Statutory Authority for Adoption: RCW 28A.410.210.

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: Amends WAC 181-78A-105 (3)(a)(iii)(B).

Name of Proponent: Professional educators standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

July 10, 2009
David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-24-082, filed 12/5/06, effective 1/5/07)

WAC 181-78A-105 Procedures for initial approval of an educator preparation program. Each college or university desiring to establish a preparation program shall comply with the following:

(1) Advise the professional educator standards board of its desire to establish a preparation program.

(2) Develop with the assistance of the professional education advisory board and designated staff of the office of the superintendent of public instruction, a written preproposal plan which addresses all preproposal components adopted and published by the professional educator standards board and submit such plan to the designated official of the professional educator standards board for review and comment. Resubmit such plan to the designated official.

(3) Submit such plan to the professional educator standards board. The college or university may be granted approval for full proposal development or denied approval.

(a) If approved, the college or university shall comply with the following:

(i) Establish the appropriate professional education advisory board pursuant to WAC 181-78A-205;

(ii) Develop with assistance of the professional education advisory board and designated staff of the office of the superintendent of public instruction, a written plan which includes the following:

(A) Timelines for the implementation of all applicable program approval standards during the first year of the program;

(B) The criteria that the program will use to assess, in multiple ways over time, its candidates' knowledge and skills including evidence related to positive impact on student learning (WAC 181-78A-205(4)), provided that a college/university with an approved residency principal program which adds an approved program administrator program is not required to have a site visit of the program administrator program until the next regularly scheduled site visit of that institution;

(C) How the professional education advisory board was involved in program development, including a letter of support; and

(D) Letters of support from partnership districts and/or other agencies.

(iii) Present the written plan to the professional educator standards board.

(A) The program may be conditionally approved for up to a two-year period in a specific location(s). If not approved, the college or university may resubmit its revised plan or request a contested hearing via an appeal team appointed by the professional educator standards board.

(B) During the second year of approval, staff of the office of the superintendent of public instruction shall conduct a site visit and/or other forms of documentation to determine if the program is in full compliance with the 1997 program approval standards.

(b) If denied, the college or university may resubmit its plan based upon the suggestions of the professional educator standards board.

(4) Programs shall be approved for a specific location(s) identified in the written plan presented to the professional educator standards board. Institutions seeking to expand an existing program to a new location shall submit a request to the professional educator standards board which contains the following:

(a) A description of the location and facilities;

(b) Verification that no complaints have been filed against the program in its current location(s);

(c) A summary of the findings from the most recent site review, including how weaknesses, if any, have been addressed;

(d) A statement that supports need for the program;

(e) Cost to the students;

(f) Mode(s) of the program delivery; and

(g) Letters of support from program partners. The length of time for which the program approval status shall be granted shall coincide with the length of time for which the program in its current location(s) last received approval. The program review cycle for programs at all locations shall be the same.

WSR 09-15-060
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD
[Filed July 10, 2009, 11:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-074.

Title of Rule and Other Identifying Information: Amends WAC 181-79A-250 (2)(a)(i), given current budget constraints, teachers who are unemployed or subject to reduction-in-force are granted an additional two-year renewal within nine years of the date of their last employment. Teachers at risk of having their two-year experience requirement expire due to unemployment are provided an option to renew once they have returned to employment.

Hearing Location(s): Red Lion at the Park, 201 West North River Drive, Spokane, WA 99201, on September 23, 2009, at 8:30 a.m.

Date of Intended Adoption: September 23, 2009.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548 by September 18, 2009.

Assistance for Persons with Disabilities: Contact David Brenna by September 18, 2009, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Assures teacher[s] will not lose their eligibility for continuing licensure in the event of economic conditions, layoffs, unemployment or reduction-in-force.

Reasons Supporting Proposal: Unintended impact from economic conditions.

Statutory Authority for Adoption: RCW 28A.410.210.

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: Amends WAC 181-79A-250 (2)(a)(i).

Name of Proponent: Professional educators standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

July 10, 2009
David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 08-15-141, filed 7/22/08, effective 8/22/08)

WAC 181-79A-250 Initial/residency and continuing/professional certificates—Renewal, reinstatement, and continuing education requirements. The following shall apply to initial/residency and continuing/professional certificates issued pursuant to this chapter:

(1) Initial certificate.

(a) Teachers.

An initial teacher certificate may be renewed for an additional three-year period on application and verification that the individual has completed all course work requirements from a regionally accredited institution of higher education as defined in WAC 181-78A-010(6) for continuing certification or has completed at least fifteen quarter credit hours (ten semester credit hours) since the certificate was issued or renewed. After August 31, 2000, provisions of WAC 181-79A-123 will apply.

(b) Administrators.

After June 30, 2004, provisions of WAC 181-79A-123(8) will apply.

(c) Educational staff associates.

After June 30, 2005, provisions of WAC 181-79A-123(9) will apply.

(2) Residency certificate. Residency certificates shall be renewed under one of the following options:

(a) Teachers.

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate administrator that the candidate is enrolled in a state approved professional certificate program. Provided, that individuals who are unable to complete the professional certificate program by the expiration date on the two-year renewal who have not taught for any portion of the nine years between employment and expiration date of the renewal can obtain an additional two-year renewal upon verification they had been unemployed during those years, been on a leave of absence or were unemployed due to a reduction in force.

(ii) Individuals who hold, or have held, residency certificates who do not qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work (normally one hundred level or higher) from a regionally accredited institution of higher education taken since the issuance of the residency certificate.

(iii) An individual who completes a national board certification assessment but does not earn national board certification, may use that completed assessment to renew the residency certificate for two years.

(iv) Individuals who complete the requirements in their school district professional growth plan may use that completed plan to maintain the continuing certificate or renew the professional certificate.

(b) Principals/program administrators.

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (2)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, residency certificates who do not qualify for enrollment in a professional certificate program under WAC 181-78A-535 (2)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based leadership standards as defined in WAC 181-78A-270

(2)(b) plus an internship approved by a college or university with a professional educator standards board-approved residency certificate program and taken since the issuance of the last residency certificate.

(c) School counselors, school psychologists, or school social workers.

(i) Individuals who hold a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535(3) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, a residency certificate who do not qualify for admission to a professional certificate program under WAC 181-78A-535 (3)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal for an additional five-year period requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) completed since the issuance of the most recent residency certificate plus an internship approved by a college or university with a professional educator standards board-approved residency certificate program and taken since the issuance of the last residency certificate.

((~~(d) Renewals based on conditions other than those described in WAC 181-79A-250 (2)(a) and (b) may be appealed to the professional educator standards board, or its designated appeals committee. The following conditions apply to such appeals:~~

~~(i) Individuals who appeal shall present a rationale and evidence to support their request to have their residency certificates renewed.~~

~~(ii) The professional educator standards board, or its designated appeals committee, in making its decision shall determine the length of the renewal and may establish specific conditions (such as course work requirements) as prerequisites for the reissuance of the residency certificate.~~))

(3) Continuing certificate.

(a) The continuing certificates of holders who were eligible for such certificates prior to August 31, 1987, and who applied for such certificates prior to July 1, 1988, or who would have been eligible for such certificates prior to August 31, 1987, but for one of the three-year experience requirement and who complete such requirement and apply for such certificate prior to August 31, 1988, will be valid for life. Holders of valid continuing certificates affected by this subsection shall be entitled to have such certificate reissued and subject to the terms and conditions applicable to certification at the time of reissuance including the continuing education requirements of chapter 181-85 WAC.

(b) All continuing certificates not affected by the exception stated in (a) of this subsection shall lapse if the holder does not complete the continuing education requirement, to include the filing requirement specified in chapter 181-85 WAC. To reinstate such a lapsed continuing certificate the individual must complete the requirements for reinstatement stated within chapter 181-85 WAC and must meet the conditions stated in WAC 181-79A-253.

(4) Professional certificate.

(a) Teachers.

(i) A valid professional certificate may be renewed for additional five year periods by the completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued. An expired professional certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to either (a)(i)(A) or (B) of this subsection: Provided, That both categories (a)(i)(A) and (B) of this subsection must be represented in the one hundred fifty continuing education credit hours required for renewal:

(A) One or more of the following three standards outlined in WAC 181-78A-540:

(I) Effective instruction.

(II) Professional contributions.

(III) Professional development.

(B) One of the salary criteria specified in RCW 28A.415.023.

(I) Is consistent with a school-based plan for mastery of student learning goals as referenced in RCW 28A.320.205, the annual school performance report, for the school in which the individual is assigned;

(II) Pertains to the individual's current assignment or expected assignment for the subsequent school year;

(III) Is necessary to obtain an endorsement as prescribed by the professional educator standards board;

(IV) Is specifically required to obtain advanced levels of certification; or

(V) Is included in a college or university degree program that pertains to the individual's current assignment, or potential future assignment, as a certified instructional staff.

(ii) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(b) Principals/program administrators.

(i) A professional certificate may be renewed for additional five year periods for individuals employed as a principal, assistant principal or program administrator in a public school or state board of education-approved private school by:

(A) Completion of a professional growth plan that is developed and approved with the superintendent, superintendent designee, or appointed representative (e.g., educational service district personnel, professional association or organization staff, or peer from another district), and that documents formalized learning opportunities and professional development activities that:

(I) Emphasize continuous learning;

(II) Positively impact student learning;

(III) Relate to the six standards and "career level" benchmarks defined in WAC 181-78A-270 (2)(b);

(IV) Explicitly connect to the evaluation process;

(V) Reflect contributions to the school, district, and greater professional community; and

(VI) Identify areas in which knowledge and skills need to be enhanced.

(B) Documented evidence of results of the professional growth plan on student learning.

(ii) Individuals not employed as a principal, assistant principal, or program administrator in a public school or state board of education-approved private school may have their professional certificate renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the professional certificate. Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) plus an internship approved by a college or university with a professional educator standards board-approved professional certificate program, and taken since the issuance of the last professional certificate.

(c) School counselors, school psychologists, or school social workers.

(i) A professional certificate may be renewed for additional five-year periods for individuals employed as a school counselor, school psychologist, or school social worker in a public school, state board of education-approved private school, or in a state agency which provides educational services to students by:

(A) Completion of a professional growth plan that is developed and approved with the principal or principal designee, and that documents formalized learning opportunities and professional development activities that:

(I) Emphasize continuous learning;

(II) Positively impact student learning; and

(III) Reflect contributions to the school, district, and greater professional community; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9).

(ii) Individuals not employed as a school counselor, school psychologist, or a school social worker in a public school or state board of education-approved private school may have their professional certificate renewed for an additional five-year period by:

(A) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9); or

(C) Provided that, a school counselor professional certificate may be renewed based on the possession of a valid school counselor certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the national board certificate, whichever is greater.

WSR 09-15-072
PROPOSED RULES
GAMBLING COMMISSION

[Filed July 13, 2009, 9:03 a.m.]

Supplemental Notice to WSR 09-11-090.

Preproposal statement of inquiry was filed as WSR 09-08-059.

Title of Rule and Other Identifying Information: Amending WAC 230-15-040 Authorizing new games or changing game rules.

Hearing Location(s): Mirabeau Park Hotel, 110 North Sullivan Road, Spokane, WA 99037, (509) 924-9000, on September 11, 2009, at 9:00 a.m.

Date of Intended Adoption: September 11, 2009.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by September 1, 2009.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by September 1, 2009, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The petitioner is requesting that the maximum number of games allowed within a single hand of cards be increased from three to six. He has stated verbally to staff that he wants the rule change because he plans to request approval of a new type of card game. His request was filed for discussion at the May 2009 commission meeting.

At their July 2009 meeting, the commission filed an alternative version of this rule that was proposed by the petitioner. This alternative would require that no more than three of the games offer a wager that exceeds five dollars each. Additionally, a housekeeping change was made: "Card" was added to subsection (1) to distinguish between a card game and a game played within a hand of cards.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0282.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Galaxy Gaming, Inc., private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-

3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

July 13, 2009
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 632, filed 10/14/08, effective 1/1/09)

WAC 230-15-040 Requirements for authorized card games. (1) In order for a game to be authorized, the game must:

(a) Be played with standard playing cards or with electronic card facsimiles approved by the director or the director's designee; and

(b) Offer no more than ((~~three~~)) six separate games with a single hand of cards. However, no more than three of the games may offer a wager that exceeds five dollars each. We consider bonus features and progressive jackpots separate games. If a player does not have to place a separate wager to participate, we do not consider it a separate game. An example of this is an "envy" or "share the wealth" pay out when another player achieves a specific hand; and

(c) Not allow side bets between players.

(2) Card game licensees may use more than one deck of cards for a specific game. They also may remove cards to comply with rules of a specific game, such as Pinochle or Spanish 21.

(3) Players must:

(a) Compete against all other players on an equal basis for nonhouse-banked games or against the house for house-banked games. All players must compete solely as a player in the card game; and

(b) Receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager; and

(c) Not place wagers on any other player's or the house's hand or make side wagers with other players, except for:

(i) An insurance wager placed in the game of Blackjack; or

(ii) An "envy" or "share the wealth" wager which allows a player to receive a prize if another player wins a jackpot or odds-based wager; or

(iii) A tip wager made on behalf of a dealer.

(4) Mini-Baccarat is authorized when operated in the manner explained for Baccarat in the most current version of *The New Complete Hoyle, Revised* or *Hoyle's Encyclopedia of Card Games*, or similar authoritative book on card games we have approved. However:

(a) Card game licensees may make immaterial modifications to the game; and

(b) Subsection (3) of this section does not apply; and

(c) The number of players is limited under WAC 230-15-055.

(5) A player's win or loss must be determined during the course of play of a single card game.

WSR 09-15-073
PROPOSED RULES
GAMBLING COMMISSION
[Filed July 13, 2009, 9:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-082.

Title of Rule and Other Identifying Information: Amending WAC 230-11-014 Maximum raffle ticket price.

Hearing Location(s): Mirabeau Park Hotel, 110 North Sullivan Road, Spokane, WA 99037, (509) 924-9000, on September 11, 2009, at 9:00 a.m.

Date of Intended Adoption: September 11, 2009.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by September 1, 2009.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by September 1, 2009, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed change is to implement EHB 1053, which increases the maximum price a raffle ticket can be sold for from $25 to $100. This law becomes effective July 26, 2009.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0277.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

July 13, 2009
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 602, filed 9/26/06, effective 1/1/08)

WAC 230-11-014 Maximum raffle ticket price. Raffle tickets must not be sold for more than ((~~twenty-five~~)) one hundred dollars each.

WSR 09-15-074
PROPOSED RULES
GAMBLING COMMISSION
[Filed July 13, 2009, 9:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-082.

Title of Rule and Other Identifying Information: Amending WAC 230-07-020 Making "significant progress."

Hearing Location(s): Mirabeau Park Hotel, 110 North Sullivan Road, Spokane, WA 99037, (509) 924-9000, on September 11, 2009, at 9:00 a.m.

Date of Intended Adoption: September 11, 2009.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by September 1, 2009.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by September 1, 2009, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This change restores the requirements for demonstrating significant progress for all charitable or nonprofit licensees, not just Groups IV and V. Making significant progress is required under RCW 9.46.0209. Prior to the rules simplification project (RSP), significant progress was defined in WAC 230-08-255. During the RSP, demonstrating significant progress was inadvertently limited to Groups IV and V.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0209.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

July 13, 2009
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 609, filed 4/24/07, effective 1/1/08)

WAC 230-07-020 Making "significant progress." Charitable or nonprofit licensees ((~~in Groups IV and V~~)) must make "significant progress" toward their stated purpose. They have made "significant progress" when they have:

(1) Complied with all requirements set forth in their bylaws and articles of incorporation; and

(2) Actively engaged in providing services to the public or their members during the fiscal year under review, and the services directly relate to the stated purposes of the organization; and

(3) Held elections to select officers at least once in the previous two years; and

(4) Held a general membership meeting to conduct the business of the organization at least once in the previous two years; and

(5) Used a substantial portion of the licensees' "available resources" for providing program services during the fiscal year under review. For purposes of this section, "available resources":

(a) Include the income generated by or from:

(i) The net of all activities used to raise funds, including net gambling income; and

(ii) Grants, gifts, and contributions from private sources; and

(iii) Public support.

(b) Does not include:

(i) Funds generated in periods other than the fiscal year under review; or

(ii) Funds that are raised or contributed from outside the organization for purposes of purchasing land or capital assets or to endow future operations when those funds are specifically identified by the board or contributors as restricted and separately recorded in the organization's records; or

(iii) Net income from the sale of assets; or

(iv) Fees paid by members or the public to receive services or to participate in specific activities. (Example: Fees to attend a swimming lesson or event.) These fees must be classified as a reduction to both program service and supporting service expenses on a pro rata basis and as a reduction to resources available for providing services in the fiscal year. (Example: In the chart below, licensee X has revenue of five thousand dollars. They must calculate the pro rata reduction by adjusting the total by the percentages of support services, program services expenses, and functional expenses.)

Revenue					
Fees paid by public					$5,000
Calculation:					
Expenses	**Unadjusted Amount**	**% of Total**	**Pro Rata Reduction Fees Paid by Public ($5,000)**	**% of Total**	**Adjusted Amount**
Support Service Expense	$35,000	32%	($1,591)	32%	$33,409
Program Service Expense	$75,000	68%	($3,409)	68%	$71,591
Functional Expenses	$110,000	100%	($5,000)	100%	$105,000

WSR 09-15-077
PROPOSED RULES
GAMBLING COMMISSION
[Filed July 13, 2009, 12:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-09-049.

Title of Rule and Other Identifying Information: Amending WAC 230-06-095 Change given name, trade name, or corporate name.

Hearing Location(s): Mirabeau Park Hotel, 110 North Sullivan Road, Spokane, WA 99037, (509) 924-9000, on September 11, 2009, at 9:00 a.m.

Date of Intended Adoption: September 11, 2009.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by September 1, 2009.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by September 1, 2009, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Staff is proposing an amendment to allow individuals (for example, card dealers, distributor representatives, bingo managers, etc.) to report name changes thirty days after the effective date of the change. Currently, they must report a name change thirty days before the change. Individuals are unable to submit proof of a name change until after their name is legally changed (for example, divorce or marriage). Organizations and businesses would still be required to request a name change thirty days before the effective date of the change. The rule currently requires organizations and individuals to report name changes thirty days before the effective date of the change. This requirement is easy for name changes of organizations and businesses; however, staff has found it to be problematic for individual name changes. Changing the requirement to allow individuals to report name changes thirty days after the fact will streamline processes for licensees and staff.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

July 13, 2009
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 601, filed 8/22/06, effective 1/1/08)

WAC 230-06-095 Change ((~~given~~)) name, trade name, or corporate name. Licensees must notify us and pay a fee for any name change ((~~to the given name, trade name, or corporate name on their license at least thirty days before the actual change date~~)) as follows:

(1) Businesses and organizations changing their trade or corporate name - at least thirty days before the actual change date;

(2) Individuals changing their name - no later than thirty days after the effective date of the change.

WSR 09-15-078
PROPOSED RULES
GAMBLING COMMISSION
[Filed July 13, 2009, 12:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-042.

Title of Rule and Other Identifying Information: Amending WAC 230-15-400 Accounting for player-supported jackpot funds.

Hearing Location(s): Mirabeau Park Hotel, 110 North Sullivan Road, Spokane, WA 99037, (509) 924-9000, on September 11, 2009, at 9:00 a.m.

Date of Intended Adoption: September 11, 2009.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by September 1, 2009.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by September 1, 2009, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Recreational Gaming Association (RGA) requests that WAC 230-15-400 be amended to allow player-supported jackpot (PSJ) funds to be transferred into the PSJ account. Currently, PSJ funds must be directly deposited into a separate PSJ bank account. The petitioner states that bank transfers post immediately to the PSJ bank account which means there is no lag time waiting for deposits to clear. With transactions posted immediately, it's simple to compare the bank account balance to the PSJ accrual balance. Generally, only accounting staff have the ability to do bank transfers, and the cage makes deposits, so transfers are done by more experienced staff.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0282.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Recreational Gaming Association, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

July 13, 2009
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 611, filed 4/24/07, effective 1/1/08)

WAC 230-15-400 Accounting for player-supported jackpot funds. Class F or house-banked licensees must:

(1) Maintain a separate bank account in a bank, mutual savings bank, or credit union in Washington state for holding player-supported jackpot (PSJ) funds; and

(2) Deposit only funds from PSJs into the account; and

(3) Not make payouts from the PSJ funds until licensees have first deposited the funds in the PSJ account. However, licensees may pay out prizes won during the gambling day and deduct administrative expenses before licensees deposit the funds; and

(4) Transfer or deposit the PSJ funds into the PSJ account or with an armored car service no later than the second banking day after the close of business; and

(5) Identify all deposits or transfers of PSJ funds by the type of PSJ fund and date of collection. Licensees must keep the validated deposit receipts or transfer information as a part of their required daily records; and

(6) Transfer the amount from the PSJ account to the cage or general account before the end of the month if PSJ prizes are paid from the cage or general account. The licensee must keep the transfer information as part of the written records; and

(7) Reconcile the account balance in their bank statement to the PSJ prize balance on their PSJ fund accrual record each month. "Reconcile" means the licensee must compare the two balances, resolve any differences, and document the comparison and the differences in writing. Licensees must keep the reconciliation as part of their records.

WSR 09-15-079
PROPOSED RULES
GAMBLING COMMISSION
[Filed July 13, 2009, 12:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-052.

Title of Rule and Other Identifying Information: New sections WAC 230-06-011 Detaining and identifying persons under eighteen years old engaging in or attempting to engage in gambling activities and 230-06-012 Conducting underage compliance test programs with minors.

Hearing Location(s): Mirabeau Park Hotel, 110 North Sullivan Road, Spokane, WA 99037, (509) 924-9000, on September 11, 2009, at 9:00 a.m.

Date of Intended Adoption: September 11, 2009.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by September 1, 2009.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by September 1, 2009, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Implement SSB 5040 which becomes effective July 26, 2009.

WAC 230-06-011, the new rule is to implement SSB 5040, to allow for the detention and identification of minors that gamble. Chapter 7.80 RCW, which is referred to in SSB 5040, requires agencies to adopt this type of rule.

WAC 230-06-012, this new rule is to implement section 4 of SSB 5040, which allows licensees to conduct in-house controlled purchase programs (underage compliance test programs) for purposes of employee training and employer self-compliance checks regarding minors that gamble. The rule explains the approval process and requirements for conducting in-house controlled purchase programs.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

July 13, 2009
Susan Arland
Rules Coordinator

NEW SECTION

WAC 230-06-011 Detaining and identifying persons under eighteen years of age engaging in or attempting to engage in gambling activities. When issuing civil infractions under RCW 9.46.xxx (section 2, chapter 357, Laws of 2009), gambling commission special agents or peace officers may detain persons for a reasonable period of time and in a reasonable manner to determine the person's true identity and date of birth if the special agent or peace officer has reasonable grounds to believe that:

(1) The person is under eighteen years of age; and

(2) The person is, or has played or participated in, or is attempting or has attempted to play or participate in authorized gambling activities including, but not limited to, punchboards, pull-tabs, card games, or fund-raising events.

NEW SECTION

WAC 230-06-012 Conducting underage enforcement test programs with minors. (1) Licensees may conduct programs to test their employee's compliance with RCW 9.46.-xxx (section 2, chapter 357, Laws of 2009) that makes it unlawful for any person under the age of eighteen to play punchboards, pull-tabs, card games, or participate in fund-raising events.

(2) Licensees must:

(a) Have written procedures for conducting underage enforcement test programs.

(i) Class F or house-banked card game licensees must include the procedures in their internal controls; or

(ii) Licensees not required to have internal controls must submit their procedures to us prior to conducting an underage enforcement test and keep a copy of the procedures on the licensed premises.

(b) Provide employees a written description of the employer's underage enforcement test program. The written description must include notice of actions an employer may take as a consequence of an employee's failure to comply with company policies regarding unauthorized persons engaging in gambling activities during an underage enforcement test.

(c) Provide written notification (letter, e-mail, or fax) to us at least five days before conducting the test. The notification must include:

(i) Licensee name; and

(ii) Date and time of test; and

(iii) Last name and first initial of the minor used in the test; and

(iv) First and last name of the person supervising the minor.

(d) Receive written confirmation from us that the notification was received prior to conducting the test.

(e) Provide written notification of test results to us within forty-eight hours after completing the test.

(f) Maintain the following information for each test on the licensed premises for at least one year:

(i) Written confirmation received from commission staff; and

(ii) A photocopy of the identification of the minor used; and

(iii) The results.

(g) Only use minors who are sixteen or seventeen years old at the time of the test.

(3) Licensees with a minimum gambling age of twenty-one are not required to follow the procedures in subsections (1) and (2) of this section if they use persons eighteen years of age or older to conduct underage enforcement tests.

WSR 09-15-083
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
(Mental Health Division)
[Filed July 14, 2009, 8:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-03-098.

Title of Rule and Other Identifying Information: The department is amending WAC 388-865-0245 Administration of the Involuntary Treatment Act, 388-865-0275 Management information system, 388-865-0405 Competency requirements for staff, 388-865-0452 Emergency crisis inter-

vention services—Additional standards, 388-865-0456 Case management services—Additional standards, 388-865-0466 Community support outpatient certification—Additional standards, and 388-865-0468 Emergency crisis intervention services certification—Additional standards.

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 25, 2009, at 10:00 a.m.

Date of Intended Adoption: Not sooner than August 26, 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 25, 2009.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by August 11, 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: Chapter 360, Laws of 2007 (SHB 1456) established certain safety requirements for mental health professionals who conduct home visits to stabilize persons in crisis. The purpose of this rule-making action is to codify those requirements.

Reasons Supporting Proposal: To comply with state law.

Statutory Authority for Adoption: RCW 71.05.560, 71.05.700, 71.05.705, 71.05.710, 71.05.715, 71.05.720, and 71.24.035.

Statute Being Implemented: RCW 71.05.560, 71.05.-700, 71.05.705, 71.05.710, 71.05.715, 71.05.720, and 71.24.-035.

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: Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1344; Implementation: David Kludt, P.O. Box 45320, Olympia, WA 98504-5320, (360) 902-0786; and Enforcement: Pete Marburger, P.O. Box 45320, Olympia, WA 98504-5320, (360) 902-0837.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Per RCW 19.85.025(3), no statement is required for rules incorporating state statutes by reference without material change.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that are incorporating by reference Washington state statute.

July 10, 2009

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-17-114, filed 8/18/06, effective 9/18/06)

WAC 388-865-0245 Administration of the Involuntary Treatment Act. The regional support network must establish policies and procedures for administration of the involuntary treatment program, including investigation, detention, transportation, court-related, and other services required by chapters 71.05 and 71.34 RCW. This includes:

(1) Designating mental health professionals to perform the duties of involuntary investigation and detention in accordance with the requirements of chapters 71.05 and 71.34 RCW.

(2) Documenting consumer compliance with the conditions of less restrictive alternative court orders by:

(a) Ensuring periodic evaluation of each committed consumer for release from or continuation of an involuntary treatment order. Evaluations must be recorded in the clinical record, and must occur at least monthly for ninety and one hundred eighty-day commitments.

(b) Notifying the designated mental health professional if noncompliance with the less restrictive order impairs the individual sufficiently to warrant detention or evaluation for detention and petitioning for revocation of the less restrictive alternative court order.

(3) Ensuring that when a peace officer or designated mental health professional escorts a consumer to a facility, the designated mental health professional must take reasonable precautions to safeguard the consumer's property including:

(a) Safeguarding the consumer's property in the immediate vicinity of the point of apprehension;

(b) Safeguarding belongings not in the immediate vicinity if there may be possible danger to those belongings;

(c) Taking reasonable precautions to lock and otherwise secure the consumer's home or other property as soon as possible after the consumer's initial detention.

(4) Ensuring that the requirements of RCW 71.05.700 through 71.05.715 are met.

AMENDATORY SECTION (Amending WSR 06-17-114, filed 8/18/06, effective 9/18/06)

WAC 388-865-0275 Management information system. The regional support network must be able to demonstrate that it collects and manages information that shows the effectiveness and cost effectiveness of mental health services. The regional support network must:

(1) Operate an information system and ensure that information about consumers who receive publicly funded mental health services is reported to the state mental health information system according to mental health division guidelines.

(2) Ensure that the information reported is:

(a) Sufficient to produce accurate regional support network reports; and

(b) Adequate to locate case managers in the event that a consumer requires treatment by a service provider that would not normally have access to treatment information about the consumer.

(3) Ensure that information about consumers is shared or released between service providers only in compliance with

state statutes (see chapters 70.02, 71.05, and 71.34 RCW) and this chapter. Information about consumers and their individualized crisis plans must ((be available)):

(a) Be available twenty-four hours a day, seven days a week to designated mental health professionals and inpatient evaluation and treatment facilities, as consistent with confidentiality statutes; ((and))

(b) Be available to the state and regional support network staff as required for management information and program review; and

(c) Comply with the requirements of RCW 71.05.715.

(4) Maintain on file a statement signed by regional support network, county or service provider staff having access to the mental health information systems acknowledging that they understand the rules on confidentiality and will follow the rules.

(5) Take appropriate action if a subcontractor or regional support network employee willfully releases confidential information, as required by chapter 71.05 RCW.

AMENDATORY SECTION (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

WAC 388-865-0405 Competency requirements for staff. The licensed service provider must ensure that staff are qualified for the position they hold and have the education, experience, or skills to perform the job requirements. The provider must maintain documentation that:

(1) All staff have a current Washington state department of health license or certificate or registration as may be required for their position;

(2) Washington state patrol background checks are conducted for employees in contact with consumers consistent with RCW 43.43.830;

(3) Mental health services are provided by a mental health professional, or under the clinical supervision of a mental health professional;

(4) Staff performing mental health services (not including crisis telephone) must have access to consultation with a psychiatrist or a physician with at least one year's experience in the direct treatment of persons who have a mental or emotional disorder;

(5) Mental health services to children, older adults, ethnic minorities or persons with disabilities must be provided by, under the supervision of, or with consultation from the appropriate mental health specialist(s) when the consumer:

(a) Is a child as defined in WAC ((866-865-0150 [388-865-0150])) 388-865-0150;

(b) Is or becomes an older person as defined in WAC 388-865-0150;

(c) Is a member of a racial/ethnic group as defined in WAC ((866-865-0105)) 388-865-0105 and as reported:

(i) In the consumer's demographic data; or

(ii) By the consumer or others who provide active support to the consumer; or

(iii) Through other means.

(d) Is disabled as defined in WAC 388-865-0150 and as reported:

(i) In the consumer's demographic data; or

(ii) By the consumer or others who provide active support to the consumer; or

(iii) Through other means.

(6) Staff receive regular supervision and an annual performance evaluation; and

(7) An individualized annual training plan must be implemented for each direct service staff person and supervisor ((in)), to include at a minimum:

(a) The skills he or she needs for his/her job description and the population served; and

(b) The requirements of RCW 71.05.720.

AMENDATORY SECTION (Amending WSR 06-17-114, filed 8/18/06, effective 9/18/06)

WAC 388-865-0440 Availability of consumer information. (1) Consumer individualized crisis plans as provided by the consumer must be available twenty-four hours a day, seven days a week to ((designated mental health professionals, crisis teams, and voluntary and involuntary inpatient evaluation and treatment facilities)) the following, as consistent with confidentiality statutes((;)) and without unduly delaying a crisis response:

(a) Designated mental health professionals;

(b) Crisis teams; and

(c) Voluntary and involuntary inpatient evaluation and treatment facilities.

(2) Consumer information must be available to the state and regional support network staff as required for management information, quality management and program review.

AMENDATORY SECTION (Amending WSR 06-17-114, filed 8/18/06, effective 9/18/06)

WAC 388-865-0452 Emergency crisis intervention services—Additional standards. The community support service provider that is licensed for emergency crisis intervention services must assure that required general minimum standards for community support services are met, plus the additional minimum requirements:

(1) Availability of staff to respond to crises twenty-four hours a day, seven days a week, including:

(a) Bringing services to the person in crisis when clinically indicated;

(b) Requiring that staff remain with the consumer in crisis to stabilize and support him/her until the crisis is resolved or a referral to another service is accomplished;

(c) Resolving the crisis in the least restrictive manner possible;

(d) A process to include family members, significant others, and other relevant treatment providers as necessary to provide support to the person in crisis((; and)).

(((e))) (2) Written procedures for managing assaultive and/or self-injurious patient behavior.

(((2))) (3) Written procedures for visits to homes and other private locations in accordance with the requirements of RCW 71.05.700 through 71.05.715.

(4) Crisis telephone screening;

(((3))) (5) Mobile outreach and stabilization services with trained staff available to provide in-home or in-commu-

nity stabilization services, including flexible supports to the person where he/she lives.

((~~(4)~~)) (6) Provide access to necessary services including:

(a) Medical services, which means at least emergency services, preliminary screening for organic disorders, prescription services, and medication administration;

(b) Interpretive services to enable staff to communicate with consumers who have limited ability to communicate in English, or have sensory disabilities;

(c) Mental health specialists for children, elderly, ethnic minorities or consumers who are deaf or developmentally disabled;

(d) Voluntary and involuntary inpatient evaluation and treatment services, including a written protocol to assure that consumers who require involuntary inpatient services are transported in a safe and timely manner;

(e) Investigation and detention to involuntary services under chapter 71.05 RCW for adults and chapter 71.34 RCW for children who are thirteen years of age or older, including written protocols for contacting the designated mental health professional.

((~~(5)~~)) (7) Document all telephone and face-to-face crisis response contacts, including:

(a) Source of referral;

(b) Nature of crisis;

(c) Time elapsed from the initial contact to face-to-face response; and

(d) Outcomes, including basis for decision not to respond in person, follow-up contacts made, and referrals made.

((~~(6)~~)) (8) The provider must have a written protocol for referring consumers to a voluntary or involuntary inpatient evaluation and treatment facility for admission on a seven-day-a-week, twenty-four-hour-a-day basis, including arrangements for contacting the designated mental health professional and transporting consumers.

AMENDATORY SECTION (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

WAC 388-865-0456 Case management services—Additional standards. The community support service provider for case management services must assure that all general minimum standards for community support services and are met, plus the following additional minimum requirements:

(1) Assist consumers to achieve the goals stated in their individualized service plan;

(2) Support consumer employment, education or participation in other daily activities appropriate to their age and culture;

(3) Make referrals to other needed services and supports, including treatment for co-occurring disorders and health care;

(4) Assist consumers to resolve crises in least-restrictive settings;

(5) Provide information and education about the consumer's illness so the consumer and family and natural supports are engaged to help consumers manage the consumer's symptoms;

(6) Include, as necessary, flexible application of funds, such as rent subsidies, rent deposits, and in-home care to enable stable community living; and

(7) Maintain written procedures for home visits in accordance with the requirements of RCW 71.05.700 through 71.05.715.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 06-17-114, filed 8/18/06, effective 9/18/06)

WAC 388-865-0466 Community support outpatient certification—Additional standards. In order to provide services to consumers on a less restrictive alternative court order, providers must be licensed to provide the psychiatric and medical service component of community support services and be certified by the mental health division to provide involuntary treatment services consistent with WAC 388-865-0484. In addition, the provider must:

(1) Document in the consumer clinical record and otherwise ensure:

(a) Detained and committed consumers are advised of their rights under chapter 71.05 or 71.34 RCW and as follows:

(i) To receive adequate care and individualized treatment;

(ii) To make an informed decision regarding the use of antipsychotic medication and to refuse medication beginning twenty-four hours before any court proceeding that the consumer has the right to attend;

(iii) To maintain the right to be presumed competent and not lose any civil rights as a consequence of receiving evaluation and treatment for a mental disorder;

(iv) Of access to attorneys, courts, and other legal redress;

(v) To have the right to be told statements the consumer makes may be used in the involuntary proceedings; and

(vi) To have the right to have all information and records compiled, obtained, or maintained in the course of treatment kept confidential as defined in chapters 71.05 and 71.34 RCW.

(b) A copy of the less restrictive alternative court order and any subsequent modifications are included in the clinical record;

(c) Development and implementation of an individual service plan which addresses the conditions of the less restrictive alternative court order and a plan for transition to voluntary treatment;

(d) That the consumer receives psychiatric treatment including medication management for the assessment and prescription of psychotropic medications appropriate to the needs of the consumer. Such services must be provided:

(i) At least weekly during the fourteen-day period;

(ii) Monthly during the ninety-day and one-hundred eighty day periods of involuntary treatment unless the attending physician determines another schedule is more appropri-

ate, and they record the new schedule and the reasons for it in the consumer's clinical record.

(2) Maintain written procedures for managing assaultive and/or self-destructive patient behavior, and provide training to staff in these interventions;

(3) Have a written protocol for referring consumers to an inpatient evaluation and treatment facility for admission on a seven-day-a-week, twenty-four-hour-a-day basis;

(4) For consumers who require involuntary detention the protocol must also include procedures for:

(a) Contacting the designated mental health professional regarding revocations and extension of less restrictive alternatives, and

(b) Transporting consumers.

(5) Maintain written procedures for home visits in accordance with the requirements of RCW 71.05.700 through 71.05.715

AMENDATORY SECTION (Amending WSR 06-17-114, filed 8/18/06, effective 9/18/06)

WAC 388-865-0468 Emergency crisis intervention services certification—Additional standards. In order to provide emergency services to a consumer who may need to be detained or who has been detained, the service provider must be licensed for emergency crisis intervention services and be certified by the mental health division to provide involuntary treatment services consistent with WAC 388-865-0484. In addition, the provider must:

(1) Be available seven-days-a-week, twenty-four-hours-per-day;

(2) Follow a written protocol for holding a consumer and contacting the designated mental health professional;

(3) Provide or have access to necessary medical services;

(4) Have a written agreement with a certified inpatient evaluation and treatment facility for admission on a seven day a week, twenty-four hour per day basis; ((~~and~~))

(5) Follow a written protocol for transporting individuals to inpatient evaluation and treatment facilities; and

(6) Maintain written procedures for home visits in accordance with the requirements of RCW 71.05.700 through 71.05.715.

WSR 09-15-094
PROPOSED RULES
BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

[Filed July 14, 2009, 10:07 a.m.]

Supplemental Notice to WSR 09-12-055.

Preproposal statement of inquiry was filed as WSR 09-08-073.

Title of Rule and Other Identifying Information: Chapter 196-29 WAC, Professional practices.

Hearing Location(s): Courtyard Marriott, Salon A, 31910 Gateway Center Boulevard South, Federal Way, WA 98003, on November 4, 2009, at 6:00 p.m.

Date of Intended Adoption: November 5, 2009.

Submit Written Comments to: George A. Twiss, PLS, Executive Director, Board of Professional Engineers and Land Surveyors, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by November 2, 2009.

Assistance for Persons with Disabilities: Contact Kim King, administrative assistant, by November 2, 2009, TTY (360) 664-8885 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To add a new section regarding the federal employee exemption.

This supplemental filing is being done, as new language was added to subsection (3) of the proposed language, since the original filing.

Reasons Supporting Proposal: There have been questions from federal employees regarding who can perform engineering and/or land surveying on lands adjoining government property. This rule will help define who can perform work being done on federally owned property or on property adjoining federal land.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: Chapter 18.43 RCW.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: George Twiss, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1565.

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

A cost-benefit analysis is not required under RCW 34.05.328. There is no economic impact to licensees.

July 14, 2009
George A. Twiss
Executive Director

NEW SECTION

WAC 196-29-200 Federal employee exemption. (1) Under RCW 18.43.130(6) the provisions of the act shall not be construed to prevent or affect the practice of officers or employees of the government of the United States while engaged within the state in the practice of the profession of engineering or land surveying for the government of the United States; provided:

(a) That all work performed is for the exclusive use of the federal government; and

(b) That all work performed is wholly contained within the confines of lands held by the federal government (federal enclave).

(2) Any engineering work that is performed and/or constructed for the benefit of a private citizen or business entity, even if directly adjoining lands held by the federal government, must be performed by or under the direct supervision of an engineer licensed in accordance with the requirements of chapter 18.43 RCW.

(3) Any surveying work that is performed for boundaries between lands held by the federal government and lands held

by a private citizen or business entity, must be performed by or under the direct supervision of a land surveyor licensed in accordance with the requirements of chapter 18.43 RCW or under the authority of the Secretary of the Interior through special instructions approved by the Bureau of Land Management.

WSR 09-15-100
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION
[Filed July 15, 2009, 9:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-126.

Title of Rule and Other Identifying Information: WAC 392-140-950 through 293-140-967 [392-140-962], Finance—Special allocations—Learning improvement days.

Hearing Location(s): Old Capitol Building, 600 South Washington Street, P.O. Box 47200, Olympia, WA 98504-7200, on August 25, 2009, at 9:00 a.m.

Date of Intended Adoption: August 26, 2009.

Submit Written Comments to: Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, fax (360) 753-4201, by August 24, 2009.

Assistance for Persons with Disabilities: Contact Clarice Nnanubu by August 24, 2009, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amendment reduces the number of state-funded learning improvement days from two to one for the 2009-10 school year and thereafter, pursuant to section 503(7) of the 2009-11 state Biennial Operating Appropriations Act, ESHB 1244. A "housekeeping" update adds program 34, middle school career and technical education-state, to the programs where funding for learning improvement days applies.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Charlie Schreck, Office of Superintendent of Public Instruction, (360) 725-6136; Implementation: Ross Bunda, Office of Superintendent of Public Instruction, (360) 725-6308; and Enforcement: Jennifer Priddy, Office of Superintendent of Public Instruction, (360) 725-6292.

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

A cost-benefit analysis is not required under RCW 34.05.328. The superintendent of public instruction is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

June 8, 2009
Randy I. Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 02-20-063, filed 9/27/02, effective 10/28/02)

WAC 392-140-950 Learning improvement days—Applicable provisions. The provisions of WAC 392-140-950 through 392-140-967 govern state funding for ((~~up to three~~)) learning improvement days for certificated instructional staff ((~~in the 2001-02 school year and up to two days in the 2002-03 school year and thereafter~~)). The authority for WAC 392-140-950 through 392-140-967 is the state Biennial Operating Appropriations Act and RCW 28A.150.290(1).

AMENDATORY SECTION (Amending WSR 01-08-048, filed 3/30/01, effective 4/30/01)

WAC 392-140-956 Learning improvement days—Other definitions. As used in WAC 392-140-950 through 392-140-967:

(1) "Certificated instructional staff" means district certificated instructional employees and contractor certificated instructional employees as defined in WAC 392-121-205 and 392-121-206.

(2) "Base contract" means a contract protected by the continuing contract law, RCW 28A.405.300. The base contract does not include hours or compensation provided under a supplemental contract as defined in RCW 28A.400.200.

(3) "Number of days in the base contract" means the number of full work days in the school year for a full-time certificated instructional employee holding the position for the full school year. Days include paid leave. The number of hours in a full work day is determined by each school district. Days scheduled before September 1 can be counted in the school year if included and compensated in the base contract for the school year beginning September 1.

(4) "Selected state-funded programs" means the following programs as defined in the *Accounting Manual for Public School Districts in the State of Washington*:

01 Basic Education
21 Special Education-Supplemental-State
31 Vocational-Basic-State
34 Middle School Career and Technical Education-State
45 Skills Center-Basic-State
55 Learning Assistance Program-State
65 Transitional Bilingual-State
74 Highly Capable
97 District-wide Support

(5) "State institutional education programs" means the following programs:

26 Special Education-Institutions-State
56 State Institutions, Centers, and Homes-Delinquent

AMENDATORY SECTION (Amending WSR 02-20-063, filed 9/27/02, effective 10/28/02)

WAC 392-140-961 Learning improvement days—Determination of the number of funded learning improvement days in the 2001-02 school year and thereafter. The superintendent of public instruction shall separately determine for selected state-funded programs and for institutional education programs the number of funded learning improvement days for each school district for the 2001-02 school year and for each school year thereafter as follows:

(1) In September through December of each school year, the superintendent will use the number of learning improvement days budgeted by the district and reported on Form F-203.

(2) Monthly, beginning in January of the school year, using current personnel data reported on the S-275 Personnel Report:

(a) Select all certificated instructional staff with assignments in the programs.

(b) For each employee, subtract one hundred eighty days from the number of days reported in the base contract.

(c)(i) For the 2001-02 school year, take the lesser of three days or the result of (b) of this subsection but not less than zero.

(ii) For the 2002-03 through 2008-09 school years ((~~and thereafter~~)), take the lesser of two days or the result of (b) of this subsection but not less than zero.

(iii) For the 2009-10 school year and thereafter, take the lesser of one day or the result of (b) of this subsection but not less than zero.

(d) Sum the number of days determined for all employees pursuant to (b) and (c) of this subsection.

(e) Divide the result of (d) of this subsection by the number of employees and round to two decimal places.

(f) The result is the number of funded learning improvement days for the district.

(3) After the close of the school year, the superintendent shall fund the lesser of:

(a) The number of days determined pursuant to subsection (2) of this section; or

(b) The number of days reported by the district pursuant to WAC 392-140-967.

AMENDATORY SECTION (Amending WSR 02-20-063, filed 9/27/02, effective 10/28/02)

WAC 392-140-962 Learning improvement days—Salary allocations for learning improvement days. Using the number of learning improvement days determined pursuant to WAC 392-140-961, the superintendent of public instruction shall adjust salary allocations to school districts as follows:

(1) For general apportionment, the derived base salary allocation for learning improvement days as shown on LEAP Document ((~~12E~~)) 2 shall be reduced pro rata for any district with less than three learning improvement days in the 2001-02 school year, or less than two learning improvement days in the 2002-03 through 2008-09 school years, or less than one learning improvement day in the 2009-10 school year and thereafter in selected state-funded programs.

(2) Special education allocations shall be adjusted based on adjustments to the unenhanced basic education allocation per full-time equivalent student.

(3) For transitional bilingual, highly capable, and learning assistance program allocations, the additional state allocation per pupil for three learning improvement days in the 2001-02 school year ((~~and~~)), for two learning improvement days in the 2002-03 through 2008-09 school years, and for one learning improvement day in the 2009-10 school year and thereafter as calculated by the superintendent shall be reduced pro rata for any district with fewer learning improvement days in selected state-funded programs.

(4) For state institutional education programs the salary allocation for three learning improvement days in the 2001-02 school year ((~~and~~)), for two learning improvement days in the 2002-03 through 2008-09 school years, and for one learning improvement day in the 2009-10 school year and thereafter as calculated by the superintendent shall be reduced pro rata for any district with fewer learning improvement days in state institutional education programs. Educational service districts or contractors operating state-funded institutional education programs shall be eligible for learning improvement day funding in the same manner as school districts.

(5) Allocations for learning improvement days are subject to adjustment or recovery based on findings of the Washington state auditor and chapters 392-115 and 392-117 WAC.

WSR 09-15-112
PROPOSED RULES
LIQUOR CONTROL BOARD
[Filed July 16, 2009, 2:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-10-094.

Title of Rule and Other Identifying Information: Amending WAC 314-29-015, 314-29-020, 314-29-025, 314-29-030, and 314-29-035.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on August 26, 2009, at 10:00 a.m.

Date of Intended Adoption: September 9, 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 26, 2009.

Assistance for Persons with Disabilities: Contact Karen McCall by August 26, 2009, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will create consistency in standard penalties for commonly violated laws that are not represented in the current penalty matrix, and provide clarity to liquor licensees of the progression of penalties for subsequent violations in various categories.

Reasons Supporting Proposal: Liquor licensees and other stakeholders have questions about penalty guidelines that are not currently covered in the guidelines of chapter 314-29 WAC. The proposed rules clarify all penalties and the progression of penalties.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: Chapters 66.44, 66.28, 66.24 RCW.

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 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. This proposal does not change the impact on businesses or individuals that receive violations.

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

July 16, 2009
Ruthann Kurose
Board Member

AMENDATORY SECTION (Amending WSR 03-09-015, filed 4/4/03, effective 5/5/03)

WAC 314-29-015 What are the penalties if a liquor license holder violates a liquor law or rule? (1) The purpose of WAC 314-29-015 through 314-29-040 is to outline what penalty a liquor licensee can expect if a licensee or employee violates a liquor control board law or rule (the penalty guidelines for mandatory alcohol server training permit holders are in WAC 314-17-100 through 314-17-110). WAC rules listed in the categories provide reference areas, and may not be all inclusive.

(2) Penalties for violations by liquor licensees or employees are broken down into four categories:

(a) Group One—Public safety violations, WAC 314-29-020.

(b) Group Two—((~~Conduct~~)) Regulatory violations, WAC 314-29-025.

(c) Group Three—((~~Regulatory~~)) License violations, WAC 314-29-030.

(d) Group Four—Nonretail violations involving the manufacture, supply, and/or distribution of liquor by nonretail licensees and prohibited practices between nonretail licensees and retail licensees, WAC 314-29-035.

(3) For the purposes of chapter 314-29 WAC, a two year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred.

(4) The following schedules are meant to serve as guidelines. Based on mitigating or aggravating circumstances, the liquor control board may impose a different penalty than the standard penalties outlined in these schedules.

(a) Mitigating circumstances	(b) Aggravating circumstances
((~~Examples of~~)) Mitigating circumstances that may result in ((~~a~~)) fewer ((~~number of~~)) days of suspension and/or a lower monetary option may include((~~, but are not limited to, having in place~~)) demonstrated business policies and/or practices ((~~such as:~~ • ~~Using licensee certification cards that are correctly filled out and filed;~~ • ~~Having direct on-site supervision of employees;~~ • ~~Having a signed acknowledgment of the business' alcohol policy on file for each employee;~~ • ~~Having an employee training plan that includes annual training on liquor laws;~~ • ~~Showing cooperation with local law enforcement; etc.~~)) that reduce the risk of future violations.	((~~Examples of~~)) Aggravating circumstances that may result in ((~~a higher number of~~)) increased days of suspension, ((~~a higher~~)) and/or increased monetary option, and/or cancellation of a liquor license may include((~~, but are not limited to:~~ • ~~Failing to cooperate with local law enforcement or liquor control board employees;~~ • ~~Not calling for local law enforcement when requested by a customer or liquor control board agent;~~ • ~~Not checking to ensure employees are of legal age or have appropriate work permits;~~ • ~~Committing the violation willfully; etc.~~)) business operations or behaviors that create an increased risk for a violation and/or intentional commission of a violation.

AMENDATORY SECTION (Amending WSR 03-09-015, filed 4/4/03, effective 5/5/03)

WAC 314-29-020 Group 1 violations against public safety. Group 1 violations are considered the most serious because they present a direct threat to public safety.

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Violations involving minors: **Sale or service to minor:** Sale or service of alcohol to a person under 21 years of age. WAC 314-16-150 **Minor frequenting** a tavern, lounge, or other restricted area.	5 day suspension or $500 monetary option	7 day suspension with no monetary option	30 day suspension with no monetary option	Cancellation of license

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
RCW 66.44.270 RCW 66.44.310 WAC 314-11-020				
((**Minor frequenting** a tavern, lounge, or other age restricted area.	5 day suspension or $500 monetary option	7 day suspension with no monetary option	30 day suspension with no monetary option	Cancellation of license))
Sale or service to apparently intoxicated person: Sale or service of alcohol to, or permitting consumption or possession by, an apparently intoxicated person. RCW 66.44.200 WAC 314-16-150	5 day suspension or $500 monetary option	((5)) 7 day suspension ((or $2,500)) with no monetary option	((10)) 30 day suspension ((or $5,000)) with no monetary option	Cancellation of license
Conduct violations: **Disorderly conduct** by licensee or employee, or permitting on premises. **Licensee and/or employee** intoxicated on the licensed premises and/or drinking on duty. **Criminal conduct:** Permitting or engaging in criminal conduct. WAC 314-11-015	5 day suspension or $500 monetary option	((5)) 7 day suspension ((or $2,500)) with no monetary option	((10)) 30 day suspension ((or $5,000)) with no monetary option	Cancellation of license
((**Criminal conduct:** Permitting or engaging in criminal conduct.	5 day suspension or $500 monetary option	7 day suspension with no monetary option	30 day suspension with no monetary option	Cancellation of license))
Lewd conduct: Engaging in or permitting conduct in violation of WAC 314-11-050.	5 day suspension or $500 monetary option	7 day suspension with no monetary option	30 day suspension with no monetary option	Cancellation of license
Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. RCW 66.28.090 RCW 66.44.370 WAC 314-11-090	5 day suspension or $500 monetary option	7 day suspension with no monetary option	30 day suspension with no monetary option	Cancellation of license
Condition of suspension violation: Failure to follow any suspension restriction while liquor license is suspended. WAC 314-29-040	Original penalty plus 10 day suspension with no monetary option	Cancellation of license		

AMENDATORY SECTION (Amending WSR 03-09-015, filed 4/4/03, effective 5/5/03)

WAC 314-29-025 Group 2 ((conduct)) regulatory violations. Group 2 violations are violations involving ((conduct)) general regulation and administration of retail or nonretail ((licensee, employees, or patrons)) licenses.

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
((**Misuse or unauthorized use of liquor license.**	5 day suspension or $1,500 monetary option	Cancellation of license	Cancellation of license	Cancellation of license
Sale of alcohol in violation of a board-approved alcohol impact area restriction.	5 day suspension or $500 monetary option	7 day suspension or $1,500 monetary option	10 day suspension with no monetary option	Cancellation of license))
Club liquor to the public. WAC 314-40-010	5 day suspension or $500 monetary option	5 day suspension or $1,500 monetary option	10 day suspension or $3,000 monetary option	Cancellation of license
Employee under legal age or without required mandatory alcohol server training permit. RCW 66.44.316 RCW 66.44.318 RCW 66.44.340 RCW 66.44.350 WAC 314-11-040 WAC 314-11-045 Chapter 314-17 WAC	5 day suspension or (($250)) $500 monetary option	5 day suspension or $1,500 monetary option	10 day suspension or $3,000 monetary option	Cancellation of license
Failure to follow 11:00 p.m. entertainment rules. WAC 314-02-025(2)	5 day suspension or $500 monetary option	5 day suspension or $1,500 monetary option	10 day suspension or $3,000 monetary option	Cancellation of license
Hours of service: Sales, service, removal, or consumption of alcohol between 2:00 a.m. and 6:00 a.m. WAC 314-11-070	5 day suspension or (($250)) $500 monetary option	5 day suspension or $1,500 monetary option	10 day suspension or $3,000 monetary option	Cancellation of license
Keg registration: Failure to properly register kegs. RCW 66.28.200 RCW 66.28.210 WAC 314-02-115	5 day suspension or $500 monetary option	5 day suspension or $1,500 monetary option	10 day suspension or $3,000 monetary option	Cancellation of license
Spirituous liquor not sold by the individual drink. RCW 66.24.400 WAC 314-02-015 (1)(a)	5 day suspension or $500 monetary option	5 day suspension or $1,500 monetary option	10 day suspension or $3,000 monetary option	Cancellation of license
Food service: Required food service not available. WAC 314-02-035 WAC 314-02-0411 WAC 314-02-065 WAC 314-02-075	5 day suspension or $250 monetary option	5 day suspension or $1,500 monetary option	10 day suspension or $3,000 monetary option	Cancellation of license
Hours of operation: Failure to meet required hours of operation. WAC 314-02-015(2)	5 day suspension or $250 monetary option	5 day suspension or $1,500 monetary option	10 day suspension or $3,000 monetary option	Cancellation of license

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
NSF check: Payment by a retail licensee for alcohol purchases. WAC 314-13-020	5 day suspension or $250 monetary option	5 day suspension or $1,500 monetary option	10 day suspension or $3,000 monetary option	Cancellation of license
Premises not open to the general public while liquor is sold, served, or consumed. WAC 314-11-072	5 day suspension or $250 monetary option	5 day suspension or $1,500 monetary option	10 day suspension or $3,000 monetary option	Cancellation of license
Sampling and/or cooking class violations. WAC 314-02-105	5 day suspension or $250 monetary option	5 day suspension or $1,500 monetary option	10 day suspension or $3,000 monetary option	Cancellation of license
Substituting, tampering, improper labeling, unlawful removal, possession, or unauthorized sale of liquor. WAC 314-11-065 WAC 314-11-080 WAC 314-16-020	5 day suspension or $250 monetary option	5 day suspension or $1,500 monetary option	10 day suspension or $3,000 monetary option	Cancellation of license
((**Lewd conduct:** Engaging in or permitting conduct in violation of WAC 314-11-050.	5 day suspension or $250 monetary option	5 day suspension or $1,500 monetary option	10 day suspension or $3,000 monetary option	Cancellation of license
Inspections: Refusing to allow inspection(s) by law enforcement.	5 day suspension or $100 monetary option	5 day suspension or $500 monetary option	10 day suspension or $1,000 monetary option	20 day suspension with no monetary option))
Advertising: Advertising violations other than those involving prohibited practices between a nonretail and a retail licensee. Chapter 314-52 WAC.	5 day suspension or $100 monetary option	5 day suspension or $500 monetary option	10 day suspension or $1,000 monetary option	20 day suspension with no monetary option
Hotel/motel honor bar violation. WAC 314-02-080	5 day suspension or $100 monetary option	5 day suspension or $500 monetary option	10 day suspension or $1,000 monetary option	20 day suspension with no monetary option
Inventory: Inventory below required amount. WAC 314-02-100 WAC 314-02-105	5 day suspension or $100 monetary option	5 day suspension or $500 monetary option	10 day suspension or $1,000 monetary option	20 day suspension with no monetary option
Lighting: Inadequate lighting. WAC 314-11-055	5 day suspension or $100 monetary option	5 day suspension or $500 monetary option	10 day suspension or $1,000 monetary option	20 day suspension with no monetary option
Liquor purchased from unauthorized source or sale below cost in violation of liquor law or rule. WAC 314-11-085 WAC 314-13-010 WAC 314-13-040	5 day suspension or $100 monetary option	5 day suspension or $500 monetary option	10 day suspension or $1,000 monetary option	20 day suspension with no monetary option

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Private club violations: Club regulations other than club liquor to the public. Chapter 314-40 WAC	5 day suspension or $100 monetary option	5 day suspension or $500 monetary option	10 day suspension or $1,000 monetary option	20 day suspension with no monetary option
Records: Improper recordkeeping. WAC 314-11-090 WAC 314-11-095 WAC 314-12-135	5 day suspension or $100 monetary option	5 day suspension or $500 monetary option	10 day suspension or $1,000 monetary option	20 day suspension with no monetary option
Retailer/nonretailer violation: Violation on the part of a retail licensee that involves a nonretail licensee, other than group four violations.	5 day suspension or $100 monetary option	5 day suspension or $500 monetary option	10 day suspension or $1,000 monetary option	20 day suspension with no monetary option
Signs: Failure to post required signs. WAC 314-11-060	5 day suspension or $100 monetary option	5 day suspension or $500 monetary option	10 day suspension or $1,000 monetary option	20 day suspension with no monetary option
Unauthorized alterations, change of trade name, or added activity. WAC 314-02-025 WAC 314-02-125 WAC 314-02-130	5 day suspension or $100 monetary option	5 day suspension or $500 monetary option	10 day suspension or $1,000 monetary option	20 day suspension with no monetary option

AMENDATORY SECTION (Amending WSR 03-09-015, filed 4/4/03, effective 5/5/03)

WAC 314-29-030 Group 3 ((~~regulatory~~)) license violations. Group 3 violations are violations involving ((~~administrative~~)) licensing requirements, license classification, and special restrictions.

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
((~~**Keg registration:** Failure to properly register kegs.~~	~~5 day suspension or $500 monetary option~~	~~5 day suspension or $1,000 monetary option~~	~~10 day suspension or $1,500 monetary option~~	~~20 day suspension with no monetary option~~
~~**Signs:** Failure to post required signs.~~	~~5 day suspension or $100 monetary option~~	~~5 day suspension or $500 monetary option~~	~~10 day suspension or $1,000 monetary option~~	~~20 day suspension with no monetary option~~
~~**Records:** Improper record keeping.~~	~~5 day suspension or $100 monetary option~~	~~5 day suspension or $500 monetary option~~	~~10 day suspension or $1,000 monetary option~~	~~20 day suspension with no monetary option~~
~~**Advertising:** Advertising violations other than those involving prohibited practices between a nonretail and a retail licensee.~~	~~5 day suspension or $100 monetary option~~	~~5 day suspension or $500 monetary option~~	~~10 day suspension or $1,000 monetary option~~	~~20 day suspension with no monetary option~~
~~**Inventory:** Inventory below required amount.~~	~~5 day suspension or $100 monetary option~~	~~5 day suspension or $500 monetary option~~	~~10 day suspension or $1,000 monetary option~~	~~20 day suspension with no monetary option~~
~~**Unauthorized alterations, change of trade name, or added activity.**~~	~~5 day suspension or $100 monetary option~~	~~5 day suspension or $500 monetary option~~	~~10 day suspension or $1,000 monetary option~~	~~20 day suspension with no monetary option~~

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Lighting: Inadequate lighting.	5 day suspension or $100 monetary option	5 day suspension or $500 monetary option	10 day suspension or $1,000 monetary option	20 day suspension with no monetary option
Liquor purchased from unauthorized source or sale below cost in violation of liquor law or rule.	5 day suspension or $100 monetary option	5 day suspension or $500 monetary option	10 day suspension or $1,000 monetary option	20 day suspension with no monetary option))
True party of interest violation. RCW 66.24.010(1) WAC 314-12-030	Cancellation of license			
Failure to furnish required documents. WAC 314-12-035	Cancellation of license			
Misrepresentation of fact. WAC 314-12-010	Cancellation of license			
Misuse or unauthorized use of liquor license (operating outside of license class, lending or contracting license to another person/entity). Chapter 66.24 RCW WAC 314-02-015 WAC 314-02-041 WAC 314-02-045 WAC 314-02-065 WAC 314-02-070 WAC 314-02-075 WAC 314-02-090 WAC 314-02-095 WAC 314-02-100 WAC 314-02-105 WAC 314-02-110 WAC 314-12-030	5 day suspension or $1,500 monetary option	Cancellation of license		
Operating plan: Violations of a board-approved operating plan. WAC 314-16-270 WAC 314-16-275	5 day suspension or $500 monetary option	7 day suspension or $1,500 monetary option	10 day suspension with no monetary option	Cancellation of license
Sale of alcohol in violation of a board-approved local authority restriction. Chapter 66.24 RCW	5 day suspension or $500 monetary option	7 day suspension or $1,500 monetary option	10 day suspension with no monetary option	Cancellation of license
Sale of alcohol in violation of a board-approved alcohol impact area restriction. WAC 314-12-215	5 day suspension or $500 monetary option	7 day suspension or $1,500 monetary option	10 day suspension with no monetary option	Cancellation of license

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Catering endorsement violation. WAC 314-02-060 WAC 314-02-061	5 day suspension or $250 monetary option	5 day suspension or $1,500 monetary option	10 day suspension or $3,000 monetary option	Cancellation of license

AMENDATORY SECTION (Amending WSR 03-09-015, filed 4/4/03, effective 5/5/03)

WAC 314-29-035 Group 4 nonretail violations. Group 4 violations are violations involving the manufacture, supply, and/or distribution of liquor by nonretail licensees and prohibited practices between a nonretail licensee and a retail licensee.

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Providing credit to a retail licensee. RCW 66.28.010 WAC 314-12-140 WAC 314-12-145 WAC 314-13-015 WAC 314-13-020	3 day suspension or $500 monetary option	5 day suspension or $2,500 monetary option	10 day suspension or $5,000 monetary option	20 day suspension or $10,000 monetary option
Quantity discount. RCW 66.28.170 RCW 66.28.180	3 day suspension or $500 monetary option	5 day suspension or $2,500 monetary option	10 day suspension or $5,000 monetary option	20 day suspension or $10,000 monetary option
Giving away liquor in violation of liquor law or rule. RCW 66.28.040 WAC 314-64-080 WAC 314-64-08001	3 day suspension or $500 monetary option	5 day suspension or $2,500 monetary option	10 day suspension or $5,000 monetary option	20 day suspension or $10,000 monetary option
Consignment sales/return of product in violation of liquor law or rule. RCW 66.28.010 WAC 314-12-140 WAC 314-13-015 WAC 314-20-070 WAC 314-20-090 WAC 314-24-210	3 day suspension or $500 monetary option	5 day suspension or $2,500 monetary option	10 day suspension or $5,000 monetary option	20 day suspension or $10,000 monetary option
Advertising violations involving prohibited practices between a nonretail and a retail licensee. RCW 66.28.010 RCW 66.24.570 WAC 314-05-030 WAC 314-52-040 WAC 314-52-070 WAC 314-52-080 WAC 314-52-090 WAC 314-52-113	3 day suspension or $500 monetary option	5 day suspension or $2,500 monetary option	10 day suspension or $5,000 monetary option	20 day suspension or $10,000 monetary option

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Price ((~~posting~~)) lists/labeling/ packaging violations. RCW 66.24.145 RCW 66.28.100 RCW 66.28.110 RCW 66.28.120 RCW 66.28.180 WAC 314-20-020 WAC 314-20-030 WAC 314-20-100 WAC 314-20-130 WAC 314-24-003 WAC 314-24-006 WAC 314-24-040 WAC 314-24-080 WAC 314-24-090 WAC 314-24-190 WAC 314-28-090	3 day suspension or $500 monetary option	5 day suspension or $2,500 monetary option	10 day suspension or $5,000 monetary option	20 day suspension or $10,000 monetary option
Agents violations: Non-retail licensee employing an unlicensed agent. RCW 66.24.310 RCW 66.28.050 WAC 314-44-005	3 day suspension or $500 monetary option	5 day suspension or $2,500 monetary option	10 day suspension or $5,000 monetary option	20 day suspension or $10,000 monetary option
Unauthorized product/unapproved storage or delivery. RCW 66.24.140 RCW 66.24.160 RCW 66.24.170 RCW 66.24.185 RCW 66.24.200 RCW 66.24.203 RCW 66.24.206 RCW 66.24.240 RCW 66.24.244 RCW 66.24.250 RCW 66.24.261 RCW 66.24.395 RCW 66.28.010 RCW 66.44.140 RCW 66.44.150 RCW 66.44.160 RCW 66.44.170 WAC 314-20-015 WAC 314-20-017 WAC 314-20-055 WAC 314-20-095 WAC 314-20-120 WAC 314-20-160 WAC 314-20-170	3 day suspension or $500 monetary option	5 day suspension or $2,500 monetary option	10 day suspension or $5,000 monetary option	20 day suspension or $10,000 monetary option

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
WAC 314-24-070 WAC 314-24-115 WAC 314-24-120 WAC 314-24-140 WAC 314-24-160 WAC 312-24-161 WAC 314-24-220 WAC 314-25-020 WAC 314-25-030 WAC 314-25-040 WAC 314-28-050				
Sampling/tasting violations. RCW 66.20.010 RCW 66.24.145 RCW 66.24.170 RCW 66.28.040 RCW 66.28.150 WAC 314-20-015 WAC 314-24-160 WAC 314-45-010 Chapter 314-64 WAC	3 day suspension or $500 monetary option	5 day suspension or $2,500 monetary option	10 day suspension or $5,000 monetary option	20 day suspension or $10,000 monetary option
Entertainment/ instruction/meeting/ trade show violations. RCW 66.20.010 RCW 66.28.010 RCW 66.28.042 RCW 66.28.043 RCW 66.28.150 RCW 66.28.155 WAC 314-45-010	3 day suspension or $500 monetary option	5 day suspension or $2,500 monetary option	10 day suspension or $5,000 monetary option	20 day suspension or $10,000 monetary option
((~~**Providing money or money's worth less than $100.**~~	~~3 day suspension or $250 monetary option~~	~~5 day suspension or $500 monetary option~~	~~10 day suspension or $1,000 monetary option~~	~~20 day suspension or $2,000 monetary option~~))
Providing/accepting money or money's worth: Goods or services worth ((~~$100 to $1,000~~)) up to $1,500. RCW 66.28.010 WAC 314-12-140 WAC 314-44-005	3 day suspension or $500 monetary option	5 day suspension or $2,500 monetary option	10 day suspension or $5,000 monetary option	20 day suspension or $10,000 monetary option
Providing/accepting money or money's worth: Goods or services worth over ((~~$1,000~~)) $1,500. RCW 66.28.010 WAC 314-12-140 WAC 314-44-005	Cost of item or service provided plus: 3 day suspension or $1,000 monetary option	Cost of item or service provided plus: 5 day suspension or $2,500 monetary option	Cost of item or service provided plus: 10 day suspension or $5,000 monetary option	Cost of item or service provided plus: 20 day suspension or $10,000 monetary option

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Providing/accepting exclusive or contingency agreements. RCW 66.28.010 RCW 66.24.570 WAC 314-12-140 WAC 314-05-030	3 day suspension or $1,000 monetary option	10 day suspension or $6,000 monetary option	20 day suspension or $12,000 monetary option	30 day suspension or $20,000 monetary option
Unauthorized interest or ownership in retail license. RCW 66.28.010 WAC 314-12-030	3 day suspension or $1,000 monetary option	30 day suspension or $20,000 monetary option	Cancellation of license	
Failure to obtain surety bond/savings account, if required by the board. RCW 66.24.210 RCW 66.24.290 WAC 314-19-020	Immediate suspension of license until surety bond has been obtained and all missing reports are filed and late taxes are paid.			
Failure to file tax/shipment report. RCW 66.24.210 RCW 66.24.290 WAC 314-19-005 WAC 314-19-010 WAC 314-19-020	3 day suspension or $250 monetary option	5 day suspension or $500 monetary option	10 day suspension or $1,000 monetary option	20 day suspension or $2,000 monetary option
Certificate of approval (COA) and/or authorized representative violations. RCW 66.24.206 WAC 314-19-005 WAC 314-19-010 WAC 314-19-020	15 day suspension or $100 monetary option	30 day suspension or $500 monetary option	180 day suspension or $1,000 monetary option	Cancellation of license

WSR 09-15-126
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION
[Filed July 20, 2009, 9:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-012.

Title of Rule and Other Identifying Information: Minor revisions to chapter 468-70 WAC, Motorist information signs.

Hearing Location(s): Department of Transportation, Commission Board Room, 310 Maple Park Avenue, Olympia, WA 98504, on August 27, 2009, at 1:30 p.m.

Date of Intended Adoption: August 27, 2009.

Submit Written Comments to: Rick Mowlds, P.O. Box 47344, Olympia, WA 98504-7344, e-mail mowldsr@wsdot.wa.gov, fax (360) 705-6826, by August 26, 2009.

Assistance for Persons with Disabilities: Contact WSDOT reception by August 26, 2009, (360) 705-7000.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will amend existing rules to: (1) Update certain signing eligibility requirements regarding campgrounds and recreational activities, to reflect national trends and other states' practices, (2) correct the statute cited, from chapter 43.165 RCW to chapter 43.168 RCW, in reference to economic distressed areas, (3) increase the city/town population threshold, from 22,500 to 25,000, to reflect RCW 47.24.020, and (4) increase from four to six the allowable number of business signs on intersection approach back panels, to reflect the 2003 edition of the Manual on Uniform Traffic Control Devices published by the Federal Highway Administration. Anticipated effects may include additional campgrounds eligible for business signs and two additional business signs displayed on back panels at intersection approaches.

Reasons Supporting Proposal: Chapter 468-70 WAC has a thirty-four year history based on Washington state law and national signing standards. The minor revisions in this rule correct a statutory reference, correct a population threshold to reflect a recent statutory revision, and assure Washington state's uniformity with nationally accepted signing practices.

Statutory Authority for Adoption: RCW 47.36.030 and 47.36.320.

Statute Being Implemented: None.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Rick Mowlds, Olympia, Washington, (360) 705-7288.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule is exempt from the small business economic impact statement process under RCW 19.85.025(3) and 34.05.310 (4)(c) and (d). There is no economic impact to small business because participation in the motorist information sign program is voluntary.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is exempt under RCW 34.05.328 (5)(b)(iii) and (iv). The rule does not materially change federal regulations or Washington state law. The rule corrects typographical errors, and clarifies language without changing its effect.

July 20, 2009
Stephen T. Reinmuth
Chief of Staff

AMENDATORY SECTION (Amending WSR 06-15-018, filed 7/7/06, effective 8/7/06)

WAC 468-70-050 Business eligibility. (1) To be eligible for placement of a business sign on a motorist information sign panel a motorist service activity must conform to the following standards:

(a) Gas activity:

(i) Provide vehicle services including fuel, oil, tire repair and water; and

(ii) Be in continuous operation at least sixteen hours a day, seven days a week; and

(iii) Provide restroom facilities, drinking water and a telephone access;

(iv) Motorist information sign panels may be installed and existing signing will not be removed when the motorist service activity is closed for a short period of time or when its hours of operation have been reduced as a result of a shortage of gasoline;

(v) Activities not meeting the tire repair requirement of (i) of this subsection but have gas, oil, and water may qualify for signing provided that the motorist information sign panel displays fewer than the full complement of business signs. A telephone must also be available at no cost for a person to use to acquire tire repair;

(vi) Business signs for card-lock gas activities may be installed, provided that the activities serve the general motoring public, without membership, and accept a variety of credit cards available to the general public. Card-lock gas activities must also meet the applicable requirements of (a)(i) through (v) of this subsection.

(b) Food activity:

(i) Be licensed or approved by the county health office; and

(ii) Food activities in fee zones 1 and 2 shall be in continuous operation to serve meals for a minimum of ten hours a day six days a week, and food activities in fee zone 3 shall be in continuous operation to serve meals for a minimum of eight hours a day six days a week; and

(iii) Have inside seating for a minimum of twenty patrons and parking facilities for a minimum of ten vehicles; and

(iv) Provide telephone and restroom facilities.

(c) Lodging activity:

(i) Be licensed or approved by the Washington department of health; and

(ii) Provide adequate sleeping and bathroom accommodations available without reservations for rental on a daily basis; and

(iii) Provide public telephone facilities.

(d) Camping activity (applicable only for activities available from interstate highways):

(i) Have a valid business license;

(ii) Consist of at least twenty camping spaces((~~, at least fifty percent of which will accommodate tents,~~)) and have adequate parking, modern sanitary and drinking water facilities for such spaces; and

(iii) Have an attendant on duty to manage and maintain the facility twenty-four hours a day while in operation.

(e) Recreation activity (applicable only for activities available from noninterstate highways):

(i) Consist of activities and sports of interest to family groups and the public generally in which people participate for purposes of active physical exercise, collective amusement or enjoyment of nature; e.g., hiking, golfing, skiing, boating, swimming, picnicking, camping, fishing, tennis, horseback riding, ice skating and gun clubs; and

(ii) Be licensed or approved by the state or local agency regulating the particular type of business; and

(iii) When the recreational activity is a campground, it must meet the criteria specified in WAC 468-70-050 (1)(d)(i) thru (iii).

(iv) Activities must be open to the motoring public without appointment, at least six hours a day, five days a week including Saturday and/or Sunday.

(f) Tourist-oriented business activity:

(i) A natural, recreational, historical, cultural, educational, or entertainment activity, or a unique or unusual commercial or nonprofit activity, the major portion of whose income or visitors are derived during its normal business seasons from motorists not residing in the immediate area of the activity.

(ii) Be listed as a historic district on the National Register of Historic Places, on the Washington Heritage Register, or as a National Historic Landmark with the state's office of ((~~archeology~~)) archaeology and historic preservation. Signs on private property that mark the entrance to the historic dis-

trict and a letter of support by the jurisdictional local agency are required.

(iii) Be a commercial district as adopted by a city ordinance or resolution with a minimum of one million square feet of leasable commercial space located within one square mile. The commercial district must provide a unique commercial activity where the majority of the district's customers do not reside in the city where the commercial district is located. The commercial district shall be located within one mile of the nearest state highway. Only the name of the commercial district will be displayed on the business sign. Corporate logos may not be displayed.

(iv) Activities must be open to the motoring public without appointment, at least six hours a day, five days a week including Saturday and/or Sunday.

(g) Twenty-four-hour pharmacy:

(i) Be open twenty-four hours a day, seven days a week.

(ii) Have a state-licensed pharmacist present and on duty at all times.

(2) To be eligible for a RV symbol on its business sign, the business or destination shall have amenities, designed to accommodate recreational and other large vehicles, including:

(a) A hard-surfaced access to and from the business, that is free of potholes and is at least twelve feet wide with minimum turning radii of fifty feet.

(b) The roadway access and parking facilities must be free of utility wires, tree branches, or other obstructions up to fourteen feet above the surfacing.

(c) Facilities having short-term parking, such as restaurants and tourist attractions, must have a minimum of two parking spaces that are at least twelve feet wide and sixty-five feet long with a minimum turning radius of fifty feet for entering and exiting.

(d) Fueling islands must be located to allow for pull-through with a minimum entering and exiting turning radius of fifty feet.

(e) Canopied fueling islands must have a fourteen-foot minimum overhead clearance.

(f) Fueling facilities selling diesel are required to have pumps with noncommercial nozzles.

(g) For campgrounds, a minimum of two parking spaces at least eighteen feet wide and forty-five feet long are required.

(h) Business activities must also post directional signing on the premises as needed to indicate RV-friendly parking spaces and other on-site RV-friendly services, so that the motorist is given additional guidance upon leaving the public highway and entering the property.

(3) Distances prescribed herein will be measured from the center of the interchange or intersection along the centerline of the most direct public road to the facility access.

(4) The maximum distance that gas, food, lodging, camping, recreational, or tourist-oriented activities can be located on either side of an interchange or intersection to qualify for a business sign shall be as follows:

(a) From an interstate highway, gas, food, and lodging activities shall be located within three miles in either direction. Camping or tourist-oriented activities shall be located within five miles in either direction;

(b) From a noninterstate highway, gas, food, lodging, recreation, or tourist-oriented activities shall be located within five miles in either direction.

(c) A twenty-four-hour pharmacy must be located within three miles of an interstate or noninterstate highway.

(d) Where there are fewer than the maximum number, as specified in WAC 468-70-060 (3)(a), of eligible services within the distance limits prescribed in (a) and (b) of this subsection, the distance limits may be increased up to a maximum of fifteen miles to complete the balance of allowable signs.

(i) In reference to WAC 468-70-040(3), the department may erect and maintain signs on an alternate route that is longer than fifteen miles if it is safer and still provides reasonable and convenient travel to an eligible activity.

(ii) The department may erect and maintain signs on a route up to a maximum of twenty miles if an activity qualifies as eligible and is located within a distressed area under the criteria set forth in chapter ((~~43.165~~)) 43.168 RCW.

(5) Within cities and towns having a population greater than ((~~twenty-two~~)) twenty-five thousand ((~~five hundred~~)), the department shall obtain concurrence from the municipality of locations for installing panels, and may request that the municipality install the panels.

(6) A gas, food, lodging, camping/recreational, tourist-oriented, or twenty-four-hour pharmacy activity visible from the mainline at least three hundred feet prior to an intersection shall not qualify for a business sign on such highway. The activity's on-premise sign is considered part of that activity in determining the three hundred foot visibility.

(7) When a multiple business activity qualifies for business sign placement on more than one type of motorist information sign panel, placement will be made on that type of panel which, as determined by the department, best describes the main product or service. Additional business signs for a qualifying multiple business activity may only be placed on more than one type of motorist information sign panel where the applicable panels display fewer than a full complement of business signs. Where these additional business signs complete the full complement of business signs on a motorist information sign panel, the most recently installed of such additional business signs shall be substituted for in the event that a qualifying single business activity applies to receive business signs.

(8) Motorist information sign panels will not be erected and maintained by the department until adequate follow-through signing, as specified by the department, is erected on local roads and/or streets. Written assurance that the follow-through signs will be maintained is required.

(9) Where operations are seasonal, business signs for each specific location shall be removed or covered during the appropriate period as determined by the department.

AMENDATORY SECTION (Amending WSR 06-15-018, filed 7/7/06, effective 8/7/06)

WAC 468-70-060 Signing details. (1) Specifications. All motorist information sign panels, supplemental directional panels, and business signs shall be constructed in accordance with the Washington state standard specifica-

tions, standard plans and amendments thereto. All business signs and RV symbols shall be constructed of a single piece of 0.063 inch thick aluminum. All panels, business signs, and RV symbols shall be fully reflectorized to show the same shape and color both by day and night.

(2) Color of panels, signs, and RV symbols:

(a) The background color for gas, food, lodging, camping, TOD, and twenty-four-hour pharmacy motorist information sign panels and supplemental directional panels shall be blue. The background color for recreation motorist information sign panels and supplemental directional panels shall be brown. The border and lettering on all such signs shall be white.

(b) The background and message colors of business signs shall be at the businesses' option, subject to the department's approval as prescribed by WAC 468-70-070(5).

(c) The background color of RV symbols shall be yellow, with the letters RV in black.

(3) Composition of motorist information sign panels:

(a) For interchanges, the maximum number of business signs which may be displayed on a motorist information sign panel are six for each gas, food, lodging, camping/recreation, TOD's, and twenty-four-hour pharmacy panel. For intersections, each panel is limited to ((~~four~~)) six business signs. For combined motorist information sign panels on the mainline, the minimum number of business signs which may be displayed is two for each type of motorist service activity. For supplemental directional panels located along interchange ramps, there is no minimum number of business signs which may be displayed for each type of motorist service activity.

(b) Sign panel fabrication layouts, and business sign sizes, are provided in the Appendices of the Motorist Information Signs Booklet published by the Washington state department of transportation.

(i) The panel size shall be sufficient to accommodate the various sizes of business signs and directional information.

(ii) For qualifying businesses located more than one mile from an intersection the business sign shall show the mileage to the business to the nearest mile. For interchanges the mileage will be shown on the supplemental directional panel business signs installed along an interchange ramp or at a ramp terminal.

(4) RV symbol design and statutory mounting location:

(a) RV symbols installed on freeway/expressway size business signs shall be a round twelve-inch diameter plaque displaying eight-inch RV letters. RV symbols installed on conventional roadway size business signs shall be a round six-inch diameter plaque displaying four-inch RV letters.

(b) The RV symbol shall be displayed in the lower right corner of the gas, food, lodging, camping, or tourist activity business signs installed along the mainline of freeways/expressways and along conventional highways. The term lower right corner is exclusive of any panel displaying the mileage message referenced in subsection (3)(b)(ii) of this section. RV symbols shall not be installed on supplemental directional panel business signs installed along an interchange ramp or at a ramp terminal.

WSR 09-15-128
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 09-06—Filed July 20, 2009, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-12-097.

Title of Rule and Other Identifying Information: Rule amendment for chapter 173-224 WAC, Wastewater discharge permit fees.

Hearing Location(s): Spokane South Hill Library, 3324 South Perry Street, Spokane, WA, on August 25, 2009, at 12:30; at the Hal Holmes Community Center, 209 North Ruby Street, Ellensburg, WA, on August 26, 2009, at 12:30; and at the Ecology Headquarters Building, 300 Desmond Drive, Meeting Room ROA-34, Lacey, WA, on August 27, 2009, at 12:30.

Date of Intended Adoption: September 28, 2009.

Submit Written Comments to: Bev Poston, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail bpos461@ecy.wa.gov, fax (360) 407-7151, by September 9, 2009.

Assistance for Persons with Disabilities: Contact Bev Poston by August 18, 2009. Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call 877-833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To increase fees for some wastewater and stormwater permit holders by the following: 5.20% for fiscal year 2010 and 4.61% for fiscal year 2011 as authorized by the 2009 Washington state legislature. Fees for domestic wastewater permit holders will also increase from the current $1.80 per residential equivalent (RE) for cities with less than 250,000 RE's to $1.89 per RE for fiscal year 2010 and $1.98 per RE for fiscal year 2011. For residential equivalent counts greater than 250,000, the fee for fiscal year 2011 will increase from $1.32 to $1.38. Ecology is also proposing to eliminate the proration fees to the fiscal quarter a permit is terminated in.

Reasons Supporting Proposal: The fee increase will allow continued operation of the wastewater/stormwater permit program. Wastewater and stormwater permits are tools used by ecology to ensure that man-made activities that discharge into the various water bodies of the state are discharged at a level where they will not impair the water.

Statutory Authority for Adoption: RCW 90.48.465 Water pollution control.

Statute Being Implemented: RCW 90.48.465 Water pollution control.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bev Poston, Olympia, Washington, (360) 407-6425.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 173-224 WAC, Wastewater discharge permit fees, already provides relief from fees for small business with no more than one million

dollars in gross revenue from the activity covered by the permit. To the extent there may be a disproportionate impact on small business, this provides mitigation, as would be required by the Regulatory Fairness Act (RCW 19.85.030) were a small business economic impact statement found to be necessary.

A cost-benefit analysis is not required under RCW 34.05.328. Rules changing fee schedules are exempt from significant legislature [legislative] rule cost-benefit analysis (RCW 34.05.328) requirements. The exemptions apply to rules which set or adjust fees or rates pursuant to legislative standards. Legislative standards for these fees appear in RCW 90.48.465 Water pollution control (authorizing the fee). Ecology is proposing to increase some fees by the state fiscal growth factor projections determined by the Washington state expenditure limit committee.

July 16, 2009

Polly Zehm

Deputy Director

AMENDATORY SECTION (Amending Order 08-05, filed 8/5/08, effective 9/5/08)

WAC 173-224-040 Permit fee schedule. (1) Application fee. In addition to the annual fee, first time applicants (except those applying for coverage under a general permit) will pay a one time application fee of twenty-five percent of the annual permit fee, or $250.00, whichever is greater. An application fee will be assessed for RCRA sites regardless of whether a new permit is being issued or an existing permit for other than the discharge resulting from the RCRA corrective action, is being modified.

(2) Industrial facility categories.

INDUSTRIAL FACILITY CATEGORIES	FY ((~~2009~~)) 2010 ANNUAL PERMIT FEE	FY ((~~2010~~)) 2011 ANNUAL PERMIT FEE ((~~*~~))
Aluminum Alloys	$16,713.00	$((~~17,614.00~~)) 16,713.00
Aluminum and Magnesium Reduction Mills		
a. NPDES Permit	98,554.00	((~~103,866.00~~)) 98,554.00
b. State Permit	49,279.00	((~~51,935.00~~)) 49,279.00
Aluminum Forming	50,136.00	((~~52,838.00~~)) 50,136.00
Aggregate Production - Individual Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	2,876.00	((~~3,031.00~~)) 2,876.00
2. Nonoperating aggregate site (fee per site)	118.00	((~~124.00~~)) 118.00
b. Asphalt Production		
1. 0 - < 50,000 tons/yr.	1,198.00	((~~1,263.00~~)) 1,198.00
2. 50,000 - < 300,000 tons/yr.	2,877.00	((~~3,032.00~~)) 2,877.00
3. 300,000 tons/yr. and greater	3,598.00	((~~3,792.00~~)) 3,598.00
c. Concrete Production		
1. 0 - < 25,000 cu. yds/yr.	1,198.00	((~~1,263.00~~)) 1,198.00
2. 25,000 - < 200,000 cu. yds/yr.	2,877.00	((~~3,032.00~~)) 2,877.00
3. 200,000 cu. yds/yr. and greater	3,598.00	((~~3,792.00~~)) 3,598.00

The fee for a facility in the aggregate production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.

d. Portable Operations

INDUSTRIAL FACILITY CATEGORIES	FY ((~~2009~~)) 2010 ANNUAL PERMIT FEE	FY ((~~2010~~)) 2011 ANNUAL PERMIT FEE ((~~*~~))
1. Rock Crushing	2,876.00	((~~3,031.00~~)) 2,876.00
2. Asphalt	2,876.00	((~~3,031.00~~)) 2,876.00
3. Concrete	2,876.00	((~~3,031.00~~)) 2,876.00
Aggregate Production - General Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	2,012.00	((~~2,120.00~~)) 2,012.00
2. Nonoperating aggregate site (fee per site)	83.00	((~~87.00~~)) 83.00
b. Asphalt Production		
1. 0 - < 50,000 tons/yr.	840.00	((~~885.00~~)) 840.00
2. 50,000 - < 300,000 tons/yr.	2,013.00	((~~2,122.00~~)) 2,013.00
3. 300,000 tons/yr. and greater	2,517.00	((~~2,653.00~~)) 2,517.00
c. Concrete Production		
1. 0 - < 25,000 cu. yds/yr.	840.00	((~~885.00~~)) 840.00
2. 25,000 - < 200,000 cu. yds/yr.	2,013.00	((~~2,122.00~~)) 2,013.00
3. 200,000 cu. yds/yr. and greater	2,517.00	((~~2,653.00~~)) 2,517.00
The fee for a facility in the aggregate production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.		
d. Portable Operations		
1. Rock Crushing	2,013.00	((~~2,122.00~~)) 2,013.00
2. Asphalt	2,013.00	((~~2,122.00~~)) 2,013.00
3. Concrete	2,013.00	((~~2,122.00~~)) 2,013.00
Aquaculture		
a. Finfish hatching and rearing - Individual Permit	5,012.00	((~~5,282.00~~)) 5,012.00
b. Finfish hatching and rearing - General Permit Coverage	3,511.00	((~~3,700.00~~)) 3,511.00
c. Shellfish hatching	((~~173.00~~)) 182.00	((~~182.00~~)) 190.00
Aquatic Pest Control		
a. Irrigation Districts	((~~377.00~~)) 397.00	((~~397.00~~)) 415.00
b. Mosquito Control Districts	((~~377.00~~)) 397.00	((~~397.00~~)) 415.00

	INDUSTRIAL FACILITY CATEGORIES	FY ((~~2009~~)) 2010 ANNUAL PERMIT FEE	FY ((~~2010~~)) 2011 ANNUAL PERMIT FEE ((~~*~~))
c.	Invasive Moth Control	((~~377.00~~)) 397.00	((~~397.00~~)) 415.00
d.	Aquatic Species Control & Eradication	((~~377.00~~)) 397.00	((~~397.00~~)) 415.00
e.	Oyster Growers	((~~377.00~~)) 397.00	((~~397.00~~)) 415.00
f.	Rotenone Control	((~~377.00~~)) 397.00	((~~397.00~~)) 415.00
Boat Yards - Individual Permit Coverage			
a.	With storm water only discharge	428.00	((~~451.00~~)) 428.00
b.	All others	856.00	((~~902.00~~)) 856.00
Boat Yards - General Permit Coverage			
a.	With storm water only discharge	((~~298.00~~)) 313.00	((~~314.00~~)) 327.00
b.	All others	((~~602.00~~)) 633.00	((~~634.00~~)) 662.00
Coal Mining and Preparation			
a.	< 200,000 tons per year	6,680.00	((~~7,040.00~~)) 6,680.00
b.	200,000 - < 500,000 tons per year	15,042.00	((~~15,853.00~~)) 15,042.00
c.	500,000 - < 1,000,000 tons per year	26,739.00	((~~28,180.00~~)) 26,739.00
d.	1,000,000 tons per year and greater	50,136.00	((~~52,838.00~~)) 50,136.00
Combined Industrial Waste Treatment			
a.	< 10,000 gpd	3,342.00	((~~3,522.00~~)) 3342.00
b.	10,000 - < 50,000 gpd	8,354.00	((~~8,804.00~~)) 8,354.00
c.	50,000 - < 100,000 gpd	16,713.00	((~~17,614.00~~)) 16,713.00
d.	100,000 - < 500,000 gpd	33,422.00	((~~35,223.00~~)) 33,422.00
e.	500,000 gpd and greater	50,136.00	((~~52,838.00~~)) 50,136.00
Combined Food Processing Waste Treatment Facilities		16,000.00	((~~16,862.00~~)) 16,000.00
Combined Sewer Overflow System			
a.	< 50 acres	3,342.00	((~~3,522.00~~)) 3,342.00
b.	50 - < 100 acres	8,354.00	((~~8,804.00~~)) 8,354.00
c.	100 - < 500 acres	10,030.00	((~~10,571.00~~)) 10,030.00

INDUSTRIAL FACILITY CATEGORIES	FY ((~~2009~~)) 2010 ANNUAL PERMIT FEE	FY ((~~2010~~)) 2011 ANNUAL PERMIT FEE ((~~*~~))
d. 500 acres and greater	13,368.00	((~~14,089.00~~)) 13,368.00
Commercial Laundry	428.00	((~~451.00~~)) 428.00
Concentrated Animal Feeding Operation		
a. < 200 Animal Units	((~~171.00~~)) 180.00	((~~180.00~~)) 188.00
b. 200 - < 400 Animal Units	((~~428.00~~)) 450.00	((~~451.00~~)) 471.00
c. 400 - < 600 Animal Units	((~~856.00~~)) 901.00	((~~902.00~~)) 943.00
d. 600 - < 800 Animal Units	((~~1,284.00~~)) 1,351.00	((~~1,353.00~~)) 1,413.00
e. 800 Animal Units and greater	((~~1,714.00~~)) 1,803.00	((~~1,806.00~~)) 1,886.00
Crop Preparing - Individual Permit Coverage		
a. 0 - < 1,000 bins/yr.	333.00	((~~351.00~~)) 333.00
b. 1,000 - < 5,000 bins/yr.	669.00	((~~705.00~~)) 669.00
c. 5,000 - < 10,000 bins/yr.	1,337.00	((~~1,409.00~~)) 1,337.00
d. 10,000 - < 15,000 bins/yr.	2,676.00	((~~2,820.00~~)) 2,676.00
e. 15,000 - < 20,000 bins/yr.	4,425.00	((~~4,664.00~~)) 4,425.00
f. 20,000 - < 25,000 bins/yr.	6,183.00	((~~6,516.00~~)) 6,183.00
g. 25,000 - < 50,000 bins/yr.	8,271.00	((~~8,717.00~~)) 8,271.00
h. 50,000 - < 75,000 bins/yr.	9,192.00	((~~9,687.00~~)) 9,192.00
i. 75,000 - < 100,000 bins/yr.	10,694.00	((~~11,270.00~~)) 10,694.00
j. 100,000 - < 125,000 bins/yr.	13,368.00	((~~14,089.00~~)) 13,368.00
k. 125,000 - < 150,000 bins/yr.	16,712.00	((~~17,613.00~~)) 16,712.00
l. 150,000 bins/yr. and greater	20,055.00	((~~21,136.00~~)) 20,055.00
Crop Preparing - General Permit Coverage		
a. 0 - < 1,000 bins/yr.	232.00	((~~245.00~~)) 232.00
b. 1,000 - < 5,000 bins/yr.	468.00	((~~493.00~~)) 468.00
c. 5,000 - < 10,000 bins/yr.	937.00	((~~988.00~~)) 937.00

	INDUSTRIAL FACILITY CATEGORIES	FY ((~~2009~~)) 2010 ANNUAL PERMIT FEE	FY ((~~2010~~)) 2011 ANNUAL PERMIT FEE ((~~*~~))
d.	10,000 - < 15,000 bins/yr.	1,873.00	((~~1,974.00~~)) 1,873.00
e.	15,000 - < 20,000 bins/yr.	3,100.00	((~~3,267.00~~)) 3,100.00
f.	20,000 - < 25,000 bins/yr.	4,328.00	((~~4,561.00~~)) 4,328.00
g.	25,000 - < 50,000 bins/yr.	5,788.00	((~~6,100.00~~)) 5,788.00
h.	50,000 - < 75,000 bins/yr.	6,433.00	((~~6,780.00~~)) 6,433.00
i.	75,000 - < 100,000 bins/yr.	7,481.00	((~~7,884.00~~)) 7,481.00
j.	100,000 - < 125,000 bins/yr.	9,360.00	((~~9,865.00~~)) 9,360.00
k.	125,000 - < 150,000 bins/yr.	11,698.00	((~~12,329.00~~)) 11,698.00
l.	150,000 bins/yr. and greater	14,037.00	((~~14,794.00~~)) 14,037.00
Dairies $.50 per Animal Unit not to exceed ((~~1,199.00 for FY 2009 and $1,264.00~~)) $1,261.00 for FY 2010 and $1,319.00 for FY 2011			
Facilities Not Otherwise Classified - Individual Permit Coverage			
a.	< 1,000 gpd	1,671.00	((~~1,761.00~~)) 1,671.00
b.	1,000 - < 10,000 gpd	3,342.00	((~~3,522.00~~)) 3,342.00
c.	10,000 - < 50,000 gpd	8,355.00	((~~8,805.00~~)) 8,355.00
d.	50,000 - < 100,000 gpd	13,368.00	((~~14,089.00~~)) 13,368.00
e.	100,000 - < 500,000 gpd	26,606.00	((~~28,040.00~~)) 26,606.00
f.	500,000 - < 1,000,000 gpd	33,422.00	((~~35,223.00~~)) 33,422.00
g.	1,000,000 gpd and greater	50,135.00	((~~52,837.00~~)) 50,135.00
Facilities Not Otherwise Classified - General Permit Coverage			
a.	< 1,000 gpd	1,172.00	((~~1,235.00~~)) 1,172.00
b.	1,000 - < 10,000 gpd	2,425.00	((~~2,556.00~~)) 2,425.00
c.	10,000 - < 50,000 gpd	5,851.00	((~~6,166.00~~)) 5,581.00
d.	50,000 - < 100,000 gpd	9,360.00	((~~9,865.00~~)) 9,360.00
e.	100,000 - < 500,000 gpd	18,715.00	((~~19,724.00~~)) 18,715.00
f.	500,000 - < 1,000,000 gpd	23,394.00	((~~24,655.00~~)) 23,394.00

	INDUSTRIAL FACILITY CATEGORIES	FY ((~~2009~~)) 2010 ANNUAL PERMIT FEE	FY ((~~2010~~)) 2011 ANNUAL PERMIT FEE ((~~*~~))
g.	1,000,000 gpd and greater	35,095.00	((~~36,987.00~~)) 35,095.00
Flavor Extraction			
a.	Steam Distillation	171.00	((~~180.00~~)) 171.00
Food Processing			
a.	< 1,000 gpd	1,670.00	((~~1,760.00~~)) 1,670.00
b.	1,000 - < 10,000 gpd	4,259.00	((~~4,489.00~~)) 4,259.00
c.	10,000 - < 50,000 gpd	7,604.00	((~~8,014.00~~)) 7,604.00
d.	50,000 - < 100,000 gpd	11,948.00	((~~12,592.00~~)) 11,948.00
e.	100,000 - < 250,000 gpd	16,712.00	((~~17,613.00~~)) 16,712.00
f.	250,000 - < 500,000 gpd	21,977.00	((~~23,162.00~~)) 21,977.00
g.	500,000 - < 750,000 gpd	27,572.00	((~~29,058.00~~)) 27,572.00
h.	750,000 - < 1,000,000 gpd	33,422.00	((~~35,223.00~~)) 33,422.00
i.	1,000,000 - < 2,500,000 gpd	41,175.00	((~~43,394.00~~)) 41,175.00
j.	2,500,000 - < 5,000,000 gpd	45,957.00	((~~48.434.00~~)) 45,957.00
k.	5,000,000 gpd and greater	50,136.00	((~~52,838.00~~)) 50,136.00
Fuel and Chemical Storage			
a.	< 50,000 bbls	1,671.00	((~~1,761.00~~)) 1,671.00
b.	50,000 - < 100,000 bbls	3,342.00	((~~3,522.00~~)) 3,342.00
c.	100,000 - < 500,000 bbls	8,354.00	((~~8,804.00~~)) 8,354.00
d.	500,000 bbls and greater	16,713.00	((~~17,614.00~~)) 16,713.00
Hazardous Waste Clean Up Sites			
a.	Leaking Underground Storage Tanks (LUST)		
	1. State Permit	4,383.00	((~~4,619.00~~)) 4,383.00
	2. NPDES Permit Issued pre 7/1/94	4,383.00	((~~4,619.00~~)) 4.383.00
	3. NPDES Permit Issued post 7/1/94	8,765.00	((~~9,237.00~~)) 8,765.00
b.	Non-LUST Sites		
	1. 1 or 2 Contaminants of concern	8,570.00	((~~9,032.00~~)) 8,570.00

INDUSTRIAL FACILITY CATEGORIES	FY ((~~2009~~)) 2010 ANNUAL PERMIT FEE	FY ((~~2010~~)) 2011 ANNUAL PERMIT FEE ((~~*~~))
2. > 2 Contaminants of concern	17,140.00	((~~18,064.00~~)) 17,140.00
Ink Formulation and Printing		
a. Commercial Print Shops	2,571.00	((~~2,710.00~~)) 2,571.00
b. Newspapers	4,286.00	((~~4,517.00~~)) 4,286.00
c. Box Plants	6,856.00	((~~7,226.00~~)) 6,856.00
d. Ink Formulation	8,571.00	((~~9,033.00~~)) 8,571.00
Inorganic Chemicals Manufacturing		
a. Lime Products	8,354.00	((~~8,804.00~~)) 8,354.00
b. Fertilizer	10,058.00	((~~10,600.00~~)) 10,058.00
c. Peroxide	13,368.00	((~~14,089.00~~)) 13,368.00
d. Alkaline Earth Salts	16,713.00	((~~17,614.00~~)) 16,713.00
e. Metal Salts	23,393.00	((~~24,654.00~~)) 23,393.00
f. Acid Manufacturing	33,416.00	((~~35,217.00~~)) 33,416.00
g. Chlor-alkali	66,846.00	((~~70,449.00~~)) 66,846.00
Iron and Steel		
a. Foundries	16,713.00	((~~17,614.00~~)) 16,713.00
b. Mills	33,453.00	((~~35,256.00~~)) 33,453.00
Metal Finishing		
a. < 1,000 gpd	2,004.00	((~~2,112.00~~)) 2,004.00
b. 1,000 - < 10,000 gpd	3,341.00	((~~3,521.00~~)) 3,341.00
c. 10,000 - < 50,000 gpd	8,353.00	((~~8,803.00~~)) 8,353.00
d. 50,000 - < 100,000 gpd	16,712.00	((~~17,613.00~~)) 16,712.00
e. 100,000 - < 500,000 gpd	33,420.00	((~~35,221.00~~)) 33,420.00
f. 500,000 gpd and greater	50,133.00	((~~52,835.00~~)) 50,133.00
Noncontact Cooling Water With Additives - Individual Permit Coverage		
a. < 1,000 gpd	1,046.00	((~~1,102.00~~)) 1,046.00

	INDUSTRIAL FACILITY CATEGORIES	FY ((~~2009~~)) 2010 ANNUAL PERMIT FEE	FY ((~~2010~~)) 2011 ANNUAL PERMIT FEE ((~~*~~))
b.	1,000 - < 10,000 gpd	1,459.00	((~~1,538.00~~)) 1,459.00
c.	10,000 - < 50,000 gpd	3,136.00	((~~3,305.00~~)) 3,136.00
d.	50,000 - < 100,000 gpd	7,314.00	((~~7,708.00~~)) 7,314.00
e.	100,000 - < 500,000 gpd	12,531.00	((~~13,206.00~~)) 12,531.00
f.	500,000 - < 1,000,000 gpd	17,758.00	((~~18,715.00~~)) 17,758.00
g.	1,000,000 - < 2,500,000 gpd	22,982.00	((~~24,221.00~~)) 22,982.00
h.	2,500,000 - < 5,000,000 gpd	28,082.00	((~~29,596.00~~)) 28,082.00
i.	5,000,000 gpd and greater	33,422.00	((~~35,223.00~~)) 33,422.00
Noncontact Cooling Water With Additives - General Permit Coverage			
a.	< 1,000 gpd	733.00	((~~773.00~~)) 733.00
b.	1,000 - < 10,000 gpd	1,461.00	((~~1,540.00~~)) 1,461.00
c.	10,000 - < 50,000 gpd	2,195.00	((~~2,313.00~~)) 2,195.00
d.	50,000 - < 100,000 gpd	5,120.00	((~~5,396.00~~)) 5,120.00
e.	100,000 - < 500,000 gpd	8,773.00	((~~9,246.00~~)) 8,773.00
f.	500,000 - < 1,000,000 gpd	12,432.00	((~~13,102.00~~)) 12,432.00
g.	1,000,000 - < 2,500,000 gpd	16,086.00	((~~16,953.00~~)) 16,086.00
h.	2,500,000 - < 5,000,000 gpd	19,739.00	((~~20,803.00~~)) 19,739.00
i.	5,000,000 gpd and greater	23,394.00	((~~24,655.00~~)) 23,394.00
Noncontact Cooling Water Without Additives - Individual Permit Coverage			
a.	< 1,000 gpd	838.00	((~~883.00~~)) 838.00
b.	1,000 - < 10,000 gpd	1,671.00	((~~1,761.00~~)) 1,671.00
c.	10,000 - < 50,000 gpd	2,509.00	((~~2,644.00~~)) 2,509.00
d.	50,000 - < 100,000 gpd	5,851.00	((~~6,166.00~~)) 5,851.00
e.	100,000 - < 500,000 gpd	10,030.00	((~~10,571.00~~)) 10,030.00
f.	500,000 - < 1,000,000 gpd	14,203.00	((~~14,969.00~~)) 14,203.00

INDUSTRIAL FACILITY CATEGORIES	FY ((~~2009~~)) 2010 ANNUAL PERMIT FEE	FY ((~~2010~~)) 2011 ANNUAL PERMIT FEE ((~~*~~))
g. 1,000,000 - < 2,500,000 gpd	18,310.00	((~~19,297.00~~)) 18,310.00
h. 2,500,000 - < 5,000,000 gpd	22,559.00	((~~23,775.00~~)) 22,559.00
i. 5,000,000 gpd and greater	26,739.00	((~~28,180.00~~)) 26,739.00
Noncontact Cooling Water Without Additives - General Permit Coverage		
a. < 1,000 gpd	586.00	((~~618.00~~)) 586.00
b. 1,000 - < 10,000 gpd	1,172.00	((~~1,235.00~~)) 1,172.00
c. 10,000 - < 50,000 gpd	1,757.00	((~~1,852.00~~)) 1,757.00
d. 50,000 - < 100,000 gpd	4,095.00	((~~4,316.00~~)) 4,095.00
e. 100,000 - < 500,000 gpd	7,019.00	((~~7,397.00~~)) 7,019.00
f. 500,000 - < 1,000,000 gpd	9,944.00	((~~10,480.00~~)) 9,944.00
g. 1,000,000 - < 2,500,000 gpd	12,868.00	((~~13,562.00~~)) 12,868.00
h. 2,500,000 - < 5,000,000 gpd	15,793.00	((~~16,644.00~~)) 15,793.00
i. 5,000,000 gpd and greater	18,715.00	((~~19,724.00~~)) 18,715.00
Nonferrous Metals Forming	16,713.00	((~~17,614.00~~)) 16,713.00
Ore Mining		
a. Ore Mining	3,342.00	((~~3,522.00~~)) 3,342.00
b. Ore mining with physical concentration processes	6,682.00	((~~7,042.00~~)) 6,682.00
c. Ore mining with physical and chemical concentration processes	26,739.00	((~~28,180.00~~)) 26,739.00
Organic Chemicals Manufacturing		
a. Fertilizer	16,713.00	((~~17,614.00~~)) 16,713.00
b. Aliphatic	33,422.00	((~~35,223.00~~)) 33,422.00
c. Aromatic	50,136.00	((~~52,838.00~~)) 50,136.00
Petroleum Refining		
a. < 10,000 bbls/d	33,422.00	((~~35,223.00~~)) 33,422.00
b. 10,000 - < 50,000 bbls/d	66,266.00	((~~69,838.00~~)) 66,266.00
c. 50,000 bbls/d and greater	133,699.00	((~~140,905.00~~)) 133,699.00

INDUSTRIAL FACILITY CATEGORIES		FY ((~~2009~~)) 2010 ANNUAL PERMIT FEE	FY ((~~2010~~)) 2011 ANNUAL PERMIT FEE ((~~*~~))
Photofinishers			
a.	< 1,000 gpd	1,337.00	((~~1,409.00~~)) 1,337.00
b.	1,000 gpd and greater	3,342.00	((~~3,522.00~~)) 3,342.00
Power and/or Steam Plants			
a.	Steam Generation - Nonelectric	6,680.00	((~~7,040.00~~)) 6,680.00
b.	Hydroelectric	6,680.00	((~~7,040.00~~)) 6,680.00
c.	Nonfossil Fuel	10,028.00	((~~10,569.00~~)) 10,028.00
d.	Fossil Fuel	26,739.00	((~~28,180.00~~)) 26,739.00
Pulp, Paper and Paper Board			
a.	Fiber Recyclers	16,711.00	((~~17,612.00~~)) 16,711.00
b.	Paper Mills	33,422.00	((~~35,223.00~~)) 33,422.00
c.	Groundwood Pulp Mills		
	1. < 300 tons per day	50,136.00	((~~52,838.00~~)) 50,136.00
	2. > 300 tons per day	100,270.00	((~~105,675.00~~)) 100,270.00
d.	Chemical Pulp Mills w/o Chlorine Bleaching	133,692.00	((~~140,898.00~~)) 133,692.00
e.	Chemical Pulp Mills w/Chlorine Bleaching	150,400.00	((~~158,507.00~~)) 150,400.00
Radioactive Effluents and Discharges (RED)			
a.	< 3 waste streams	32,332.00	((~~34,075.00~~)) 32,332.00
b.	3 - < 8 waste streams	56,147.00	((~~59,173.00~~)) 56,147.00
c.	8 waste streams and greater	92,478.00	((~~97,463.00~~)) 92,478.00
RCRA Corrective Action Sites		23,490.00	((~~24,756.00~~)) 23,490.00
Seafood Processing			
a.	< 1,000 gpd	1,671.00	((~~1,761.00~~)) 1,671.00
b.	1,000 - < 10,000 gpd	4,259.00	((~~4,489.00~~)) 4,259.00
c.	10,000 - < 50,000 gpd	7,604.00	((~~8,014.00~~)) 7,604.00
d.	50,000 - < 100,000 gpd	11,948.00	((~~12,592.00~~)) 11,948.00

INDUSTRIAL FACILITY CATEGORIES	FY ((~~2009~~)) 2010 ANNUAL PERMIT FEE	FY ((~~2010~~)) 2011 ANNUAL PERMIT FEE ((~~*~~))
e. 100,000 gpd and greater	16,713.00	((~~17,614.00~~)) 16,713.00
Shipyards		
a. Per crane, travel lift, small boat lift	3,342.00	((~~3,552.00~~)) 3,342.00
b. Per drydock under 250 ft in length	3,342.00	((~~3,552.00~~)) 3,342.00
c. Per graving dock	3,342.00	((~~3,552.00~~)) 3,342.00
d. Per marine way	5,012.00	((~~5,282.00~~)) 5,012.00
e. Per sycrolift	5,012.00	((~~5,282.00~~)) 5,012.00
f. Per drydock over 250 ft in length	6,682.00	((~~7,042.00~~)) 6,682.00
g. In-water vessel maintenance	6,682.00	((~~7,042.00~~)) 6,682.00
The fee for a facility in the shipyard category is the sum of the fees for the applicable units in the facility.		
Solid Waste Sites (nonstorm water)		
a. Nonputrescible	6,682.00	((~~7,042.00~~)) 6,682.00
b. < 50 acres	13,367.00	((~~14,087.00~~)) 13,367.00
c. 50 - < 100 acres	26,739.00	((~~28,180.00~~)) 26,739.00
d. 100 - < 250 acres	33,422.00	((~~35,223.00~~)) 33,422.00
e. 250 acres and greater	50,136.00	((~~52,838.00~~)) 50,136.00
Textile Mills	66,846.00	((~~70,449.00~~)) 66,846.00
Timber Products		
a. Log Storage	3,342.00	((~~3,522.00~~)) 3,342.00
b. Veneer	6,682.00	((~~7,042.00~~)) 6,682.00
c. Sawmills	13,368.00	((~~14,089.00~~)) 13,368.00
d. Hardwood, Plywood	23,393.00	((~~24,654.00~~)) 23,393.00
e. Wood Preserving	32,094.00	((~~33,824.00~~)) 32,094.00
Vegetable/Bulb Washing Facilities		
a. < 1,000 gpd	110.00	((~~116.00~~)) 110.00
b. 1,000 - < 5,000 gpd	224.00	((~~236.00~~)) 224.00

INDUSTRIAL FACILITY CATEGORIES		FY ((~~2009~~)) 2010 ANNUAL PERMIT FEE	FY ((~~2010~~)) 2011 ANNUAL PERMIT FEE ((~~*~~))
c.	5,000 - < 10,000 gpd	440.00	((~~464.00~~)) 440.00
d.	10,000 - < 20,000 gpd	887.00	((~~935.00~~)) 887.00
e.	20,000 and greater	1,464.00	((~~1,543.00~~)) 1,464.00
Vehicle Maintenance and Freight Transfer			
a.	< 0.5 acre	3,342.00	((~~3,522.00~~)) 3,342.00
b.	0.5 - < 1.0 acre	6,682.00	((~~7,042.00~~)) 6,682.00
c.	1.0 acre and greater	10,028.00	((~~10,569.00~~)) 10,028.00
Water Plants - Individual Permit Coverage		4,180.00	((~~4,405.00~~)) 4,180.00
Water Plants - General Permit Coverage		2,925.00	((~~3,083.00~~)) 2,925.00
Wineries			
a.	< 500 gpd	341.00	((~~359.00~~)) 341.00
b.	500 - < 750 gpd	684.00	((~~721.00~~)) 684.00
c.	750 - < 1,000 gpd	1,367.00	((~~1,441.00~~)) 1,367.00
d.	1,000 - < 2,500 gpd	2,734.00	((~~2,881.00~~)) 2,734.00
e.	2,500 - < 5,000 gpd	4,362.00	((~~4,597.00~~)) 4,362.00
f.	5,000 gpd and greater	5,987.00	((~~6,310.00~~)) 5,987.00

((~~*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.~~))

(a) Facilities other than those in the aggregate production, shipyard, or RCRA categories that operate within several fee categories or subcategories, shall be charged from that category or subcategory with the highest fee.

(b) The total annual permit fee for a water treatment plant that primarily serves residential customers may not exceed three dollars per residential equivalent. The number of residential equivalents is determined by dividing the facility's annual gross revenue in the previous calendar year by the annual user charge for a single family residence that uses nine hundred cubic feet of water per month.

(c) Crop preparation and aggregate production permit holders are required to submit information to the department certifying annual production (calendar year) or unit processes. When required, the department will send the information form to the permit holder. The permit holder shall complete and return the information form to the department by the required due date. Failure to provide this information will result in a fee determination based on the highest subcategory the facility has received permit coverage in.

(i) Information submitted shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized general partner;

(C) In the case of a general partnership, by an authorized partner; or

(D) In the case of a sole proprietorship, by the proprietor.

(ii) The department may verify information submitted and, if it determines that false or inaccurate statements have been made, it may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(d) Fees for crop preparers discharging only noncontact cooling water without additives shall pay the lesser of the

applicable fee in the crop preparing or noncontact cooling water without additives categories.

(e) Where no clear industrial facility category exists for placement of a permit holder, the department may elect to place the permit holder in a category with dischargers or permit holders that contain or use similar properties or processes and/or a category which contains similar permitting complexities to the department.

(f) Hazardous waste clean up sites and EPA authorized RCRA corrective action sites with whom the department has begun cost recovery through chapter 70.105D RCW shall not pay a permit fee under chapter 173-224 WAC until such time as the cost recovery under chapter 70.105D RCW ceases.

(g) Any permit holder, with the exception of nonoperating aggregate operations or a permitted portable facility, who has not been in continuous operation within a consecutive eighteen-month period or who commits to not being in operation for a consecutive eighteen-month period or longer can have their permit fee reduced to twenty-five percent of the fee that they would be otherwise assessed. This nonoperating mode must be verified by the appropriate ecology staff. Once operations resume, the permit fee will be returned to the full amount.

Facilities who commit to the minimum eighteen-month nonoperating mode but go back into operation during the same eighteen-month period will be assessed permit fees as if they were active during the entire period.

(h) Facilities with subcategories based on gallons per day (gpd) shall have their annual permit fee determined by using the maximum daily flow or maximum monthly average permitted flow in gallons per day as specified in the waste discharge permit, whichever is greater.

(i) RCRA corrective action sites requiring a waste discharge permit will be assessed a separate permit fee regardless of whether the discharge is authorized by a separate permit or by a modification to an existing permit for a discharge other than that resulting from the corrective action.

(3) MUNICIPAL/DOMESTIC FACILITIES

(a) The annual permit fee for a permit held by a municipality for a domestic wastewater facility issued under RCW 90.48.162 or 90.48.260 is determined as follows:

Residential Equivalents (RE)	FY ((~~2009~~)) 2010 Annual Permit Fee	FY ((~~2010~~)) 2011 Annual Permit Fee((~~*~~))
< 250,000	$((~~1.80~~)) 1.89	$((~~1.80~~)) 1.98
> 250,000	((~~1.25~~)) 1.32	((~~1.32~~)) 1.38

((~~*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the state fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.~~))

(b) The annual permit fee under RCW 90.48.162 or 90.48.260 that is held by a municipality which:

(i) Holds more than one permit for domestic wastewater facilities; and

(ii) Treats each domestic wastewater facility as a separate accounting entity, is determined as in (a) of this subsection.

A separate accounting entity is one that maintains separate funds or accounts for each domestic wastewater facility. Revenues are received from the users to pay for the costs of operating that facility.

(c) The sum of the annual permit fees for permits held by a municipality that:

(i) Holds more than one permit for domestic wastewater facilities issued under RCW 90.48.162 or 90.48.260; and

(ii) Does not treat each domestic wastewater facility as a separate accounting entity, as described in (b) of this subsection, is determined as in (a) of this subsection.

(d) The permit fee for a privately owned domestic wastewater facility that primarily serves residential customers is determined as in (a) of this subsection. Residential customers are those whose lot, parcel or real estate, or building is primarily used for domestic dwelling purposes.

(e) The annual permit fee for privately owned domestic wastewater facilities must be determined by using the maximum daily flow or maximum monthly average permitted flow in million gallons per day, whichever is greater, as specified in the waste discharge permit. Permit fees for privately owned domestic wastewater facilities that do not serve primarily residential customers and for state-owned domestic wastewater facilities are the following:

Permitted Flows	FY ((~~2009~~)) 2010 Annual Permit Fee	FY ((~~2010~~)) 2011 Annual Permit Fee((~~*~~))
.1 MGD and Greater	$((~~8,354.00~~)) 8,788.00	$((~~8,804.00~~)) 9,193.00
.05 MGD to < .1 MGD	((~~3,342.00~~)) 3,516.00	((~~3,522.00~~)) 3,678.00
.0008 MGD to < .05 MGD	((~~1,671.00~~)) 1,758.00	((~~1,761.00~~)) 1,839.00
< .0008 MGD	((~~504.00~~)) 530.00	((~~531.00~~)) 554.00

((~~*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.~~))

(f) The number of residential equivalents is calculated in the following manner:

(i) If the facility serves only single-family residences, the number of residential equivalents is the number of single-family residences that it served on January 1 of the previous calendar year.

(ii) If the facility serves both single-family residences and other classes of customers, the number of residential equivalents is calculated in the following manner:

(A) Calculation of the number of residential equivalents that the facility serves in its own service area. Subtract from the previous calendar year's gross revenue:

(I) Any amounts received from other municipalities for sewage interception, treatment, collection, or disposal; and

(II) Any user charges received from customers for whom the permit holder pays amounts to other municipalities for sewage treatment or disposal services. Divide the resulting figure by the annual user charge for a single-family residence.

(B) Calculation of the number of residential equivalents that the facility serves in other municipalities which pay amounts to the facility for sewage interception, treatment, collection, or disposal:

(I) Divide any amounts received from other municipalities during the previous calendar year by the annual user charge for a single-family residence. In this case "annual user charge for a single-family residence" means the annual user charge that the facility charges other municipalities for sewage interception, treatment, collection, or disposal services for a single-family residence. If the facility charges different municipalities different single-family residential user fees, then the charge used in these calculations must be that which applies to the largest number of single-family residential customers. Alternatively, if the facility charges different municipalities different single-family residential user fees, the permit holder may divide the amount received from each municipality by the annual user charge that it charges that municipality for a single-family residence and sum the resulting figures.

(II) If the facility does not charge the other municipality on the basis of a fee per single-family residence, the number of residential equivalents in the other municipality is calculated by dividing its previous calendar year's gross revenue by its annual user fee for a single-family residence. If the other municipality does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, the number of residential equivalents is calculated as in (f)(iv) of this subsection.

(III) If the other municipality serves only single-family residences, the number of residential equivalents may be calculated as in (f)(i) of this subsection.

The sum of the resulting figures is the number of residential equivalents that the facility serves in other municipalities.

(C) The number of residential equivalents is the sum of the number of residential equivalents calculated in (f)(ii)(A) and (B) of this subsection.

(iii) The annual user fee for a single-family residence is calculated by either of the following methods, at the choice of the permit holder:

(A) The annual user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed monthly, this is calculated by multiplying by twelve the monthly user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed bimonthly, the annual user fee is calculated by multiplying by six the bimonthly user fee for a single-family residence using one thousand eight hundred cubic feet of water per two-month period. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the fee used in these calculations must be that which applies to the largest number of single-family residential customers.

(B) The average annual user fee for a single-family residence. This average is calculated by dividing the previous calendar year's gross revenue from provision of sewer services to single-family residences by the number of single-family residences served on January 1 of the previous calendar year. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the gross revenue and number of single-family residences used in making this calculation must be those for all the single-family residential customers.

In either case, (f)(iii)(A) or (B) of this subsection, the permit holder must provide the department with a copy of its complete sewer rate schedule for all classes of customers.

(iv) If a permit holder does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, and therefore cannot use the methods described in (f)(i) or (ii) of this subsection to calculate the number of residential equivalents that it serves, then the number of residential equivalents that it serves is calculated by dividing the average daily influent flow to its facility for the previous calendar year by two hundred fifty gallons. This average is calculated by summing all the daily flow measurements taken during the previous calendar year and then dividing the resulting sum by the number of days on which flow was measured. Data for this calculation must be taken from the permit holder's discharge monitoring reports. Permit holders using this means of calculating the number of their residential equivalents must submit with their application a complete set of copies of their discharge monitoring reports for the previous calendar year.

(g) Fee calculation procedures for holders of permits for domestic wastewater facilities.

(i) Municipalities holding permits for domestic wastewater facilities issued under RCW 90.48.162 and 90.48.260, and holders of permits for privately owned domestic wastewater facilities that primarily serve residential customers must complete a form certifying the number of residential equivalents served by their domestic wastewater system. The form must be completed and returned to the department within thirty days after it is mailed to the permit holder by the department. Failure to return the form could result in permit termination.

(ii) The form shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized partner;

(C) In the case of a general partnership, by an authorized partner;

(D) In the case of a sole proprietorship, by the proprietor; or

(E) In the case of a municipal or other public facility, by either a ranking elected official or a principal executive officer.

(iii) The department may verify the information contained in the form and, if it determines that the permit holder has made false statements, may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(4) STORM WATER PERMIT COVERAGES (UNLESS SPECIFICALLY CATEGORIZED ELSEWHERE IN WAC 173-224-040(2))

		FY ((~~2009~~)) 2010 Annual Permit Fee	FY ((~~2010~~)) 2011 Annual Permit Fee ((~~*~~))
a.	Individual Construction or Industrial Storm Water Permits		
1.	< 50 acres	$((~~3,342.00~~)) 3,516.00	$((~~3,522.00~~)) 3,678.00
2.	50 -< 100 acres	$((~~6,680.00~~)) 7,027.00	$((~~7,040.00~~)) 7,351.00
3.	100 -< 500 acres	$((~~10,028.00~~)) 10,549.00	$((~~10,569.00~~)) 11,035.00
4.	500 acres and greater	$((~~13,368.00~~)) 14,063.00	$((~~14,089.00~~)) 14,711.00
b.	Facilities Covered Under the Industrial Storm Water General Permit		
1.	Municipalities and state agencies	$((~~1,094.00~~)) 1,151.00	$((~~1,153.00~~)) 1,204.00
2.	New permit holders without historical gross revenue information	$((~~575.00~~)) 605.00	$((~~606.00~~)) 633.00
3.	The permit fee for all other permit holders shall be based on the gross revenue of the business for the previous calendar year		
	Gross Revenue		
	Less than $100,000	$((~~106.00~~)) 112.00	$((~~112.00~~)) 117.00
	$100,000 -< $1,000,000	$((~~461.00~~)) 485.00	$((~~486.00~~)) 507.00
	$1,000,000 -< $2,500,000	$((~~552.00~~)) 581.00	$((~~582.00~~)) 608.00
	$2,500,000 -< $5,000,000	$((~~921.00~~)) 969.00	$((~~971.00~~)) 1,014.00
	$5,000,000 -< $10,000,000	$((~~1,382.00~~)) 1,454.00	$((~~1,456.00~~)) 1,521.00
	$10,000,000 and greater	$((~~1,669.00~~)) 1,756.00	$((~~1,759.00~~)) 1,837.00

To be eligible for less than the maximum permit fee, the permit holder must provide documentation to substantiate the gross revenue claims. Documentation shall be provided annually in a manner prescribed by the department. The documentation shall bear a certification of correctness and be signed:

(a) In the case of a corporation, by an authorized corporate officer;

(b) In the case of a limited partnership, by an authorized general partner;

(c) In the case of a general partnership, by an authorized partner; or

(d) In the case of a sole proprietorship, by the proprietor.

The department may verify the information contained in the submitted documentation and, if it determines that the permit holder has made false statements, may deny the adjustment, revoke previously granted fee adjustments, and/or take such other actions deemed appropriate or required under state or federal law.

c.	Construction Activities Covered Under the Construction Storm Water General Permit(s)		
1.	Less than 5 acres disturbed area	$((~~432.00~~)) 454.00	$((~~455.00~~)) 475.00
2.	5 -< 7 acres of disturbed area	$((~~703.00~~)) 740.00	$((~~741.00~~)) 774.00
3.	7 -< 10 acres of disturbed area	$((~~950.00~~)) 999.00	$((~~1,001.00~~)) 1,045.00
4.	10 -< 20 acres of disturbed area	$((~~1,295.00~~)) 1,362.00	$((~~1,365.00~~)) 1,425.00
5.	20 acres and greater of disturbed area	$((~~1,611.00~~)) 1,695.00	$((~~1,698.00~~)) 1,773.00

((~~*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.~~))

(5) MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS

(a) Except as provided for in (d) of this subsection, the municipal storm water permit annual fee for the entities listed below will be:

Name of Entity	FY ((~~2009~~)) 2010 Annual Permit Fee	FY ((~~2010~~)) 2011 Annual Permit Fee((~~*~~))
King County	$((~~38,067.00~~)) 40,046.00	$((~~40,119.00~~)) 41,892.00
Snohomish County	((~~38,067.00~~)) 40,046.00	((~~40,119.00~~)) 41,892.00
Pierce County	((~~38,067.00~~)) 40,046.00	((~~40,119.00~~)) 41,892.00
Tacoma, City of	((~~38,067.00~~)) 40,046.00	((~~40,119.00~~)) 41,892.00
Seattle, City of	((~~38,067.00~~)) 40,046.00	((~~40,119.00~~)) 41,892.00
Washington Department of Transportation	((~~38,067.00~~)) 40,046.00	((~~40,119.00~~)) 41,892.00
Clark County	((~~38,067.00~~)) 40,046.00	((~~40,119.00~~)) 41,892.00

((~~*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.~~))

(b) Municipal storm water general permit fees for cities and counties, except as otherwise provided for in (a), (c), and (d) of this subsection, will be determined in the following manner: For fiscal year ((~~2009~~)) 2010, ecology will charge ((~~$1.11~~)) $1.17 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to ((~~$.53~~)) $.56 per housing unit inside the geographic area covered by the permit. ((~~If, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor~~)) For fiscal year 2011, ecology will charge ((~~$1.17~~)) $1.22 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to ((~~$.56~~)) $.59 per housing unit inside the geographic area covered by the permit. Fees will not exceed ((~~$38,067.00~~)) $40,046.00 for fiscal year ((~~2009~~)) 2010 and ((~~$40,119.00~~)) $41,892.00 for fiscal year ((~~2010~~)) 2011. ((~~If ecology's request for the FY 2010 fee increase is not approved, the FY 2009 fee amount will remain in effect until this section is next amended.~~)) The minimum annual fee will not be lower than ((~~$1,584.00~~)) $1,666.00 for fiscal year 2010 and $1,742.00 for fiscal year 2011 unless the permitted city or county has a median household income less than the state average. In this case, the city or county will pay a fee totaling ((~~$.53~~)) $.56 per housing unit for fiscal year ((~~2009~~)) 2010. The fee amount for ((~~FY 2010~~)) FY 2011 will be ((~~$.56~~)) $.59 per housing unit ((~~if, and only if, the state legislature approves ecology's request to increase fees by the fiscal growth factor. If ecology's request for a FY 2010 fee increase is not approved, the FY 2009 fee amount will remain in effect until this section is next amended~~)).

(c) Other entities required to have permit coverage under a municipal storm water general permit will pay an annual fee based on the entities' previous year's annual operating budget as follows:

Annual Operating Budget	FY ((~~2009~~)) 2010 Annual Permit Fee	FY ((~~2010~~)) 2011 Annual Permit Fee ((~~*~~))
Less than $100,000	$((~~111.00~~)) 117.00	$((~~117.00~~)) 122.00
$100,000 -< $1,000,000	$((~~446.00~~)) 469.00	$((~~470.00~~)) 491.00
$1,000,000 -< $5,000,000	$((~~1,114.00~~)) 1,172.00	$((~~1,174.00~~)) 1,226.00
$5,000,000 -< $10,000,000	$((~~1,670.00~~)) 1,757.00	$((~~1,760.00~~)) 1,838.00
$10,000,000 and greater	$((~~2,784.00~~)) 2,929.00	$((~~2,934.00~~)) 3,064.00

((~~*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.~~))

For the purposes of determining the annual permit fee category, the annual operating budget shall be the entities' annual operating budget for the entities' previous fiscal year and shall be determined as follows:

(i) For diking, drainage, irrigation, and flood control districts, the district's annual operating budget.

(ii) For ports, the annual operating budget for the port district.

(iii) For colleges, schools, and universities, the portion of the operating budget related to plant or facilities operation and maintenance for the site or sites subject to the permit.

(iv) For state agencies, the annual operating budget for the site or sites subject to the permit.

(v) For other entities not listed, ecology will consider annual revenue, and the noncapital operating budget for the site subject to the permit.

(d) Municipal storm water permits written specifically for a single entity, such as a single city, county, or agency, issued after the effective date of this rule will have its annual fee determined in the following manner:

(i) For cities and counties listed in (a) of this subsection, the fee shall be five times the amount identified.

(ii) For cities and counties whose median household income exceeds the state average, the fee shall be the higher of either five times the otherwise applicable general permit fee or $30,000. For municipalities whose median household income is less than the state average, the fee shall be the higher of 2.5 times the otherwise applicable general permit fee or $15,000.

(iii) For entities that would otherwise be covered under a municipal storm water general permit as determined in (c) of this subsection, the fiscal year ((~~2009~~)) 2010 annual fee for a permit written for a specific entity shall be ((~~$7,918.00~~)) $8,330.00. ((~~If, and only if, the state legislature approves ecology's request to increase fees in~~)) For FY ((~~2010~~)) 2011, the annual fee will be ((~~$8,345.00. However, if a fee increase is not approved, the FY 2009 fee amount will remain in effect until this section is next amended~~)) $8,714.00.

(e) Ecology will assess a single permit fee for entities which apply only as co-permittees or co-applicants. The permit fee shall be equal to the highest single permit fee which would have been assessed if the co-permittees had applied separately.

AMENDATORY SECTION (Amending Order 08-05, filed 8/5/08, effective 9/5/08)

WAC 173-224-050 Permit fee computation and payments. (1) The department shall charge permit fees based on the permit fee schedule contained in WAC 173-224-040. The department may charge fees at the beginning of the year to which they apply. The department shall notify permit holders of fee charges by mailing billing statements. Permit fees must be received by the department within forty-five days after the department mails a billing statement. The department may elect to bill permit holders a prorated portion of the annual fee on a monthly, quarterly, or other periodic basis.

(2) Permit fee computation for individual permits. Computation of permit fees shall begin on the first day of each fiscal year. In the case of facilities or activities not previously covered by permits, fee computation begins on the issuance date of the permit. In the case of applicants for state waste discharge permits who are deemed to have a temporary permit under RCW 90.48.200, computation shall begin on the sixty-first day after the department accepts a completed application. In the case of NPDES permit holders who submit a new, updated permit application containing information that could change their assigned permit fee, computation and permit fee category reassignment begins upon acceptance of the application by the department. Any facility that obtains permit coverage but fails to operate will still be obligated to pay the annual permit fee assessment until the permit has been terminated by the department. Permits terminated during the fiscal year will ((~~have their fees prorated as follows unless it results in an annual fee assessment of less than one hundred dollars. Ecology will not process refunds of one hundred dollars or less:~~

~~(a) Permit coverage for up to three months will pay twenty-five percent of the annual permit fee;~~

~~(b) Permit coverage for three to six months will pay fifty percent of the annual permit fee;~~

~~(c) Permit coverage for six to nine months will pay seventy-five percent of the annual permit fee; and~~

~~(d) Permit coverage for nine months or greater will pay one hundred percent of the annual permit fee.~~

~~(3) Permit fee computation for general permits. Computation of fees for permittees covered under a general permit begins on the permit coverage date. Any facility that obtains permit coverage is obligated to pay the annual permit fee regardless of whether or not the facility has ever operated until the permit has been terminated by the department. Permits terminated during the fiscal year excluding permits issued for aquatic pest control will have their fees prorated as described in subsection (2)(a), (b), (c), (d) of this section unless it results in an annual fee assessment of less than one hundred dollars. Ecology will not process refunds of one hundred dollars or less~~)) pay the annual fee assessment regardless of the permit termination date.

(4) Permit fees for sand and gravel (aggregate) general permit holders will be assessed as in subsection (3) of this section and:

(a) Nonoperating aggregate sites. A facility conducting mining, screening, washing and/or crushing activities excluding portable rock crushing operations is considered nonoperating for fee purposes if they are conducting these activities for less than ninety cumulative days during a calendar year. A facility producing no asphalt and/or concrete during the calendar year is also considered nonoperating for fee purposes.

(b) Nonoperating sites that become active for only concrete and/or asphalt production will be assessed a prorated fee for the actual time inactive. For the actual time a concrete and/or asphalt facility is active excluding asphalt portable batch plants and concrete portable batch plants, fees will be based on total production of concrete and/or asphalt.

(c) Fees for continuously active sites that produce concrete and/or asphalt excluding asphalt portable batch plants and concrete portable batch plants, will be based on the average of the three previous calendar years production totals. Existing facilities must provide the department with the production totals for concrete and/or asphalt produced during the previous three calendar years or for the number of full calendar years of operation if less than three. New facilities with no historical asphalt and/or concrete production data will have their first year fee based on the production levels reported on the application for coverage under the National Pollutant Discharge Elimination System and State Waste Discharge Permit for Process Water, Storm Water, and Mine Dewatering Water Discharges Associated with Sand and Gravel Operations, Rock Quarries and Similar Mining Facilities including Stockpiles of Mined Materials, Concrete Batch Operations and Asphalt Batch Operations general permit. The second year fee will be determined based on the actual production during the first year and estimated production for the second year. The third year fee will be determined based on the average of actual production for the first two years and estimated for the third year. Fee calculation for subsequent years will be based on the average production values of previous years.

(d) Asphalt portable batch plants, concrete portable batch plants and portable rock crushing operations will be assessed fees as in subsection (3) of this section. Each permitted operation must commit to being shut down for a minimum of twelve calendar months before the status can be changed to nonoperating.

(5) Fees for crop preparation general permit holders will be assessed as in subsection (3) of this section and will be computed on the three previous calendar years production totals. Existing facilities must provide the department with the production totals in the manner described in WAC 173-

224-040 (2)(d). New facilities with no historical production data will have their first year fee based on the estimated production level for that year. The second year fee will be determined based on the actual production during the first year and estimated production for the second year. The third year fee will be determined based on the average of actual production for the first two years and estimated for the third year. Fee calculation for subsequent years will be based on the average production values of previous years.

(6) Facilities with construction and industrial storm water general permit coverage will have their annual permit fees begin on the permit issuance date. Permit fee accrual will continue until the permit has been terminated by the department regardless if the activity covered under the permit has already ceased.

(7) Facilities with an existing NPDES and/or state wastewater discharge permit who also have obtained industrial and/or construction storm water general permit coverage shall only pay an annual fee based on the permit with the highest permit fee category assessment.

(8) Computation of fees shall end on June 30th, the last day of the state's fiscal year((~~, or in the case of a terminated permit, during the quarter the termination took place~~)) regardless of the permit termination date.

(9) The applicable permit fee shall be paid by check or money order payable to the "Department of Ecology" and mailed to the Wastewater Discharge Permit Fee Program, P.O. Box 47611, Olympia, Washington 98504-7611.

(10) In the event a check is returned due to insufficient funds, the department shall consider the permit fee to be unpaid.

(11) Delinquent accounts. Permit holders are considered delinquent in the payment of fees if the fees are not received by the first invoice billing due date. Delinquent accounts will be processed in the following manner:

(a) Municipal and government entities shall be notified by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days may receive a permit revocation letter for nonpayment of fees.

(b) Nonmunicipal or nongovernment permit holders shall be notified by the department by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days will be turned over for collection. In addition, a surcharge totaling twenty percent of the delinquent amount owed will also be added. The surcharge is to recover the costs for collection. If the collection agency fails to recover the delinquent fees after twelve months, the permit holder may receive a permit revocation letter for nonpayment of fees.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 08-05, filed 8/5/08, effective 9/5/08)

WAC 173-224-090 Small business fee reduction. Except as noted in subsection (6) of this section, a small business required to pay a permit fee under an industrial facility category may receive a reduction of its permit fee.

(1) To qualify for the fee reduction, a business must:

(a) Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;

(b) Be independently owned and operated from all other businesses (i.e., not a subsidiary of a parent company);

(c) Have annual sales of one million dollars or less of the goods or services produced using the processes regulated by the waste discharge permit; and

(d) Pay an annual wastewater discharge permit fee greater than five hundred dollars.

(2) To receive a fee reduction, the permit holder must submit an application in a manner prescribed by the department demonstrating that the conditions of subsection (1) of this section have been met. The application shall bear a certification of correctness and be signed:

(a) In the case of a corporation, by an authorized corporate officer;

(b) In the case of a limited partnership, by an authorized general partner;

(c) In the case of a general partnership, by an authorized partner; or

(d) In the case of a sole proprietorship, by the proprietor.

(3) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, may deny the fee reduction request and revoke previously granted fee reductions.

(4) The permit fee for small businesses determined to be eligible under subsection (1) of this section shall be reduced to fifty percent of the assessed annual permit fee.

(5) If the annual gross revenue of the goods and services produced using the processes regulated by the waste discharge permit is one hundred thousand dollars or less, and the annual permit fee assessed imposes an extreme hardship to the business, the small business may request an extreme hardship fee reduction. The small business must provide sufficient evidence to support its claim of an extreme hardship. In no case will a permit fee be reduced below ((~~$106.00 for fiscal year 2009 and~~)) $112.00 for fiscal year 2010 and $117.00 for fiscal year 2011.

(6) Facilities covered under the industrial storm water general permit are not eligible for a small business fee reduction under this section.

WSR 09-15-141

WITHDRAWAL OF PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

(By the Code Reviser's Office)

[Filed July 21, 2009, 9:11 a.m.]

WAC 392-410-120, proposed by the superintendent of public instruction in WSR 09-02-023 appearing in issue 09-02 of the State Register, which was distributed on January 21, 2009, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 09-15-143
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION
[Filed July 21, 2009, 9:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-01-157.

Title of Rule and Other Identifying Information: Amending sections of chapter 392-172A WAC as follows: (a) WAC 392-172A-01040, 392-172A-02000 and 392-172A-03000, allow a parent to revoke consent for continued special education services; (b) WAC 392-172A-02090, adds information relating to employment of individuals with disabilities; (c) WAC 392-172A-04015, 392-172A-04040, 392-172A-04045, 392-172A-04060, and 392-172A-04070, remove the prohibition regarding the provision of services to unilaterally placed private school students on the site of religious private schools; (d) WAC 392-172A-05005 clarifies rights for an IEE at the identification stage and omitted federal language regarding timelines is included; (e) WAC 392-172A-05135, addresses steps for appointment of an educational representative; and (f) WAC 392-172A-06000, 392-172A-06005, 392-172A-06085, 392-172A-07010 and 392-172A-07035, address district requirements for receipt of federal funding, including requirements to address compliance with corrective actions. New section WAC 392-172A-07012, addressing determinations, was previously contained in WAC 392-172A-07010. WAC 392-172A-04075, which prohibited services to students on site of religious schools, is repealed. Other amended sections are housekeeping changes for clarity to include cross references; or to correct typographical errors.

Hearing Location(s): Office of Superintendent of Public Instruction, 600 Washington Street, Billings Conference Room, 3rd Floor, Olympia, WA 98501, on September 3, 2009, at 3:30 p.m. You may access the hearing at the following locations via the K-20 system: Educational Service District 101, 4202 South Regal Street, Conference Center, Classroom 1, Spokane, WA 99223, on Monday, September 3, 2009, at 3:30 p.m., remote location information April Bylsma, (509) 323-2780, abylsma@esd101.net; and at the Educational Service District 105, 33 South Second Avenue, Columbia Room, Yakima, WA 98902, on Monday, September 3, 2009, at 3:30 p.m., remote location information Lidia Rodriguez, (509) 454-3132, lidiar@esd105.wednet.edu. For all other questions please contact Jill Pilbro, (360) 725-6067, OSPI/Special Education, jill.pilbro@k12.wa.us.

Date of Intended Adoption: September 30, 2009.

Submit Written Comments to: Doug Gill, Director, Special Education, P.O. Box 47200, Olympia, WA 98501, e-mail Doug.Gill@k12.wa.us, fax (360) 586-0247, by September 22, 2009.

Assistance for Persons with Disabilities: Contact Krissy Hall by August 26, 2009, TTY (360) 586-0126 or (360) 725-6075.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes will address:

- The changes in the federal rules, that were effective December 1, 2008, addressing a parent's right to revoke consent for continued special education services, employment of qualified individuals with disabilities, and monitoring, funding and determinations processes for districts. Prior to the change in federal law, parents were not allowed to revoke consent for continued services once a student received special education services. Other changes clarify the processes in place for district compliance.
- Procedures for districts to follow when a student over eighteen needs assistance in making educational decisions, but does not have a guardian. Existing rules did not specifically address this situation.
- Removal of the requirement that districts are prohibited from providing services on site of religious private schools using federal special education funding.
- Inclusion of the right for a parent to request an independent educational evaluation at public expense from a district when the parent disagrees with a district's initial eligibility determination. This change was contained in prior rules, but was omitted in the current rule. The proposed change is consistent with federal guidance.
- Rules addressing district requirements clarify monitoring procedures, application requirements, timely compliance, and steps taken to address district compliance and findings of significant disproportionality.

Reasons Supporting Proposal: Federal rule changes were effective December 31, 2008, addressing the changes to revocation of consent, employment of individuals with disabilities and state requirements for reporting on district performance. Changes to rules regarding services on site of religious schools clarify that federal funds may be used to address services and allow district options for location of services. Other changes are to address information required under federal law, or to address housekeeping.

Statutory Authority for Adoption: RCW 28A.155.090.

Statute Being Implemented: Chapter 28A.155 RCW.

Rule is necessary because of federal law, 34 C.F.R. Part 300.

Name of Proponent: Office of superintendent of public instruction, special education, governmental.

Name of Agency Personnel Responsible for Drafting: Pamela McPartland, OSPI, P.O. Box 47200, Olympia, WA, (360) 725-6075; Implementation and Enforcement: Douglas Gill, Director, OSPI, P.O. Box 47200, Olympia, WA, (360) 725-6075.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. The rules do not impose costs on businesses or industries.

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

July 21, 2009
Randy I. Dorn
Superintendent

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01040 Consent. (1) Consent means that:

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity. This includes a list of any records that will be released, and to whom they will be released, or records that will be requested and from whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(2) If a parent revokes consent, that revocation is not retroactive. This means that it does not undo an action that occurred after consent was given and before the consent was revoked.

(3) If the parent revokes consent in writing for their child's receipt of special education services after the student is initially provided special education and related services, the school district is not required to amend the student's education records to remove any references to the student's receipt of special education and related services because of the revocation of consent.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01060 Elementary or secondary school. Elementary or secondary school means a public school, a nonprofit institutional day or residential school, including a private school, that provides education to students in any combination of kindergarten through twelfth grade. The definition does not include any education beyond grade twelve.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01145 Private school. Private school means a nonpublic school or nonpublic school district conducting a program consisting of kindergarten and at least grade one, or a program of any combination of grades one through twelve and meeting:

(1) Minimum state board private school approval standards as outlined in chapter 180-90 WAC; and

(2) The definition of elementary and secondary schools in WAC 392-172A-01060.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02000 ((~~Student's~~)) Students' rights to a free appropriate public education (FAPE). (1) Each school district, public agency, and residential or day schools operated pursuant to chapters 28A.190 and 72.40 RCW shall provide every student who is eligible for special education between the age of three and twenty-one years, a free appropriate public education program (FAPE). The right to a FAPE includes special education for students who have been suspended or expelled from school. A FAPE is also available to any student determined eligible for special education even though the student has not failed or been retained in a course or grade and is advancing from grade to grade. The right to special education for eligible students starts on their third birthday with an IEP in effect by that date. If an eligible student's third birthday occurs during the summer, the student's IEP team shall determine the date when services under the individualized education program will begin.

(2) A student who is determined eligible for special education services shall remain eligible until one of the following occurs:

(a) A group of qualified professionals and the parent of the student, based on a reevaluation, determines the student is no longer eligible for special education; or

(b) The student has met high school graduation requirements established by the school district pursuant to rules of the state board of education, and the student has graduated from high school with a regular high school diploma. A regular high school diploma does not include a certificate of high school completion, or a general educational development credential. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with WAC 392-172A-05010; or

(c) The student enrolled in the public school system or is receiving services pursuant to chapter 28A.190 or 72.40 RCW has reached age twenty-one. The student whose twenty-first birthday occurs on or before August 31 would no longer be eligible for special education. The student whose twenty-first birthday occurs after August 31, shall continue to be eligible for special education and any necessary related services for the remainder of the school year; or

(d) The student stops receiving special education services based upon a parent's written revocation to a school district pursuant to WAC 392-172A-03000 (2)(e).

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02040 Child find. (1) The school district shall conduct child find activities calculated to reach all students with a suspected disability for the purpose of locating, evaluating and identifying students who are in need of special education and related services, regardless of the severity of their disability. The child find activities shall extend to students residing in the district whether or not they are enrolled in the public school system. Students attending private elementary or secondary schools located within the district shall be located, identified and evaluated consistent with WAC 392-172A-04005. Districts will conduct child find activities for infants and toddlers, consistent with the child find requirements of the lead agency for Part C of the act.

(2) Child find activities must be calculated to reach students who are homeless, wards of the state, highly mobile students with disabilities, such as homeless and migrant stu-

dents and students who are suspected of being a student with a disability and in need of special education, even though they are advancing from grade to grade.

(3) The local school district shall have policies and procedures in effect that describe the methods it uses to conduct child find activities in accordance with subsections (1) and (2) of this section. Methods used may include but are not limited to activities such as:

(a) Providing written notification to all parents of students in the district's jurisdiction regarding access to and the use of its child find system;

(b) Posting notices in school buildings, other public agency offices, medical facilities, and other public areas, describing the availability of special education programs;

(c) Offering preschool developmental screening;

(d) Conducting local media informational campaigns;

(e) Coordinating distribution of information with other child find programs within public and private agencies; and

(f) Using internal district ((~~review of students~~)) child find methods such as screening, reviewing district-wide test results, providing in-service education to staff, and other methods developed by the school district to identify, locate and evaluate students including a systematic, intervention based, process within general education for determining the need for a special education referral.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02090 Personnel qualifications. (1) In addition to the highly qualified requirements for teachers, pursuant to WAC 392-172A-01085, all school district personnel providing special education services shall meet the following qualifications:

(a) All employees shall hold such credentials, certificates, endorsements or permits as are now or hereafter required by the professional educator standards board for the particular position of employment and shall meet such supplemental standards as may be established by the school district of employment. Supplemental standards established by a district or other public agency may exceed, but not be less than, those established by the professional educator standards board in accordance with Title 181 WAC and this section.

(b) In addition to the requirement of this subsection (1), all special education teachers providing, designing, supervising, monitoring or evaluating the provision of special education shall possess "substantial professional training." "Substantial professional training" as used in this section shall be evidenced by issuance of an appropriate special education endorsement on an individual teaching certificate issued by the OSPI, professional education and certification section.

(c) Other certificated related services personnel providing specially designed instruction or related services as defined in this chapter, shall meet standards established under the educational staff associate rules of the professional educator standards board, as now or hereafter amended.

(d) Employees with only an early childhood special education endorsement may be assigned to programs that serve students birth through eight. Preference for an early childhood special education assignment must be given first to employees having early childhood special education endorsement.

(e) Certified and/or classified staff assigned to provide instruction in Braille, the use of Braille, or the production of Braille must demonstrate competency with grade two standard literary Braille code by successful completion of a test approved by the professional educator standards board pursuant to WAC 181-82-130.

(f) Paraprofessional staff and aides shall present evidence of skills and knowledge necessary to meet the needs of students eligible for special education, and shall be under the supervision of a certificated teacher with a special education endorsement or a certificated educational staff associate, as provided in (g) of this subsection. Paraprofessional staff in Title ((~~One~~)) 1 school-wide programs shall meet ESEA standards for paraprofessionals. Districts shall have procedures that ensure that classified staff receive training to meet state recommended core competencies pursuant to RCW 28A.415.310.

(g) Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraprofessionals may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate.

(2) School districts must take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to students eligible for special education. There may be occasions when, despite efforts to hire or retain highly qualified teachers, they are unable to do so. The following options are available in these situations:

(a) Teachers who meet state board criteria pursuant to WAC ((~~181-81-110~~)) 181-82-110(3) as now or hereafter amended, are eligible for a preendorsement waiver. Application for the special education preendorsement waiver shall be made to the special education section at the OSPI.

(b) In order to temporarily assign a classroom teacher without a special education endorsement to a special education position, the district or other public agency must keep written documentation on the following:

(i) The school district must make one or more of the following factual determinations:

(A) The district or other public agency was unable to recruit a teacher with the proper endorsement who was qualified for the position;

(B) The need for a teacher with such an endorsement could not have been reasonably anticipated and the recruitment of such a classroom teacher at the time of assignment was not reasonably practicable; and/or

(C) The reassignment of another teacher within the district or other public agency with the appropriate endorsement to such assignment would be unreasonably disruptive to the current assignments of other classroom teachers or would have an adverse effect on the educational program of the students assigned such other classroom teachers.

(ii) Upon determination by a school district that one or more of these criteria can be documented, and the district determines that a teacher has the competencies to be an effective special education teacher but does not have endorsement in special education, the district can so assign the teacher to special education. The teacher so assigned must have completed six semester hours or nine quarter hours of course work which are applicable to an endorsement in special education. The following requirements apply:

(A) A designated representative of the district and any such teacher shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(B) Such teachers shall not be subject to nonrenewal or probation based on evaluations of their teaching effectiveness in the out-of-endorsement assignments;

(C) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned; and

(D) The assignment of such teachers for the previous school year shall be reported annually to the professional educator standards board by the employing school district as required by WAC 181-16-195.

(3) Teachers placed under the options described in subsection (2) of this section do not meet the definition of highly qualified.

(4) Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this section shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular school district employee be highly qualified, or to prevent a parent from filing a state complaint about staff qualifications with the OSPI under WAC 392-172A-05025 through 392-172A-05040.

(5) School districts and other public agencies that are recipients of funding under Part B of the act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the act.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02100 Home/hospital instruction. Home or hospital instruction shall be provided to students eligible for special education and other students who are unable to attend school for an estimated period of four weeks or more because of ((~~physical~~)) disability or illness. As a condition((~~s~~)) to such services, the parent of a student shall request the services and provide a written statement to the school district from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least four weeks. A student who is not determined eligible for special education, but who qualifies pursuant to this subsection shall be deemed "disabled" only for the purpose of home/hospital instructional services and funding and may not otherwise qualify as a ((~~special education~~)) student eligible for special education for the purposes of generating state or federal special education funds. A school district shall not pay for the cost of the statement from a qualified medical practitioner for the purposes of qualifying a student for home/hospital instructional services pursuant to this section.

Home/hospital instructional services funded in accordance with the provisions of this section shall not be used for the initial or ongoing delivery of services to students eligible for special education. It shall be limited to services necessary to provide temporary intervention as a result of a physical disability or illness.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03000 Parental consent for initial evaluations, initial services and reevaluations. (1)(a) A school district proposing to conduct an initial evaluation to determine if a student is eligible for special education services must provide prior written notice consistent with WAC 392-172A-05010 and obtain informed consent from the parent before conducting the evaluation.

(b) Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services.

(c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is eligible for special education.

(d) If the student is a ward of the state and is not residing with the student's parent, the school district or public agency is not required to obtain informed consent from the parent for an initial evaluation to determine eligibility for special education services if:

(i) Despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated; or

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(e) If the parent of a student enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial evaluation under subsection (1) of this section, or the parent fails to respond to a request to provide consent, the school district may, but is not required to, pursue the initial evaluation of the student by using due process procedures or mediation.

(f) The school district does not violate its child find and evaluation obligations, if it declines to pursue the initial evaluation when a parent refuses to provide consent under (e) of this subsection.

(2)(a) A school district that is responsible for making FAPE available to a student must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student.

(b) The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student.

(c) If the parent of a student fails to respond to a request for or refuses to consent to the initial provision of special education and related services, the school district may not use the due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the student.

(d) If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district:

(i) Will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the ((~~public agency~~)) school district requests consent; and

(ii) Is not required to convene an IEP team meeting or develop an IEP.

(e) If at any time after the initial provision of special education and related services, the parent revokes consent in writing for the continued provision of special education and related services, the school district:

(i) Must provide prior written notice to the parent in accordance with WAC 392-172A-05015 before ceasing to provide special education and related services and may not continue to provide special education and related services after the effective date of the prior written notice;

(ii) May not use mediation or the due process procedures in order to obtain agreement or a ruling that the services may be provided to the student;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with further special education and related services; and

(iv) Is not required to convene an IEP team meeting or develop an IEP for the student for further provision of special education services.

(3)(a) A school district must obtain informed parental consent, prior to conducting any reevaluation of a student eligible for special education services, subject to the exceptions in (d) of this subsection and subsection (4) of this section.

(b) If the parent refuses to consent to the reevaluation, the ((~~public agency~~)) school district may, but is not required to, pursue the reevaluation by using the due process procedures to override consent or mediation to obtain an agreement from the parent.

(c) The school district does not violate its child find obligations or the evaluation and reevaluation procedures if it declines to pursue the evaluation or reevaluation.

(d) A school district may proceed with a reevaluation and does not need to obtain informed parental consent if the school district can demonstrate that:

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond.

(4)(a) Parental consent for an initial or a reevaluation is not required before:

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

(b) A school district may not use a parent's refusal to consent to one service or activity of an initial evaluation or reevaluation to deny the parent or student any other service, benefit, or activity of the ((~~public agency~~)) school district, except as required by this chapter.

(c) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures and the public agency is not required to consider the student as eligible for special education services.

(d) To meet the reasonable efforts requirements to obtain consent for an evaluation or reevaluation the school district must document its attempts to obtain parental consent using the procedures in WAC 392-172A-03100(6).

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03045 District procedures for specific learning disabilities. In addition to the evaluation procedures for determining whether students are eligible for special education, school districts must follow additional procedures for identifying whether a student has a specific learning disability. Each school district shall develop procedures for the identification of students with specific learning disabilities which may include the use of:

(1) A severe discrepancy between intellectual ability and achievement; or

(2) A process based on the student's response to scientific, research-based intervention; or

(3) A combination of both within a school district, provided that the evaluation process used is the same for all students within the selected grades or buildings within the school district and is in accordance with district procedures.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03105 When IEPs must be in effect. (1) At the beginning of each school year, each school district must have an IEP in effect((~~,~~)) for each student eligible for special education that it is serving through enrollment in the district.

(2) For an initial IEP, a school district must ensure that:

(a) A meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and

(b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.

(3) Each school district must ensure that:

(a) The student's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(b) Each teacher and provider described in (a) of this subsection is informed of:

(i) His or her specific responsibilities related to implementing the student's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

(4) If a student eligible for special education transfers from one school district to another school district within the state and has an IEP that was in effect for the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district either:

(a) Adopts the student's IEP from the previous school district; or

(b) Develops, adopts, and implements a new IEP that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(5) If a student eligible for special education transfers from a school district located in another state to a school district within the state and has an IEP that is in effect for the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district ((~~either~~)):

(a) Conducts an evaluation to determine whether the student is eligible for special education services in this state, if the school district believes an evaluation is necessary to determine eligibility under state standards; and

(b) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(6) To facilitate the transition for a student described in subsections (4) and (5) of this section:

(a) The new school in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous school in which the student was enrolled, pursuant to RCW 28A.225.335 and consistent with applicable Family Education Rights and Privacy Act (FERPA) requirements; and

(b) The school district in which the student was enrolled must take reasonable steps to promptly respond to the request from the new school district, pursuant to RCW 28A.225.335 and applicable FERPA requirements.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03135 Aversive interventions—Individualized education program requirements. (1) If the need for use of aversive interventions is determined appropriate by the IEP team, the individualized education program shall:

(a) Be consistent with the recommendations of the IEP team which includes a school psychologist and/or other certificated employee who understands the appropriate use of the aversive interventions and who concurs with the recommended use of the aversive interventions, and a person who works directly with the student.

(b) Specify the aversive interventions that may be used.

(c) State the reason the aversive interventions are judged to be appropriate and the behavioral objective sought to be achieved by its use, and shall describe the positive interventions attempted and the reasons they failed, if known.

(d) Describe the circumstances under which the aversive interventions may be used.

(e) Describe or specify the maximum duration of each isolation or restraint.

(f) Specify any special precautions that must be taken in connection with the use of the aversive interventions technique.

(g) Specify the person or persons permitted to use the aversive interventions and the current qualifications and required training of the personnel permitted to use the aversive interventions.

(h) Establish a means of evaluating the effects of the use of the aversive interventions and a schedule for periodically conducting the evaluation((~~, to occur no less than four times a school year~~)) at least every three months when school is in session.

(2) School districts shall document each use of an aversive intervention, circumstances under which it was used, and the length of time of use.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04015 Expenditures. (1) To meet the requirement of WAC 392-172A-04010(2), each school district must ((~~spend~~)) make available the following ((~~on~~)) amounts for providing special education and related services, including direct services to parentally placed private students eligible for special education.

(a) For students eligible for special education aged three through twenty-one, an amount that is the same proportion of the school district's total subgrant under section 611(f) of the act as the number of private school students eligible for special education aged three through twenty-one who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district, is to the total number of students eligible for special education in its jurisdiction aged three through twenty-one.

(b)(i) For children aged three through five, an amount that is the same proportion of the school district's total subgrant under section 619(g) of the act as the number of parentally placed private school students eligible for special education aged three through five who are enrolled by their parents in a private, including religious, elementary schools located in the school district, is to the total number of students eligible for special education in its jurisdiction aged three through five.

(ii) As described in (b)(i) of this subsection, students aged three through five are considered to be parentally placed private school students enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school kindergarten level or above.

(c) If a school district has not expended ((~~for equitable services~~)) all of the funds for equitable services described in (a) and (b) of this subsection by the end of the fiscal year for which Congress appropriated the funds, the ((~~school district must obligate the~~)) remaining funds must be obligated for special education and related services to parentally placed private school students eligible for special education during a carry-over period of one additional year.

(2) In calculating the proportionate amount of federal funds to be provided for parentally placed private school students eligible for special education, the school district, after timely and meaningful consultation with representatives of private schools under WAC 392-172A-04020, must conduct a thorough and complete child find process to determine the number of parentally placed students eligible for special education attending private schools located in the school district.

(3)(a) After timely and meaningful consultation with representatives of parentally placed private school students eligible for special education, school districts must:

(i) Determine the number of parentally placed private school students eligible for special education attending private schools located in the school district; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(b) The count must be used to determine the amount that the school district must spend on providing special education and related services to parentally placed private school students eligible for special education in the next subsequent fiscal year.

(4) State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended for parentally placed private school students eligible for special education to the extent consistent with state law.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04040 Equitable services provided. (1) The services provided to parentally placed private school students eligible for special education must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally placed private school students eligible for special education do not have to meet the highly qualified special education teacher requirements.

(2) Parentally placed private school students eligible for special education may receive a different amount of services than students eligible for special education attending public schools.

(3) Each parentally placed private school student eligible for special education who has been designated to receive services must have a services plan that describes the specific special education and related services that the school district will provide in light of the services that the school district has determined, it will make available to parentally placed private school students eligible for special education.

(4) The services plan must, to the extent appropriate:

(a) Meet the requirements of WAC 392-172A-03090, with respect to the services provided; and

(b) Be developed, reviewed, and revised consistent with WAC 392-172A-03090 through 392-172A-03110.

(5) The provision of services must be provided:

(a) By employees of a school district or ESD; or

(b) Through contract by the school district with an individual, association, agency, organization, or other entity.

(6) Special education and related services provided to parentally placed private school students eligible for special education, including materials and equipment, must be ((~~nonsecular~~)) secular, neutral, and nonideological.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04045 Location of services and transportation. (1) Services to parentally placed private school students eligible for special education may be provided on the premises of private((~~, nonsectarian~~)) schools.

(2) If necessary for the student to benefit from or participate in the services provided, a parentally placed private school student eligible for special education must be provided transportation:

(a) From the student's school or the student's home to a site other than the private school; and

(b) From the service site to the private school, or to the student's home, depending on the timing of the services.

(3) School districts are not required to provide transportation from the student's home to the private school.

(4) The cost of the transportation described in subsection (2) of this section may be included in calculating whether the school district has met its proportional share requirement.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04060 Use of personnel. (1) School district or other public agency personnel may be made available to ((~~nonsectarian~~)) private schools and agencies only to the extent necessary to provide services required by the ((~~special education~~)) student if those services are not normally provided by the private school.

(2) Each school district or other public agency providing services to students enrolled in ((~~nonsectarian~~)) private schools or agencies shall maintain continuing administrative control and direction over those services.

(3) Services to private school ((~~special education~~)) students shall not include the payment of salaries of teachers or other employees of private schools or agencies, except for services performed outside regular hours of the school day and under public supervision and control.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04070 Property, equipment and supplies. (1) A school district must control and administer the funds used to provide special education and related services for students eligible for those services in private

schools, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the act.

(2) Equipment and supplies used with students in a private school or agency may be placed on ((~~nonsectarian~~)) private school premises for the period of time necessary for the program. Equipment and supplies placed on private school premises will be used only for Part B purposes.

(3) Records shall be kept of equipment and supplies and an accounting made of the equipment and supplies which shall assure that the equipment is used solely for the purposes of the program. Equipment and supplies placed in private schools must be able to be removed from the private school without remodeling the private school facility.

(4) The equipment and supplies shall be removed from the private school or agency if necessary to avoid its being used for other purposes or if it is no longer needed for Part B purposes.

(5) Funds shall not be used for repairs, minor remodeling, or to construct facilities for private schools or agencies.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05005 Independent educational evaluation. (1)(a) Parents of a student eligible for or referred for special education have the right under this chapter to obtain an independent educational evaluation of the student if the parent disagrees with the school district's evaluation subject to subsections (2) through (7) of this section.

(b) Each school district shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in subsection (7) of this section.

(c) For the purposes of this section:

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the student in question; and

(ii) Public expense means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with this chapter.

(2)(a) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted or obtained by the school district.

(b) A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

(c) If a parent requests an independent educational evaluation at public expense consistent with (a) of this subsection, the school district must either:

(i) Initiate a due process hearing within fifteen days to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense without unnecessary delay, unless the school district demonstrates in a hearing under this chapter that the evaluation obtained by the parent did not meet agency criteria.

(3) If the school district initiates a hearing and the final decision is that the district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the school district may ask for the parent's reason why he or she objects to the school district's evaluation. However, the explanation by the parent may not be required and the school district must either provide the independent educational evaluation at public expense or initiate a due process hearing to defend the educational evaluation.

(5) If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

(a) Must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

(b) May be presented as evidence at a hearing under this chapter regarding that student.

(6) If an administrative law judge requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.

(7)(a) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(b) Except for the criteria described in (a) of this subsection, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05100 Hearing rights. These hearing rights govern both due process hearings conducted pursuant to WAC 392-172A-05080 through 392-172A-05125 and hearings for disciplinary matters conducted pursuant to WAC 392-172A-05160 and 392-172A-05165.

(1) Any party to a due process hearing has the right to:

(a) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students eligible for special education;

(b) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing, or two business days if the hearing is expedited pursuant to WAC 392-172A-05160;

(d) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(e) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(2)(a) At least five business days prior to a due process hearing conducted pursuant to this section, or two business

days prior to a hearing conducted pursuant to WAC 392-172A-05165, each party must disclose to all other parties all evaluations completed by that date and the recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(b) An administrative law judge may bar any party that fails to comply with (a) of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process hearing request unless the other party agrees otherwise.

(4) ((A parent)) Either party may file a separate due process hearing request on an issue separate from a due process hearing request already filed.

(5) Parents involved in hearings must be given the right to:

(a) Have the student who is the subject of the hearing present;

(b) Open the hearing to the public; and

(c) Have the record of the hearing and the findings of fact and decisions described in subsection (1)(d) and (e) of this section provided to the parent at no cost.

(6) To the extent not modified by the hearing procedures addressed in this section and the timelines and procedures for civil actions addressed in WAC 392-172A-05115 the general rules applicable for administrative hearings contained in chapter 10-08 WAC govern the conduct of the due process hearing.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05130 Surrogate parents. (1) School districts must ensure that the rights of a student are protected when:

(a) No parent as defined in WAC 392-172A-01125 can be identified;

(b) The school district, after reasonable efforts, cannot locate a parent;

(c) The student is a ward of the state; ((or))

(d) The student is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act; or

(e) An educational representative is appointed for a student pursuant to WAC 392-172A-05135(5).

(2) School districts must develop procedures for assignment of an individual to act as a surrogate for the parents. This must include a method:

(a) For determining whether a student needs a surrogate parent;

(b) For assigning a surrogate parent to the student; and

(c) Ensuring that an assignment of a surrogate parent is provided within thirty days of the district's determination that a surrogate parent is required.

(3) If a student is a ward of the state, the judge overseeing the student's case, may appoint a surrogate parent, provided that the surrogate meets the requirements in subsections (4)(a) and (5) of this section.

(4) School districts must ensure that a person selected as a surrogate parent:

(a) Is not an employee of the OSPI, the school district, or any other agency that is involved in the education or care of the student;

(b) Has no personal or professional interest that conflicts with the interest of the student the surrogate parent represents; and

(c) Has knowledge and skills that ensure adequate representation of the student.

(5) A person otherwise qualified to be a surrogate parent under subsection (4) of this section is not an employee of the OSPI, school district or other agency solely because he or she is paid by the agency to serve as a surrogate parent.

(6) In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to subsection (4)(a) of this section until a surrogate parent can be appointed that meets all of the requirements of subsection (4) of this section.

(7) The surrogate parent may represent the student in all matters relating to the identification, evaluation, educational placement and the provision of FAPE to the student.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05135 Transfer of parental rights to the student at age of majority. (1) ((When)) Subject to subsections (4) and (5) of this section, when a student eligible for special education reaches the age of eighteen or is deemed to have reached the age of majority, consistent with RCW 26.28.010 through 26.28.020((, unless the student is declared incapacitated as to person under chapter 11.88 RCW, the following shall occur)):

(a) The school district shall provide any notices required under this chapter to both the student and the parents; and

(b) All other rights accorded to parents under the act and this chapter transfer to the student.

(2) All rights accorded to parents under the act transfer to students at the age of majority who are incarcerated in an adult or juvenile, state, or local correctional institution.

(3) Whenever a school district transfers rights under this section, it shall notify the student and the parents of the transfer of rights.

(4) Students who have been determined to be incapacitated pursuant to chapter 11.88 RCW shall be represented by the legal guardian appointed under that chapter.

(5) Students over the age of eighteen who have not been determined incapacitated under chapter 11.88 RCW, may be certified as unable to provide informed consent or to make educational decisions, and have an educational representative appointed for them pursuant to the following procedures:

(a) Two separate professionals must state in writing they have conducted a personal examination or interview with the student, the student is incapable of providing informed consent to make educational decisions, and the student has been informed of this decision. The professionals must be:

(i) A medical doctor licensed in the state where the doctor practices medicine;

(ii) A physician's assistant whose certification is countersigned by a supervising physician;

(iii) A certified nurse practitioner;

(iv) A licensed clinical psychologist; or

(v) A guardian ad litem appointed for the student.

(b) When it receives the required written certification, the school district will designate an educational representative from the following list and in the following order of representation:

(i) The student's spouse;

(ii) The student's parent(s);

(iii) Another adult relative willing to act as the student's educational representative; or

(iv) A surrogate educational representative appointed pursuant to and acting in accordance with WAC 392-172A-05130.

(c) A student shall be certified as unable to provide informed consent pursuant to this section for a period of one year: Provided, That the student or an adult with a bona fide interest in and knowledge of the student may challenge the certification at any time. During the pendency of any challenge, the school district may not rely on the educational representative under this section until the educational representative obtains a new certification under the procedures outlined in (a) of this subsection. If a guardianship action is filed on behalf of the student while a certification is in effect, the school district must follow any court orders in the guardianship proceeding regarding the student's capacity.

(6) Nothing within this section shall prevent a student, who has reached the age of majority, from authorizing another adult to make educational decisions on that student's behalf using a power of attorney consistent with the requirements in chapter 11.94 RCW.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05150 Determination of setting. The student's IEP team determines the interim alternative educational setting for services under WAC ((~~392-172A-07105~~)) 392-172A-05145 (3), (4)(e) and (7).

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05170 Protections for students not determined eligible for special education and related services. (1) A student who has not been determined to be eligible for special education and related services under this chapter and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this chapter if the school district had knowledge as determined in accordance with subsection (2) of this section that the student was a student eligible for special education before the behavior that precipitated the disciplinary action occurred.

(2) Basis of knowledge. A school district must be deemed to have knowledge that a student is eligible for special education if before the behavior that precipitated the disciplinary action occurred:

(a) The parent of the student expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;

(b) The parent of the student requested an evaluation of the student pursuant to WAC 392-172A-03005; or

(c) The teacher of the student, or other personnel of the school district, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the school district.

(3) A school district would not be deemed to have knowledge under subsection (2) of this section if:

(a) The parent of the student:

(i) Has not allowed an evaluation of the student pursuant to WAC 392-172A-03000 through 392-172A-03080; or

(ii) Has refused services under this chapter; or

(b) The student has been evaluated in accordance with WAC 392-172A-03005 through 392-172A-03080 and determined to not be eligible for special education and related services under this part.

(4)(a) If a school district does not have knowledge that a student is eligible for special education prior to taking disciplinary measures against the student, the student may be disciplined using the same disciplinary measures applied to students without disabilities who engage in comparable behaviors consistent with (b) of this subsection.

(b)(i) If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under WAC 392-172A-05145, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the student is determined to be eligible for special education services, taking into consideration information from the evaluation conducted by the school district and information provided by the parents, the agency must provide special education and related services in accordance with this chapter and follow the discipline requirements, including the ((~~requirements of Section 612 (a)(1)(A) of the act~~)) provision of a free appropriate public education for students suspended or expelled from school.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05180 Definitions—Destruction of records, educational records, participating agency. As used in WAC ((~~392-172A-07150~~)) 392-172A-05180 through ((~~392-172A-07215~~)) 392-172A-05245:

(1) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(2) Education records means the type of records covered under the definition of "education records" in the Family Educational Rights and Privacy Act, 34 CFR Part 99.

(3) "Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information or from which information is obtained in implementing this chapter, and includes the OSPI, school districts and other public agencies.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06000 Condition of assistance. As a condition of receipt and expenditure of federal special education funds, a school district or other public agency shall annually submit a request for federal funds to the superintendent of public instruction, and conduct its special education and related services program in compliance with the requirements of this chapter. The request shall be made through an application that includes, but is not limited to the following assurances and types of information:

(1) Assurances that: The school district or other public agency meets each of the conditions contained in 34 CFR 300.201 through ((~~[300]~~)) 300.213 relating to:

(a) Development of policies and procedures consistent with this chapter and Part B of the act;

(b) The provision of FAPE to students;

(c) Child find requirements for students; including evaluation;

(d) Development of an IEP;

(e) The provision of services in the least restrictive environment, and the availability of a continuum of services, including access to extracurricular and nonacademic activities;

(f) The provision of procedural safeguard protections and implementation of the procedural safeguards notices;

(g) Confidentiality of records and information;

(h) Transition of children from Part C to Part B services;

(i) Participation of students enrolled in private school programs, using a proportional share of Part B funds;

(j) Use of funds;

(k) Personnel preparation;

(l) Availability of documents relating to the eligibility of the school district;

(m) Provision to OSPI of all necessary information and data for the state's performance goals;

(n) Provision of instructional materials to blind persons or persons with print disabilities;

(o) ((~~Compliance with corrective actions as a result of monitoring, or dispute resolution processes~~)) Timely correction of noncompliance; and

(p) A goal and detailed timetable for providing full educational opportunity to all special education students.

(2) Identification of the local district ((~~or other public agency~~)) designee responsible for child identification activities and confidentiality of information.

(3) Information related to participation of students enrolled in private school programs using a proportional share of Part B funds.

(4) Information that addresses the school district's progress or slippage in meeting the state's performance goals and in addressing the state's annual performance plan.

(5) A description of the use of funds received under Part B of the act.

(6) Any other information requested by the OSPI which is necessary for the management of the special education program, including compliance with enforcement activities related to monitoring, due process, citizen complaints, or determinations status.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06005 Consistency with state policies. The school district or other public agency, in providing for the education of students eligible for special education must have in effect policies, procedures, and programs that are consistent with the state policies and procedures established in this chapter((~~, that address the actions outlined in WAC 392-172A-06000 (1)(b) through (p)~~)).

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06085 Coordinated early intervening services. (1) A school district may not use more than fifteen percent of the amount the school district receives under Part B of the act for any fiscal year, less any amount reduced by the school district pursuant to WAC 392-172A-06015 if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures. Those services are for students in kindergarten through grade twelve, with a particular emphasis on students in kindergarten through grade three, who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

(2) In implementing coordinated, early intervening services under this section, a school district may carry out activities that include:

(a) Professional development, which may be provided by entities other than the school district, for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(b) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(3) Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the act or to delay appropriate evaluation of a student suspected of having a disability.

(4) Each school district that develops and maintains coordinated, early intervening services under this section must annually report to the OSPI on:

(a) The number of students served under this section who received coordinated, early intervening services; and

(b) The number of students served under this section who received coordinated, early intervening services and

((~~subsequently~~)) later receive special education and related services ((~~under Part B of the act during the preceding~~)) within the following two year period.

(5) Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

(6) Districts who have been determined to have significant disproportionality will be required to reserve the maximum amount of coordinated, early intervening funds for students, in accordance with WAC 392-172A-07040.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-07010 Monitoring. (1) ((~~The OSPI shall monitor selected local school districts special education programs, so that all districts are monitored at least once every six years. The focus of~~)) OSPI's monitoring of school districts' special education program is to:

(a) Improve educational results and ((~~functional~~)) outcomes for all students eligible for special education;

(b) Ensure that school districts meet the program requirements under Part B of the act with a particular emphasis on those requirements that are most closely related to improving educational results for students eligible for special education;

(c) Determine the school district's compliance with this chapter, chapter 28A.155 RCW, and federal regulations implementing 20 U.S.C. Sec. 1400, et seq. ((~~in order to validate compliance with this chapter~~));

(d) Validate information included in school district or other public agency requests for federal funds; and

(e) Measure and report district performance on relative targets and priorities from federally approved state performance plans.

(2) Procedures for monitoring school districts and other public agencies may include any or all of the following:

(a) Collection ((~~of previsit data~~)), review, and analysis of quantitative and qualitative data and other information;

(b) Conduct of on-site visits;

(c) ((~~Comparison of a sampling of evaluation reports and individualized education programs with the services provided; and~~

~~(d)~~)) Review and analysis of such quantifiable and qualitative data and indicators as are needed to measure performance in the following areas:

(i) Provision of a FAPE in the least restrictive environment;

(ii) State exercise of general supervision, including child find, effective monitoring, and the use of resolution meetings, mediation, and a system of transition services; and

(iii) Disproportionate representation of racial and ethnic groups in special education and related services to the extent the representation is the result of inappropriate identification.

(3) As part of the monitoring process, ((~~a monitoring report~~)) a notification of identified noncompliance shall be ((~~submitted~~)) issued to the school district. ((~~The monitoring report shall include, but not be limited to:~~

~~(a) Findings of noncompliance, if any;~~

~~(b) Required student specific corrective actions; and~~

~~(c) Areas that will require a corrective action plan and/or improvement plan to address any systemic issues determined through the monitoring.~~

~~(4) The school district shall have thirty calendar days after the date of its receipt of the monitoring report to provide the OSPI with supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report. In the event that the school district submits supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report, the OSPI shall determine whether or not any revisions are necessary, the extent to which the proposed action is acceptable and will issue a final monitoring report within thirty calendar days after receipt of the supplemental response.~~

~~(5) The school district will have ninety calendar days after the date of its receipt of the final monitoring report to provide the OSPI with a proposed corrective action/improvement plan, if required, which sets forth the measures the district shall take and time period(s) within which the district shall act in order to remediate any areas of noncompliance.~~

~~(6)~~)) This notification will initiate a process of corrections, verification, and validation to ensure that the noncompliance is corrected as soon as possible, but no later than one year from the identification of noncompliance. If noncompliance is systemic in nature, a systemic corrective action plan is required.

(4) If the school district does not ((~~comply with a corrective action plan approved pursuant to subsections (4) and (5) of this section~~)) timely address compliance with corrective actions, the OSPI shall institute procedures to ensure compliance with applicable state and federal rules and priorities and targets from the state performance plan. Such procedures may include one or more of the following:

(a) Verification visits by OSPI staff, or its designee, to:

(i) Determine whether the school district is taking the required corrective action(s)((~~;~~

~~(ii) Expedite the school district's response to the final monitoring report~~)); and/or

((~~(iii)~~)) (ii) Provide any necessary technical assistance to the school district or other public agency in its efforts to comply.

(b) ((~~Withholding~~)) Withhold, in whole or part, a specified amount of state and/or federal special education funds, ((~~in compliance~~)) to address noncompliance.

(c) ((~~Requesting~~)) Request assistance from the state auditors office ((~~to initiate an audit.~~

~~(7) When monitoring districts under this section or when enforcing other provisions of this subpart relating to the district's obligations to provide OSPI with data under WAC 392-172A-06000 through 392-172A-06060:~~

~~(a) If the OSPI determines, for two consecutive years, that a district needs assistance in implementing the OSPI's annual performance requirements, OSPI will take one or more of the following actions:~~

~~Advise the district of available sources of technical assistance that may help the district address the areas in which the district needs assistance, which may include assistance from the OSPI, Office of Special Education Programs, other~~

~~offices of the Department of Education, other federal agencies, technical assistance providers approved by the Department of Education, and other federally or state funded nonprofit agencies, and require the district to work with appropriate entities. Such technical assistance may include:~~

~~(i) The provision of advice by experts to address the areas in which the district needs assistance, including explicit plans for addressing the area for concern within a specified period of time;~~

~~(ii) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;~~

~~(iii) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and~~

~~(iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service districts, national centers of technical assistance, and private providers of scientifically based technical assistance.~~

~~(b) If the OSPI determines, for three or more consecutive years, that a district needs intervention in implementing the OSPI's annual performance requirements, OSPI will take one or more of the following actions:~~

~~(i) Require the district to prepare a corrective action plan or improvement plan if the OSPI determines that the district should be able to correct the problem within one year;~~

~~(ii) Withhold, in whole or in part, any further payments to the district under Part B of the act.~~

~~(c) Notwithstanding (a) or (b) of this subsection, at any time that the OSPI determines that a district needs substantial intervention in implementing the requirements of Part B of the act or that there is a substantial failure to comply with any condition of a school district's eligibility under Part B of the act, OSPI will withhold, in whole or in part, any further payments to the district under Part B of the act, in addition to any other actions taken under (a) or (b) of this subsection~~)).

NEW SECTION

WAC 392-172A-07012 Determinations. (1) OSPI annually reviews the data it obtains from school districts through monitoring, submission of other data required by the district, and other public information provided by the district. Based on the data and information provided, OSPI determines if the school district:

(a) Meets the requirements and purposes of Part B of the act;

(b) Needs assistance in implementing the requirements of Part B of the act;

(c) Needs intervention in implementing the requirements of Part B of the act; or

(d) Needs substantial intervention in implementing the requirements of Part B of the act.

(2) If the OSPI determines, for two consecutive years, that a district needs assistance in implementing the OSPI's annual performance requirements, OSPI will advise the district of available sources of technical assistance that may help the district address the areas in which the district needs assistance, which may include assistance from the OSPI, office of special education programs, other offices of the department of education, other federal agencies, technical assistance providers approved by the department of education, and other federally or state funded nonprofit agencies, and require the district to work with appropriate entities. Such technical assistance may include:

(a) The provision of advice by experts to address the areas in which the district needs assistance, including explicit plans for addressing the areas of concern within a specified period of time;

(b) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(c) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(d) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service districts, national centers of technical assistance, and private providers of scientifically based technical assistance.

(3) If the OSPI determines, for three or more consecutive years, that a district needs intervention in implementing the OSPI's annual performance requirements, OSPI may take actions described under subsection (2) of this section and will take one or more of the following actions:

(a) Require the district to prepare a corrective action plan or improvement plan if the OSPI determines that the district should be able to correct the problem within one year;

(b) Withhold, in whole or in part, any further payments to the district under Part B of the act;

(4) Notwithstanding subsections (2) or (3) of this section, at any time that the OSPI determines that a district needs substantial intervention in implementing the requirements of Part B of the act or that there is a substantial failure to comply with any condition of a school district's eligibility under Part B of the act, OSPI will withhold, in whole or in part, any further payments to the district under Part B of the act, in addition to any other actions taken under subsections (2) or (3) of this section.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-07035 Child count. The OSPI reports to the secretary of the department of education no later than February 1 of each year the number of ((~~special education~~)) students aged three through twenty-one residing in the state who are receiving special education and related services. This report is based on the school districts' ((~~reports~~)) annual federal count of eligible students provided to OSPI ((~~which are due by~~)) on a date selected by OSPI between October 1 and December 1 of each year.

(1) Information required in the report includes:

(a) The number of ((~~special education~~)) students receiving special education and related services ((~~on December 1 of that school year~~));

(b) The number of ((~~special education~~)) students aged three through five ((~~who are~~)) receiving ((~~free, appropriate public~~)) special education and related services;

(c) The number of ((~~those special education~~)) students aged six through seventeen, and eighteen through twenty-one within each disability category((~~, as defined in the definition of "special education students"~~)); and

(d) The number of ((~~those special education~~)) students aged three through twenty-one for each year of age (three, four, five, etc.).

(2) For the purpose of this part, a student's age is the student's actual age on the date of the child count((~~: December 1~~)).

(3) A student may not be reported under more than one disability category.

(4) If a special education student has more than one disability, the student is reported as follows:

(a) A student with deaf-blindness and not reported as having a developmental delay must be reported under the category "deaf-blindness."

(b) A student who has more than one disability (other than deaf-blindness or developmental delay) must be reported under the category "multiple disabilities."

(5) ((~~The office of the superintendent of public instruction shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of special education students receiving special education and related services on the dates in question.~~)) School districts must provide OSPI a certification signed by an authorized official of the district, stating that the information provided by the district is an accurate and unduplicated count of special education students receiving special education and related services on the dates in question.

((~~(6) The OSPI will include in its report special education students who are enrolled in a school or program that is operated or supported by a public agency, and that:~~

~~(a) Provides them with both special education and related services; or~~

~~(b) Provides them only with special education if they do not need related services to assist them in benefiting from that special education.~~

~~(7) The superintendent may not include special education students in its reports who:~~

~~(a) Are not enrolled in a school or program operated or supported by a public agency;~~

~~(b) Are not provided special education that meets state standards;~~

~~(c) Are not provided with a related service that they need to assist them in benefiting from special education;~~

~~(d) Are counted by the state's lead agency for Part C services; or~~

~~(e) Are receiving special education funded solely by the federal government including students served by the U.S. Departments of the Interior or Education.~~))

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-07040 Significant disproportionality. (1) The state collects and examines data annually from school districts to determine if significant disproportionality based on race or ethnicity is occurring in the state with respect to:

(a) The identification of ((~~students eligible for special education, including the identification of students in accordance with a particular impairment described in this chapter;~~

~~(b) The placement in particular educational settings of these students; and~~

~~(c) The incidence duration and type of disciplinary actions including suspension and expulsions.~~

~~(2) Disproportionality is determined by a ratio of the risk that a student from a particular racial or ethnic group is identified as eligible for special education, placed in a particular eligibility category, placed in a particular setting, or is subject to discipline, compared to the risk factor for all other students in that district.~~

~~(3) Significant disproportionality means:~~

~~(a) The overall percentage of students eligible for special education in the district is greater than the statewide average plus one percent;~~

~~(b) The weighted risk ratio for a school district as calculated by the state is greater than 3.0 in one or more racial or ethnic groups by disability category or discipline when compared to all students within the school district, and placement when compared to all eligible students within the school district; and~~

~~(c) Placement of one or more racial or ethnic groups on the least restrictive environment tables published by the OSPI annually is greater than the statewide average plus one percent, to the extent the representation is the result of inappropriate identification.~~

~~(4)~~)) children as students eligible for special education;

(b) The identification of students with a particular disability;

(c) The placement of students in particular educational settings; or

(d) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(2)(a) In the case of a determination of significant disproportionality with respect to the identification of students eligible for special education, the placement in particular educational settings of these students, or discipline, the OSPI shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the act;

(b) Require any school district identified under ((~~subsection (1) of~~)) this section to reserve the maximum amount of funds under WAC 392-172A-06085 to provide comprehensive coordinated early intervening services to serve students in the school district, particularly, but not exclusively, students in those groups that were significantly over identified; and

(c) Require the school district to publicly report on the revision of policies, practices, and procedures described under (b) of this subsection.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-07055 State safety net fund for high need students. (1) The state has established a special education safety net fund for students eligible for special education. The rules for applying for reimbursement for the fund are contained in WAC 392-14-600 through 392-14-685 or as may be amended.

(2) Part B funding is available through the safety net fund to reimburse high need, low incidence, catastrophic, or extraordinary aid for applicants with eligible high need special education students whose cost is ((~~greater than~~)) at least three times the average per pupil expenditure; and whose placement is consistent with least restrictive environment provisions and other applicable rules regarding placement, including placement in nonpublic agencies.

(3) Disbursements provided under subsection (2) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a student eligible for special education under the state medicaid program under Title XIX of the Social Security Act.

(4) The costs associated with educating a high need student eligible for special education, in subsections (2) and (3) of this section, are only those costs associated with providing direct special education and related services to the student that are identified in that student's IEP, including the cost of room and board for a residential placement determined necessary, consistent to implement a student's IEP.

(5) The disbursements to an applicant must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a student to ensure FAPE for such student.

(6) Federal funds reserved for the safety net fund from the appropriation for any fiscal year, but not expended to eligible applicants for safety net funding must be allocated to school districts in the same manner as other funds from the appropriation for that fiscal year are allocated to school districts during their final year of availability.

(7) The funds in the high cost fund remain under the control of the state until disbursed to a school district to support a specific child who qualifies under this section and the state regulations for safety net funding described in subsection (1) of this section.

(8) Nothing in this section:

(a) Limits or conditions the right of a student eligible for special education who is assisted under Part B of the act to receive a FAPE in the least restrictive environment; or

(b) Authorizes the state or a school district to establish a limit on what may be spent on the education of a student eligible for special education.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-172A-04075	Other service arrangements for students, including students placed in sectarian schools.

WSR 09-15-146
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES
[Filed July 21, 2009, 9:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-09-114.

Title of Rule and Other Identifying Information: Chapter 296-46B WAC, Electrical safety standards, administration, and installation.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S117, Tumwater, WA, on August 26, 2009, at 1:00 p.m.

Date of Intended Adoption: September 22, 2009.

Submit Written Comments to: Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by August 26, 2009.

Assistance for Persons with Disabilities: Contact Sally Elliott by August 3, 2009, at yous235@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department has reviewed the electrical rule for additions and revisions. The electrical rules are reviewed on a regular basis to ensure the rules are consistent with the national consensus standards, industry practice, clarify the rules, and make fee changes.

The rule making also includes a fee increase of 5.20%, which is the office of financial management's maximum allowable fiscal growth rate factor for fiscal year 2010. We evaluated the program's budget and projected revenue. The fee increase is necessary to help cover the cost of ongoing services of the electrical program.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.281, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551.

Statute Being Implemented: Chapter 19.28 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Ron Fuller, Tumwater, Washington, (360) 902-5249; Implementation and Enforcement: Steve McLain, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is specifically exempt from the small business economic impact statement requirement because since the proposed changes will clarify rule language without changing its effect (see RCW 34.05.328 (5)(b)(iv)).

A cost-benefit analysis is not required under RCW 34.05.328. This rule is specifically exempt from the cost-benefit analysis requirement because the proposed changes are exempted by law since the proposed changes will clarify

rule language without changing its effect (see RCW 34.05.-310 (4)(d)).

July 21, 2009
Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-100 General definitions. (1) All definitions listed in the National Electrical Code and chapter 19.28 RCW are recognized in this chapter unless other specific definitions are given in this chapter. The definitions in this section apply to all parts of this chapter. Some sections may have definitions specific to that section.

(2) "Accreditation" is a determination by the department that a laboratory meets the requirements of this chapter and is therefore authorized to evaluate electrical products that are for sale in the state of Washington.

(3) "Administrative law judge" means an administrative law judge (ALJ) appointed pursuant to chapter 34.12 RCW and serving in board proceedings pursuant to chapter 19.28 RCW and this chapter.

(4) "ANSI" means American National Standards Institute. Copies of ANSI standards are available from the National Conference of States on Building Codes and Standards, Inc.

(5) "Appeal" is a request for review of a department action by the board as authorized by chapter 19.28 RCW.

(6) "Appellant" means any person, firm, partnership, corporation, or other entity that has filed an appeal or request for board review.

(7) "Appliance" means household appliance.

(8) "ASTM" means the American Society for Testing and Materials. Copies of ASTM documents are available from ASTM International.

(9) "AWG" means American Wire Gauge.

(10) "Basement" means that portion of a building that is partly or completely below grade plane. A basement shall be considered as a story above grade plane and not a basement where the finished surface of the floor above the basement is:

(a) More than 1829 mm (six feet) above grade plane;

(b) More than 1829 mm (six feet) above the finished ground level for more than 50% of the total building perimeter; or

(c) More than 3658 mm (twelve feet) above the finished ground level at any point. Also see "mezzanine" and "story."

(11) "Board" means the electrical board established and authorized under chapter 19.28 RCW.

(12) "Chapter" means chapter 296-46B WAC unless expressly used for separate reference.

(13) "Category list" is a list of ((~~nonspecific~~)) manufacturing safety standards or product types determined by the department.

(14) A "certified electrical product" is an electrical product to which a laboratory, accredited by the state of Washington, has the laboratory's certification mark attached.

(15) A "certification mark" is a specified laboratory label, symbol, or other identifying mark that indicates the manufacturer produced the product in compliance with appropriate standards or that the product has been tested for specific end uses.

(16) "Certificate of competency" includes the certificates of competency for master journeyman electrician, master specialty electrician, journeyman, and specialty electrician.

(17) A laboratory "certification program" is a specified set of testing, inspection, and quality assurance procedures, including appropriate implementing authority, regulating the evaluation of electrical products for certification marking by an electrical products certification laboratory.

(18) A "complete application" includes the submission of all appropriate fees, documentation, and forms.

(19) "Construction," for the purposes of chapter 19.28 RCW, means electrical construction.

(20) "Coordination (selective)" as defined in NEC 100 shall be determined and documented by a professional engineer registered under chapter 18.43 RCW.

(21) "Department" means the department of labor and industries of the state of Washington.

(22) "Director" means the director of the department, or the director's designee.

(23) "Egress - unobstructed (as applied to NEC 110.26 (C)(2)(a))" means an egress path that allows a worker to travel to the exit from any other area in the room containing the equipment described in NEC 110.26 (C)(2) without having to pass through that equipment's required working space.

(24) "Electrical equipment" includes electrical conductors, conduit, raceway, apparatus, materials, components, and other electrical equipment not exempted by RCW 19.28.006 (9). Any conduit/raceway of a type listed for electrical use is considered to be electrical equipment even if no wiring is installed in the conduit/raceway at the time of the conduit/raceway installation.

(25) An "electrical products certification laboratory" is a laboratory or firm accredited by the state of Washington to perform certification of electrical products.

(26) An "electrical products evaluation laboratory" is a laboratory or firm accredited by the state of Washington to perform on-site field evaluation of electrical products for safety.

(27) "Field evaluated" means an electrical product to which a field evaluation mark is attached. Field evaluation must include job site inspection unless waived by the department, and may include component sampling and/or laboratory testing.

(28) "Field evaluation mark" is a specified laboratory label, symbol, or other identifying mark indicating the manufacturer produced the product in essential compliance with appropriate standards or that the product has been evaluated for specific end uses.

(29) A "field evaluation program" is a specified set of testing, inspection, and quality assurance procedures, including appropriate implementing authority regulating the testing and evaluation of electrical products for field evaluation marking.

(30) The "filing" is the date the document is actually received in the office of the chief electrical inspector.

(31) "Final judgment" means any money that is owed to the department under this chapter, including fees and penalties, or any money that is owed to the department as a result

of an individual's or contractor's unsuccessful appeal of a citation.

(32) "Fished wiring" is when cable or conduit is installed within the finished surfaces of an existing building or building structure (e.g., wall, floor or ceiling cavity).

(33) "Household appliance" means utilization equipment installed in a dwelling unit that is built in standardized sizes or types and is installed or connected as a unit to perform one or more functions such as cooking and other equipment installed in a kitchen, clothes drying, clothes washing, portable room air conditioning units and portable heaters, etc. Fixed electric space-heating equipment covered in NEC 424 (furnaces, baseboard and wall heaters, electric heat cable, etc.) and fixed air-conditioning/heat pump equipment (NEC 440) are not household appliances. Household appliance does not mean any utilization equipment that:

(a) Supplies electrical power, other than Class 2, to other utilization equipment; or

(b) Receives electrical power, other than Class 2, through other utilization equipment.

(34) HVAC/refrigeration specific definitions:

(a) "HVAC/refrigeration" means heating, ventilation, air conditioning, and refrigeration.

(b) "HVAC/refrigeration component" means electrical power and limited energy components within the "HVAC/refrigeration system," including, but not limited to: Pumps, compressors, motors, heating coils, controls, switches, thermostats, humidistats, low-voltage damper controls, outdoor sensing controls, outside air dampers, stand-alone duct smoke detectors, air monitoring devices, zone control valves and equipment for monitoring of HVAC/refrigeration control panels and low-voltage connections. This definition excludes equipment and components of non-"HVAC/refrigeration control systems."

(c) "HVAC/refrigeration control panel" means an enclosed, manufactured assembly of electrical components designed specifically for the control of a HVAC/refrigeration system. Line voltage equipment that has low voltage, NEC Class 2 control or monitoring components incidental to the designed purpose of the equipment is not an HVAC/refrigeration control panel (e.g., combination starters).

(d) "HVAC/refrigeration control system" means a network system regulating and/or monitoring a HVAC/refrigeration system. Equipment of a HVAC/refrigeration control system includes, but is not limited to: Control panels, data centers, relays, contactors, sensors, and cables related to the monitoring and control of a HVAC/refrigeration system(s).

(e) "HVAC/refrigeration equipment" means the central unit primary to the function of the "HVAC/refrigeration system." HVAC/refrigeration includes, but is not limited to: Heat pumps, swamp coolers, furnaces, compressor packages, and boilers.

(f) "HVAC/refrigeration system" means a system of HVAC/refrigeration: Wiring, equipment, and components integrated to generate, deliver, or control heated, cooled, filtered, refrigerated, or conditioned air. This definition excludes non-HVAC/refrigeration control systems (e.g., fire alarm systems, intercom systems, building energy management systems, and similar non-HVAC/refrigeration systems) (see Figure 920-1 and Figure 920-2).

(35) "IBC" means the International Building Code. Copies of the IBC are available from the International Code Council.

(36) An "individual" or "party" or "person" means an individual, firm, partnership, corporation, association, government subdivision or unit thereof, or other entity.

(37) An "installation" includes the act of installing, connecting, repairing, modifying, or otherwise performing work on an electrical system, component, equipment, or wire except as exempted by WAC 296-46B-925.

(38) An "identification plate" is a phenolic or metallic plate or other similar material engraved in block letters at least 1/4" (6 mm) high unless specifically required to be larger by this chapter, suitable for the environment and application. The letters and the background must be in contrasting colors. Screws, rivets, or methods specifically described in this chapter must be used to affix an identification plate to the equipment or enclosure.

(39) "License" means a license required under chapter 19.28 RCW.

(40) "Labeled" means an electrical product that bears a certification mark issued by a laboratory accredited by the state of Washington.

(41) A "laboratory" may be either an electrical product(s) certification laboratory or an electrical product(s) evaluation laboratory.

(42) A "laboratory operations control manual" is a document to establish laboratory operation procedures and may include a laboratory quality control manual.

(43) "Like-in-kind" means having similar characteristics such as voltage requirement, current draw, circuit overcurrent and short circuit characteristics, and function within the system and being in the same location. Like-in-kind also includes any equipment component authorized by the manufacturer as a suitable component replacement part.

(44) For the purpose of WAC 296-46B-940(6), a "lineman" is a person employed by a serving electrical utility or employed by a licensed general electrical contractor who carries, on their person, evidence that they:

(a) Have graduated from a department-approved lineman's apprenticeship course; or

(b) Are currently registered in a department-approved lineman's apprenticeship course and are working under the direct one hundred percent supervision of a journeyman electrician or a graduate of a lineman's apprenticeship course approved by the department. The training received in the lineman's apprenticeship program must include training in applicable articles of the currently adopted National Electrical Code.

(45) "Listed" means equipment has been listed and identified by a laboratory approved by the state of Washington for the appropriate equipment standard per this chapter.

(46) "Low voltage" means:

(a) NEC, Class 1 power limited circuits at 30 volts maximum.

(b) NEC, Class 2 circuits powered by a Class 2 power supply as defined in NEC 725.121(A).

(c) NEC, Class 3 circuits powered by a Class 3 power supply as defined in NEC 725.121(A).

(d) Circuits of telecommunications systems as defined in chapter 19.28 RCW.

(47) "Mezzanine" is the intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than one-third of the area of the room or space in which the level or levels are located. Also see "basement" and "story."

(48) "NEC" means National Electrical Code. Copies of the NEC are available from the National Fire Protection Association.

(49) "NEMA" means National Electrical Manufacturer's Association. Copies of NEMA standards are available from the National Electrical Manufacturer's Association.

(50) "NESC" means National Electrical Safety Code. Copies of the NESC are available from the Institute of Electrical and Electronics Engineers, Inc.

(51) "NETA" means International Electrical Testing Association, Inc. Copies of the NETA standards and information are available from the International Electrical Testing Association, Inc.

(52) "NFPA" means the National Fire Protection Association. Copies of NFPA documents are available from the National Fire Protection Association.

(53) "NRTL" means Nationally Recognized Testing Laboratory accredited by the federal Occupational Safety and Health Administration (OSHA) after meeting the requirements of 29 CFR 1910.7.

(54) "Point of contact" or "point of connection" means the service point.

(55) "Proceeding" means any matter regarding an appeal before the board including hearings before an administrative law judge.

(56) "Public area or square" is an area where the public has general, clear, and unrestricted access.

(57) A "quality control manual" is a document to maintain the quality control of the laboratory's method of operation. It consists of specified procedures and information for each test method responding to the requirements of the product standard. Specific information must be provided for portions of individual test methods when needed to comply with the standard's criteria or otherwise support the laboratory's operation.

(58) "RCW" means the Revised Code of Washington. Copies of electrical RCWs are available from the department and the office of the code reviser.

(59) "Readily accessible" means the definition as defined in NEC 100. In addition, it means that, except for keys, no tools or other devices are necessary to gain access (e.g., covers secured with screws, etc.).

(60) Service specific definitions replacing those found in NEC Article 100:

(a) "Service drop" means the overhead service conductors from the service point to the connection to the service-entrance conductors at the building or other structure.

(b) "Service-entrance conductors, overhead system" means the service conductors between the terminals of the service equipment and a point usually outside the building, clear of building walls, where joined by tap or splice to the service drop or service point.

(c) "Service-entrance conductors, underground system" means the service conductors between the terminals of the service equipment and the point of connection to the service lateral or service point. Where the service equipment is located outside the building walls, there may be no service-entrance conductors or they may be entirely outside the building.

(d) "Service lateral" means the underground service conductors from the service point to the point of connection to the service-entrance conductors in a terminal box, meter, or other enclosure. Where there is not a terminal box, meter, or other enclosure, the point of connection is the point of entrance of the service conductors into the building.

(61) A "stand-alone amplified sound or public address system" is a system that has distinct wiring and equipment for audio signal generation, recording, processing, amplification, and reproduction. This definition does not apply to telecommunications installations.

(62) "Service" or "served" means that as defined in RCW 34.05.010(19) when used in relation to department actions or proceedings.

(63) A "sign," when required by the NEC, for use as an identification method means "identification plate."

(64) "Story" is that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. Next above means vertically and not necessarily directly above. Also see "basement" and "mezzanine."

(65) "Structure," for the purposes of this chapter and in addition to the definition in the NEC, means something constructed either in the field or factory that is used or intended for supporting or sheltering any use or occupancy as defined by the IBC.

(66) A "telecommunications local service provider" is a regulated or unregulated (e.g., by the Federal Communications Commission or the utilities and transportation commission as a telephone or telecommunications provider) firm providing telecommunications service ahead of the telecommunications network demarcation point to an end-user's facilities.

(67) "TIA/EIA" means the Telecommunications Industries Association/Electronic Industries Association which publishes the TIA/EIA Telecommunications Building Wiring Standards. Standards and publications are adopted by TIA/EIA in accordance with the American National Standards Institute (ANSI) patent policy.

(68) A "training school" is a public community or technical college or not-for-profit nationally accredited technical or trade school licensed by the work force training and education coordinating board under chapter 28C.10 RCW.

(69) "Under the control of a utility" for the purposes of RCW 19.28.091 and 19.28.101 is when electrical equipment is not owned by a utility and:

(a) Is located in a vault, room, closet, or similar enclosure that is secured by a lock or seal so that access is restricted to the utility's personnel; or

(b) The utility is obligated by contract to maintain the equipment and the contract provides that access to the equipment is restricted to the utility's personnel or other qualified personnel.

(70) "UL" means Underwriters Laboratory.

(71) "Utility" means an electrical utility.

(72) "Utility system" means electrical equipment owned by or under the control of a serving utility that is used for the transmission or distribution of electricity from the source of supply to the point of contact and is defined in section 90.2 (b)(5) of the National Electrical Code, 1981 edition (see RCW 19.28.010(1)).

(73) "Utilization voltage" means the voltage level employed by the utility's customer for connection to lighting fixtures, motors, heaters, or other electrically operated equipment other than power transformers.

(74) "Variance" is a modification of the electrical requirements as adopted in chapter 19.28 RCW or any other requirements of this chapter that may be approved by the chief electrical inspector if assured that equivalent objectives can be achieved by establishing and maintaining effective safety.

(75) "WAC" means the Washington Administrative Code. Copies of this chapter of the WACs are available from the department and the office of the code reviser.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-445 Wind driven generator equipment. This equipment includes alternators or generators that produce electrical current through the conversion of wind energy into electrical energy. Wind driven generation equipment must demonstrate conformance to applicable safety standards recognized by the department.

Installation.

(1) A wind driven generator system design review must be submitted at the time of the first inspection ((~~request~~)). The design review must be available to the inspector on the job site. Permit holders must submit a copy of the wind driven generator equipment manufacturer's installation information and a legible one-line diagram of the wind driven generator design and calculations used to determine voltage and current within the generation system to the electrical inspector. This diagram must show the wind driven generator equipment, devices, overcurrent protection, conductor sizing, grounding, ground fault protection if required, and any system interconnection points.

(2) For utility interactive systems, any person making interconnections between the generator system and the utility distribution network must consult the serving utility and is required to meet all additional utility standards.

(3) All wind driven generator equipment and disconnecting means must be permanently identified as to their purpose, maximum voltages and type of current within the system with an identification plate.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-690 Solar photovoltaic systems.

002 Definitions.

(1) Photovoltaic system. The photovoltaic system may conduct alternating current, direct current, or both and will comprise all interconnected circuits to the point of connection with the building distribution circuits or utility service conductors.

(2) Support structure, foundation, and tracker. For the purposes of this section, those portions of the array or tracker that are exclusively mechanical and are built specifically for the purpose of physically supporting the modules or panels will not be considered part of the photovoltaic system as defined by this article.

004 Installation.

(3) A photovoltaic system design review must be submitted at the time of the first inspection ((~~request~~)). The design review must be available to the inspector on the job site. Permit holders must submit, to the electrical authority having jurisdiction, copies of the photovoltaic equipment manufacturer's installation information, accompanied by a legible one-line diagram of the photovoltaic design and calculations used to determine voltage and current within the photovoltaic system. This diagram must show the photovoltaic equipment, devices, overcurrent protection, conductor sizing, grounding, ground fault protection if required, and any system interconnection points.

(4) For utility interactive systems, persons making interconnections between solar photovoltaic system and the utility distribution network must consult the serving utility and are required to meet all additional utility standards.

007 Maximum voltage.

(5) The open-circuit voltage temperature coefficients supplied in the instructions of listed photovoltaic modules will be used to determine the maximum direct current photovoltaic system voltage. Otherwise the voltage will be calculated using Table 690.7 of the NEC. For the purposes of this calculation, a temperature correction factor of 1.25 will be used unless another factor can be justified and is approved by the authority having jurisdiction.

053 Direct-current photovoltaic power source.

(6) All photovoltaic equipment and disconnecting means must be permanently identified as to their purpose, maximum voltages, and type of current within the system with an identification plate. All photovoltaic circuits must be identified at each overcurrent protection device(s) and panel directory(ies).

(7) Required "WARNING" labels as specified by NEC 690 are required to be an identification plate on or immediately adjacent to the pertinent equipment.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-901 General—Electrical work permits and fees. (1) When an electrical work permit is required by chapter 19.28 RCW or this chapter, inspections may not be made, equipment must not be energized, or services connected unless:

(a) A valid electrical work permit is completely and legibly filled out and readily available;

(b) The classification or type of facility to be inspected and the exact scope and location of the electrical work to be performed are clearly shown on the electrical work permit;

(c) The address where the inspection is to be made is clearly identifiable from the street, road or highway that serves the premises; and

(d) Driving directions are provided for the inspectors' use.

(2) An electrical work permit is valid for only one specific site address.

(3) Except as provided in subsection (8) of this section, a valid electrical work permit must be posted on the job site at a readily accessible and conspicuous location prior to beginning electrical work and at all times until the electrical inspection process is completed.

Permit - responsibility for.

(4) Each person, firm, partnership, corporation, or other entity must furnish a valid electrical work permit for the installation, alteration, or other electrical work performed or to be performed solely by that entity. When the permitted work is performed solely or in part by another entity, the electrical work permit purchaser must request approval from the chief electrical inspector or the city that is authorized to do electrical inspections to take responsibility for the work of the original installing entity. Each electrical work permit application must be signed by the electrical contractor's administrator (or designee) or the person, or authorized representative of the firm, partnership, corporation, or other entity that is performing the electrical installation or alteration. Permits purchased electronically do not require a handwritten signature. An entity designated to sign electrical permits must provide written authorization of the purchaser's designation when requested by the department or city that is authorized to do electrical inspections.

(5) Permits to be obtained by customers. Whenever a serving electrical utility performs work for a customer under one of the exemptions in WAC 296-46B-925 and the work is subject to inspection, the customer is responsible for obtaining all required permits.

(6) Posting of permits: Where an electrical work permit is required, the work permit must be obtained and posted at the job site prior to beginning any electrical work. Exceptions:

(a) For an owner, an electrical work permit for emergency repairs to an existing electrical system(s) must be obtained and posted at the job site no later than the next business day after the work is begun.

(b) For an electrical contractor, in a city's jurisdiction where the city is authorized to do electrical inspections and does not have a provisional and a Class B permit system, an electrical work permit for emergency repairs to an existing electrical system(s) must be obtained and posted at the job site no later than the next business day after the work is begun.

(7) Fees must be paid in accordance with the inspection fee schedule in Part C of this chapter. The amount of the fee due is calculated based on the fee effective at the date payment is made. If the project is required to have an electrical plan review, the plan review fees will be based on the fees effective at the date the plans are received by the department for review. In a city where the department is doing inspections as the city's contractor, a supplemental fee may apply.

Permit - requirements for.

(8) As required by chapter 19.28 RCW or this chapter, an electrical work permit is required for the installation, alteration, or maintenance of all electrical systems or equipment except for:

(a) Travel trailers;

(b) Class A basic electrical work which includes:

(i) The **like-in-kind replacement** of a: Contactor, relay, timer, starter, circuit board, or similar control component; household appliance; circuit breaker; fuse; residential luminaire; lamp; snap switch; dimmer; receptacle outlet; thermostat; heating element; luminaire ballast with an exact same ballast; component(s) of electric signs, outline lighting, skeleton neon tubing when replaced on-site by an appropriate electrical contractor and when the sign, outline lighting or skeleton neon tubing electrical system is not modified; ten horsepower or smaller motor;

(ii) Induction detection loops described in WAC 296-46B-300(2) and used to control gate access devices;

(iii) Heat cable repair; and

(iv) Embedding premanufactured heat mats in tile grout where the mat is listed by an approved testing laboratory and comes from the manufacturer with preconnected lead-in conductors. All listing marks and lead-in conductor labels must be left intact and visible for evaluation and inspection by the installing electrician and the electrical inspector.

Unless specifically noted, the exemptions listed do not include: The replacement of an equipment unit, assembly, or enclosure that contains an exempted component or combination of components (e.g., an electrical furnace/heat pump, industrial milling machine, etc.) or any appliance/equipment described in this section for Class B permits.

In the department's jurisdiction, a provisional electrical work permit label may be posted in lieu of an electrical work permit. If a provisional electrical work permit label is used, an electrical work permit must be obtained within two working days after posting the provisional electrical work permit label. See WAC 296-46B-907(2) for provisional label requirements.

(9) An electrical work permit is required for all installations of telecommunications systems on the customer side of the network demarcation point for projects greater than ten telecommunications outlets. All backbone installations regardless of size and all telecommunications cable or equipment installations involving penetrations of fire barriers or passing through hazardous locations require permits and inspections. For the purposes of determining the inspection threshold for telecommunications projects greater than ten outlets, the following will apply:

(a) An outlet is the combination of jacks and mounting hardware for those jacks, along with the associated cable and telecommunications closet terminations, that serve one workstation. In counting outlets to determine the inspection threshold, one outlet must not be associated with more than six standard four-pair cables or more than one twenty-five-pair cable. Therefore, installations of greater than sixty standard four-pair cables or ten standard twenty-five-pair cables require permits and inspections. (It is not the intent of the statute to allow large masses of cables to be run to workstations or spaces serving telecommunications equipment with-

out inspection. Proper cable support and proper loading of building structural elements are safety concerns. When considering total associated cables, the telecommunications availability at one workstation may count as more than one outlet.)

(b) The installation of greater than ten outlets and the associated cables along any horizontal pathway from a telecommunications closet to work areas during any continuous ninety-day period requires a permit and inspection.

(c) All telecommunications installations within the residential dwelling units of single-family, duplex, and multifamily dwellings do not require permits or inspections. In residential multifamily dwellings, permits and inspections are required for all backbone installations, all fire barrier penetrations, and installations of greater than ten outlets in common areas.

(d) No permits or inspections are required for installation or replacement of cord and plug connected telecommunications equipment or for patch cord and jumper cross-connected equipment.

(e) Definitions of telecommunications technical terms will come from chapter 19.28 RCW, this chapter, TIA/EIA standards, and NEC.

Permit - inspection and approval.

(10) Requests for inspections.

(a) Requests for inspections must be made no later than three business days after completion of the electrical/telecommunications installation or one business day after any part of the installation has been energized, whichever occurs first.

(b) Requests for after hours or weekend inspections must be made by contacting the local electrical inspection supervisor at least three working days prior to the requested date of inspection. The portal-to-portal inspection fees required for after hours or weekend inspections are in addition to the cost of the original electrical work permit.

(c) Emergency requests to inspect repairs necessary to preserve life and equipment safety may be requested at any time.

(d) Inspections for annual electrical maintenance permits and annual telecommunications permits may be done on a regular schedule arranged by the permit holder with the department.

(11) Final inspection approval will not be made until all inspection fees are paid in full.

Permit - duration/refunds.

(12) Electrical work permits will expire one year after the date of purchase unless electrical work is actively and consistently in progress and inspections requested. Refunds are not available for:

(a) Expired electrical work permits;

(b) Electrical work permits where the electrical installation has begun; or

(c) Any electrical work permit where an electrical inspection or electrical inspection request has been made.

Permit - annual telecommunications.

(13) The chief electrical inspector or city that is authorized to do electrical inspections can allow annual permits for the inspection of telecommunications installations to be purchased by a building owner or licensed electrical/telecommunications contractor. The owner's full-time telecommunications maintenance staff, or a licensed electrical/telecommunications contractor(s) can perform the work done under this annual permit. The permit holder is responsible for correcting all installation deficiencies. The permit holder must make available, to the electrical inspector, all records of all the telecommunications work performed and the valid electrical or telecommunications contractor's license numbers for all contractors working under the permit.

Permit - annual electrical.

(14) The chief electrical inspector or city that is authorized to do electrical inspections can allow annual permits for the inspection of electrical installations to be purchased by a building owner or licensed electrical contractor. This type of permit is available for commercial/industrial locations employing a full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor.

The permit holder is responsible for correcting all installation deficiencies. The permit holder must make available, to the electrical inspector, all records of all electrical work performed.

This type of electrical permit may be used for retrofit, replacement, maintenance, repair, upgrade, and alterations to electrical systems at a single plant or building location. This type of permit does not include new or increased service or new square footage.

Permit - temporary installations.

(15) For temporary electrical installations, the department will consider a permit applicant to be the owner per RCW 19.28.261 under the conditions below:

Any person, firm, partnership, corporation, or other entity registered as a general contractor under chapter 18.27 RCW will be permitted to install a single electrical service per address for the purposes of temporary power during the construction phase of a project, when all of the following conditions are met:

(a) The installation is limited to the mounting and bracing of a preassembled pole or pedestal mounted service, the installation of a ground rod or ground plate, and the connection of the grounding electrode conductor to the ground rod or plate;

(b) The total service size does not exceed 200 amperes, 250 volts nominal;

(c) The service supplies no feeders;

(d) Branch circuits not exceeding 50 amperes each are permitted, provided such branch circuits supply only receptacles that are either part of the service equipment or are mounted on the same pole;

(e) The general contractor owns the electrical equipment;

(f) The general contractor has been hired by the property owner as the general contractor for the project;

(g) The general contractor must purchase an electrical work permit for the temporary service, request inspection, and obtain approval prior to energizing the service.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-906 Inspection fees. To calculate inspection fees, the amperage is based on the conductor ampacity or the overcurrent device rating. The total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) of this section, PROGRESS INSPECTIONS.

The amount of the fee due is calculated based on the fee effective at the date of a department assessed fee (e.g., plan review or fee due) or when the electrical permit is purchased.

(1) **Residential.**

(a) **Single- and two-family residential (New Construction).**

Notes:

(1) Square footage is the area included within the surrounding exterior walls of a building exclusive of any interior courts. (This includes any floor area in an attached garage, basement, or unfinished living space.)
(2) "Inspected with the service" means that a separate service inspection fee is included on the same electrical work permit.
(3) "Inspected at the same time" means all wiring is to be ready for inspection during the initial inspection trip.
(4) An "outbuilding" is a structure that serves a direct accessory function to the residence, such as a pump house or storage building. Outbuilding does not include buildings used for commercial type occupancies or additional dwelling occupancies.

(i) First 1300 sq. ft.	$((~~73.00~~)) 76.70
Each additional 500 sq. ft. or portion of	$((~~23.40~~)) 24.60
(ii) Each outbuilding or detached garage - inspected at the same time as a dwelling unit on the property	$((~~30.50~~)) 32.00
(iii) Each outbuilding or detached garage - inspected separately	$((~~48.10~~)) 50.60
(iv) Each swimming pool - inspected with the service	$((~~48.10~~)) 50.60
(v) Each swimming pool - inspected separately	$((~~73.00~~)) 76.70
(vi) Each hot tub, spa, or sauna - inspected with the service	$((~~30.50~~)) 32.00
(vii) Each hot tub, spa, or sauna - inspected separately	$((~~48.10~~)) 50.60
(viii) Each septic pumping system - inspected with the service	$((~~30.50~~)) 32.00
(ix) Each septic pumping system - inspected separately	$((~~48.10~~)) 50.60

(b) **Multifamily residential and miscellaneous residential structures, services and feeders (New Construction).**

Each service and/or feeder

Ampacity	Service/Feeder
0 to 200	$((~~78.70~~)) 82.70
201 to 400	$((~~97.80~~)) 102.80
401 to 600	$((~~134.30~~)) 141.20
601 to 800	$((~~172.30~~)) 181.20
801 and over	$((~~245.70~~)) 258.40

(c) **Single or multifamily altered services or feeders including circuits.**

(i) Each altered service and/or altered feeder

Ampacity	Service/Feeder
0 to 200	$((~~66.90~~)) 70.30
201 to 600	$((~~97.80~~)) 102.80
601 and over	$((~~147.40~~)) 155.00

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder)	$((~~36.30~~)) 38.10

(d) **Single or multifamily residential circuits only (no service inspection).**

Note:

Altered or added circuit fees are calculated per panelboard. Total cost of the alterations in an individual panel should not exceed the cost of a complete altered service or feeder of the same rating, as shown in subsection (1) RESIDENTIAL (c) (table) of this section.

(i) 1 to 4 circuits (see note above)

(ii) Each additional circuit (see note above)

(e) **Mobile homes, modular homes, mobile home parks, and RV parks.**

(i) Mobile home or modular home service or feeder only	$((~~48.10~~)) 50.60
(ii) Mobile home service and feeder	$((~~78.70~~)) 82.70

(f) **Mobile home park sites and RV park sites.**

Note:

For master service installations, see subsection (2) COMMERCIAL/INDUSTRIAL of this section.

(i) First site service or site feeder	$((~~48.10~~)) 50.60
(ii) Each additional site service; or additional site feeder inspected at the same time as the first service or feeder	$((~~30.50~~)) 32.00

(2) **Commercial/industrial.**

(a) **New service or feeder, and additional new feeders inspected at the same time (includes circuits).**

Note:

For large COMMERCIAL/INDUSTRIAL projects that include multiple feeders, "inspected at the same time" can be interpreted to include additional inspection trips for a single project. The additional inspections must be for electrical work specified on the permit at the time of purchase. The permit fee for such projects must be calculated using this section. However, the total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) PROGRESS INSPECTIONS of this section.

Ampacity	Service/Feeder	Additional Feeder
0 to 100	$((~~78.70~~)) 82.70	$((~~48.10~~)) 50.60
101 to 200	$((~~95.80~~)) 100.70	$((~~61.30~~)) 64.40
201 to 400	$((~~184.30~~)) 193.80	$((~~73.00~~)) 76.70
401 to 600	$((~~214.80~~)) 225.90	$((~~85.80~~)) 90.20
601 to 800	$((~~277.70~~)) 292.10	$((~~116.90~~)) 122.90
801 to 1000	$((~~339.00~~)) 356.60	$((~~141.40~~)) 122.90
1001 and over	$((~~369.80~~)) 389.00	$((~~197.30~~)) 207.50

(b) **Altered services/feeders (no circuits).**

(i) Service/feeder

Ampacity	Service/Feeder
0 to 200	$((~~78.70~~)) 82.70
201 to 600	$((~~184.30~~))193.80
601 to 1000	$((~~277.70~~)) 292.10
1001 and over	$((~~308.40~~)) 324.40

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder)	$((~~66.90~~)) 70.30

(c) **Circuits only.**

Note:
Altered/added circuit fees are calculated per panelboard. Total cost of the alterations in a panel (or panels) should not exceed the cost of a new feeder (or feeders) of the same rating, as shown in subsection (2) COMMERCIAL/INDUSTRIAL (2)(a)(table) above.

(i) First 5 circuits per branch circuit panel	$((~~61.30~~)) 64.40
(ii) Each additional circuit per branch circuit panel	$((~~5.30~~)) 5.50
(d) **Over 600 volts surcharge per permit.**	$((~~61.30~~)) 64.40

(3) **Temporary service(s).**

Note:
(1) See WAC 296-46B-590 for information about temporary installations.
(2) Temporary stage or concert inspections requested outside of normal business hours will be subject to the portal-to-portal hourly fees in subsection (11) OTHER INSPECTIONS. The fee for such after hours inspections shall be the greater of the fee from this subsection or the portal-to-portal fee.

Temporary services, temporary stage or concert productions.

Ampacity	Service/Feeder	Additional Feeder
0 to 60	$((~~42.20~~)) 44.30	$((~~21.60~~)) 22.70
61 to 100	$((~~48.10~~)) 50.60	$((~~23.40~~)) 24.60
101 to 200	$((~~61.30~~)) 64.40	$((~~30.50~~)) 32.00
201 to 400	$((~~73.00~~)) 76.70	$((~~36.40~~)) 38.20
401 to 600	$((~~97.80~~)) 102.80	$((~~48.10~~)) 50.60
601 and over	$((~~110.90~~)) 116.60	$((~~55.30~~)) 58.10

(4) **Irrigation machines, pumps, and equipment.**

Irrigation machines.

(a) Each tower - when inspected at the same time as a service and feeder from (2) COMMERCIAL/INDUSTRIAL	$((~~5.30~~)) 5.50
(b) Towers - when not inspected at the same time as a service and feeder - 1 to 6 towers	$((~~73.00~~)) 76.70
(c) Each additional tower	$((~~5.30~~)) 5.50

(5) **Miscellaneous - commercial/industrial and residential.**

(a) **A Class 2 low-voltage thermostat** and its associated cable controlling a single piece of utilization equipment or a single furnace and air conditioner combination.

(i) First thermostat	$((~~36.40~~)) 38.20
(ii) Each additional thermostat inspected at the same time as the first	$((~~11.40~~)) 11.90

(b) **Class 2 or 3 low-voltage systems and telecommunications systems.** Includes all telecommunications installations, fire alarm, nurse call, energy management control systems, industrial and automation control systems, lighting control systems, and similar Class 2 or 3 low-energy circuits and equipment not included in WAC 296-46B-908 for Class B work.

(i) First 2500 sq. ft. or less	$((~~42.20~~)) 44.30
(ii) Each additional 2500 sq. ft. or portion thereof	$((~~11.40~~)) 11.90

(c) **Signs and outline lighting.**

(i) First sign (no service included)	$((~~36.40~~)) 38.20
(ii) Each additional sign inspected at the same time on the same building or structure	$((~~17.30~~)) 18.10

(d) **Berth at a marina or dock.**

Note:
Five berths or more shall be permitted to have the inspection fees based on appropriate service and feeder fees from section (2) COMMERCIAL/INDUSTRIAL above.

(i) Berth at a marina or dock	$((~~48.10~~)) 50.60
(ii) Each additional berth inspected at the same time	$((~~30.50~~)) 32.00

(e) **Yard pole, pedestal, or other meter loops only.**

(i) Yard pole, pedestal, or other meter loops only	$((~~48.10~~)) 50.60
(ii) Meters installed remote from the service equipment and inspected at the same time as a service, temporary service or other installations	$((~~11.40~~)) 11.90

(f) **Emergency inspections requested outside of normal working hours.**

Regular fee plus surcharge of:	$((~~91.80~~)) 96.50

(g) **Generators.**

Note:
Permanently installed generators: Refer to the appropriate residential or commercial new/altered service or feeder section.

Portable generators: Permanently installed transfer equipment for portable generators	$((~~66.90~~)) 70.30

(h) **Electrical - annual permit fee.**

Note:
See WAC 296-46B-901(14).

For commercial/industrial location employing full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor. Note, all yearly maintenance contracts must detail the number of contractor electricians necessary to complete the work required under the contract. This number will be used as a basis for calculating the appropriate fee. Each inspection is based on a 2-hour maximum.

	Inspections	Fee
1 to 3 plant electricians	12	$((~~1,765.50~~)) 1,857.30
4 to 6 plant electricians	24	$((~~3,532.80~~)) 3,716.50
7 to 12 plant electricians	36	$((~~5,298.90~~)) 5,574.40
13 to 25 plant electricians	52	$((~~7,066.20~~)) 7,433.60
More than 25 plant electricians	52	$((~~8,833.50~~)) 9,292.80

(i) **Telecommunications - annual permit fee.**

Notes:
(1) See WAC 296-46B-901(13).
(2) Annual inspection time required may be estimated by the purchaser at the rate for "OTHER INSPECTIONS" in this section, charged portal-to-portal per hour.

For commercial/industrial location employing full-time telecommunications maintenance staff or having a yearly maintenance contract with a licensed electrical/telecommunications contractor.

2-hour minimum	$((~~146.10~~)) 153.60

Each additional hour, or portion thereof, of portal-to-portal inspection time	$((~~73.00~~)) 76.70
(j) **Permit requiring ditch cover inspection only.**	
Each 1/2 hour, or portion thereof	$((~~36.40~~)) 38.20
(k) **Cover inspection for elevator/conveyance installation. This item is only available to a licensed/registered elevator contractor.**	$((~~61.30~~)) 64.40
(6) **Carnival inspections.**	
(a) **First carnival field inspection each calendar year.**	
(i) Each ride and generator truck	$((~~17.30~~)) 18.10
(ii) Each remote distribution equipment, concession, or gaming show	$((~~5.30~~)) 5.50
(iii) If the calculated fee for first carnival field inspection above is less than $89.00, the minimum inspection fee shall be:	$((~~91.80~~)) 96.50
(b) **Subsequent carnival inspections.**	
(i) First ten rides, concessions, generators, remote distribution equipment, or gaming show	$((~~91.80~~)) 96.50
(ii) Each additional ride, concession, generator, remote distribution equipment, or gaming show	$((~~5.30~~)) 5.50
(c) **Concession(s) or ride(s) not part of a carnival.**	
(i) First field inspection each year of a single concession or ride, not part of a carnival	$((~~73.00~~)) 76.70
(ii) Subsequent inspection of a single concession or ride, not part of a carnival	$((~~48.10~~)) 50.60
(7) **Trip fees.**	
(a) Requests by property owners to inspect existing installations. (This fee includes a maximum of one hour of inspection time. All inspection time exceeding one hour will be charged at the rate for progressive inspections.)	$((~~73.00~~)) 76.70
(b) Submitter notifies the department that work is ready for inspection when it is not ready.	$((~~36.40~~)) 38.20
(c) Additional inspection required because submitter has provided the wrong address or incomplete, improper or illegible directions for the site of the inspection.	$((~~36.40~~)) 38.20
(d) More than one additional inspection required to inspect corrections; or for repeated neglect, carelessness, or improperly installed electrical work.	$((~~36.40~~)) 38.20
(e) Each trip necessary to remove a noncompliance notice.	$((~~36.40~~)) 38.20
(f) Corrections that have not been made in the prescribed time, unless an exception has been requested and granted.	$((~~36.40~~)) 38.20
(g) Installations that are covered or concealed before inspection.	$((~~36.40~~)) 38.20
(8) **Progress inspections.**	

Note:
The fees calculated in subsections (1) through (6) of this section will apply to all electrical work. This section will be applied to a permit where the permit holder has requested additional inspections beyond the number supported by the permit fee calculated at the rate in subsections (1) through (6) of this section.

On partial or progress inspections, each 1/2 hour.	$((~~36.40~~)) 38.20
(9) **Plan review.**	
Fee is thirty-five percent of the electrical work permit fee as determined by WAC 296-46B-906, plus a plan review submission and shipping/handling fee of:	$((~~61.30~~)) 64.40
(a) Supplemental submissions of plans per hour or fraction of an hour of review time.	$((~~73.00~~)) 76.70
(b) Plan review shipping and handling fee.	$((~~17.30~~)) 18.10
(10) **Out-of-state inspections.**	
(a) Permit fees will be charged according to the fees listed in this section.	
(b) Travel expenses:	
All travel expenses and per diem for out-of-state inspections are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in subsection (11) of this section.	
(11) **Other inspections.**	
Inspections not covered by above inspection fees must be charged portal-to-portal per hour:	$((~~73.00~~)) 76.70
(12) **Variance request processing fee.**	
Variance request processing fee. This fee is nonrefundable once the transaction has been validated.	$((~~73.00~~)) 76.70
(13) **Marking of industrial utilization equipment.**	
(a) Standard(s) letter review (per hour of review time).	$((~~73.00~~)) 76.70
(b) Equipment marking - charged portal-to-portal per hour:	$((~~73.00~~)) 76.70
(c) All travel expenses and per diem for in/out-of-state review and/or equipment marking are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in (b) of this subsection.	
(14) **Class B basic electrical work labels.**	
(a) Block of twenty Class B basic electrical work labels (not refundable).	$((~~200.00~~)) 210.40
(b) Reinspection of Class B basic electrical work to assure that corrections have been made (per 1/2 hour timed from leaving the previous inspection until the reinspection is completed). See WAC 296-46B-908(5).	$((~~36.40~~)) 38.20
(c) Reinspection of Class B basic electrical work because of a failed inspection of another Class B label (per 1/2 hour from previous inspection until the reinspection is completed). See WAC 296-46B-908(5).	$((~~36.40~~)) 38.20
(15) **Provisional electrical work permit labels.**	
Block of twenty provisional electrical work permit labels.	$((~~200.00~~)) 210.40

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-907 Provisional permits.

Provisional electrical work permit - use/duration/refunds.

(1) Only licensed electrical or telecommunications contractors can use provisional electrical work permits.

(2) If a provisional electrical work permit label is used, the following requirements must be met:

(a) Prior to beginning the work, the certified electrician or telecommunications worker performing the installation must affix the provisional electrical work permit label on the cover of the panelboard, overcurrent device, or telecommunications equipment supplying the circuit or equipment.

(b) The job site portion of the label must include the following:

(i) Date the work is begun;

(ii) Contractor's name;

(iii) Contractor's license number; and

(iv) Short description of the work.

(c) The contractor portion of the label must include the following:

(i) Date the work is begun;

(ii) Contractor's license number;

(iii) Job site address;

(iv) Owner's name; and

(v) Short description of the work.

(d) The label must be filled in using sunlight and weather resistant ink.

(e) The contractor must return the contractor's portion of the label to the department of labor and industries, electrical section office having jurisdiction for the inspection, within two working days after the job site portion of the label is affixed. Either receipt by department of labor and industries or postmark to a valid department of labor and industries electrical address is acceptable for meeting this requirement.

(f) The contractor must return the contractor's portion of the label to the department of labor and industries, chief electrical inspector, within five working days after destroying or voiding any label.

(g) The contractor is responsible for safekeeping of all purchased labels.

(3) Refunds are not available for provisional electrical work permit labels.

(4) Provisional electrical work permit labels will be sold in blocks of twenty.

(5) Any contractor purchasing a provisional electrical work permit label may be audited for compliance with the provisions for purchasing, inspection, reporting of installations, and any other requirement of usage.

(6) An electrical work permit must be obtained within two working days after posting the provisional work permit label. See WAC 296-46B-907 (2)(e).

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-908 Class B permits.

Class B electrical work permit - use.

(1) The electrical contractor must return the contractor's portion of the Class B label to the department of labor and industries, chief electrical inspector, within five working days after destroying or voiding any label.

(2) The electrical contractor is responsible for safekeeping of all purchased Class B labels.

(3) Only licensed electrical/telecommunication contractors can use the Class B basic electrical inspection random inspection process. Health care, large commercial or industrial facilities using an employee who is a certified electrician(s) can use the Class B random electrical inspection process after permission from the chief electrical inspector.

(4) If the Class B random electrical inspection process is used, the following requirements must be met:

(a) The certified electrician/telecommunications worker performing the installation must affix a Class B installation label on the cover of the panelboard or overcurrent device supplying power to the circuit or equipment prior to beginning the work.

(b) The job site portion of the label must include the following:

(i) Date of the work;

(ii) Electrical/telecommunication contractor's name;

(iii) Electrical/telecommunication contractor's license number;

(iv) Installing electrician's certificate number, except for telecommunication work. For thermostat installations described in WAC 296-46B-965(15), the installing trainee may enter their training certificate number; and

(v) Short description of the work.

(c) The contractor portion of the label must include the following:

(i) Date of the work;

(ii) Electrical/telecommunication contractor's license number;

(iii) Installing electrician's certificate number, except for telecommunication work;

(iv) Job site address;

(v) Contact telephone number for the job ((~~site~~)) site's owner (to be used to arrange inspection); and

(vi) Short description of the work.

(d) The label must be filled in using sunlight and weather resistant ink.

(e) The electrical/telecommunication contractor must return the contractor's portion of the label to the Department of Labor and Industries, Electrical Section, Chief Electrical Inspector, P.O. Box 44460, Olympia, WA 98504-4460 within fifteen working days after the job site portion of the Class B installation label is affixed.

(5) Class B basic installation labels will be sold in blocks. Installations where a Class B basic installation label is used will be inspected on a random basis as determined by the department.

(a) If any such random inspection fails, a subsequent label in the block must be inspected.

(b) If any such subsequent installation fails inspection, another label in the block must be inspected until a label is approved without a correction(s).

(c) A fee is required for any inspection required when a correction(s) is issued as a result of the inspection of any Class B label or if an inspection is required because of (a) or (b) of this subsection. See Part C of this chapter for fees.

(6) Any electrical/telecommunication contractor or other entity using the Class B basic electrical inspection random inspection process may be audited for compliance with the provisions for purchasing, inspection, reporting of installations, and any other requirement of usage.

(7) Class B basic electrical work means work other than Class A basic electrical work. See WAC 296-46B-901(8) for Class A definition.

(a) Class B basic electrical work includes the following:

(i) Extension of not more than one branch electrical circuit limited to 120 volts and 20 amps each where:

(A) No cover inspection is necessary. For the purposes of this section, cover inspection does not include work covered by any surface that may be removed for inspection without damaging the surface; and

(B) The extension does not supply more than two ((~~devices or~~)) outlets as defined by the NEC. ((~~A device~~

~~allowed in an extended circuit includes: General use snap switches/receptacles, luminaires, thermostats, speakers, etc., but does not include wiring/cabling systems, isolating switches, magnetic contactors, motor controllers, etc.~~))

(ii) Like-in-kind replacement of:

(A) A single luminaire not exceeding 277 volts and 20 amps; or

(B) A motor larger than 10 horsepower; or

(C) The internal wiring of a furnace, air conditioner, refrigeration unit or household appliance; or

(D) An electric/gas/oil furnace not exceeding 240 volts and 100 amps when the furnace is connected to an existing branch circuit. For the purposes of this section, a boiler is not a furnace; or

(E) An individually controlled electric room heater (e.g., baseboard, wall, fan forced air, etc.), air conditioning unit or refrigeration unit not exceeding 240 volts, 30 minimum circuit amps when the unit is connected to an existing branch circuit; or

(F) Circuit modification required to install not more than five residential load control devices in a residence where installed as part of an energy conservation program sponsored by an electrical utility and where the circuit does not exceed 240 volts and 30 amps.

(iii) The following low voltage systems:

(A) Repair and replacement of devices not exceeding 100 volt-amperes in Class 2, Class 3, or power limited low voltage systems in one- and two-family dwellings; or

(B) Repair and replacement of devices not exceeding 100 volt-amperes in Class 2, Class 3, or power limited low voltage systems in other buildings, provided the equipment is not for fire alarm or nurse call systems and is not located in an area classified as hazardous by the NEC; or

(C) The installation of Class 2 or 3 device(s) or wiring for thermostat, audio, security, burglar alarm, intercom, amplified sound, public address, or access control systems. This does not include fire alarm, nurse call, lighting control, industrial automation/control or energy management systems; or

(D) Telecommunications cabling and equipment requiring inspection in RCW 19.28.470;

(iv) The replacement of not more than ten standard receptacles with GFCI receptacles;

(v) The conversion of not more than ten snap switches to dimmers for the use of controlling a luminaire(s) conversion.

(b) Class B basic electrical work does not include any work in:

(i) Areas classified as Class I, Class II, Class III, or Zone locations per NEC 500; or

(ii) Areas regulated by NEC 517 or 680; or

(iii) Any work where electrical plan review is required; or

(iv) Fire alarm, nurse call, lighting control, industrial automation/control or energy management systems.

(8) An entity using a Class B basic inspection label is restricted to using no more than two labels per week per job site.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-909 Electrical/telecommunications contractor's license, administrator certificate and examination, master electrician certificate and examination, electrician certificate and examination, ((~~temporary electrician permit,~~)) copy, and miscellaneous fees.

Notes: (1) The department will deny renewal of a license, certificate, or permit if an individual owes money as a result of an outstanding final judgment(s) to the department or is in revoked status. The department will deny application of a license, certificate, or permit if an individual is in suspended status or owes money as a result of an outstanding final judgment(s) to the electrical program.

(2) Certificates may be prorated for shorter renewal periods in one-year increments. Each year or part of a year will be calculated to be one year.

(3) The amount of the fee due is calculated based on the fee effective at the date payment is made.

(1) **General or specialty contractor's license per twenty-four month period. (Nonrefundable after license has been issued.)**	
(a) **Initial application or renewal made in person, by mail, or by fax**	$((~~232.90~~)) 245.00
(b) **Renewal fully completed using the on-line web process**	$221.00
(c) **Reinstatement of a general or specialty contractor's license after a suspension**	$((~~47.30~~)) 49.70
(2) **Master electrician/administrator/electrician/trainee certificate.**	
(a) **Examination application (nonrefundable)**	
Administrator certificate examination application. (Required only for department administered examinations.) (Not required when testing with the department's contractor.)	$((~~29.30~~)) 30.80
(b) **Examination fees (nonrefundable)**	
Note: Normal examination administration is performed by a state authorized contractor. The fees for such examinations are set by contract with the department. For written examinations administered by the department, use the following fee schedule.	
(i) Master electrician or administrator first-time examination fee (when administered by the department)	$((~~70.50~~)) 74.10
(ii) Master electrician or administrator retest examination fee (when administered by the department)	$((~~82.50~~)) 86.70
(iii) Journeyman or specialty electrician examination fee (first test or retest when administered by the department)	$((~~53.00~~)) 55.70
(iv) Certification examination review fee	$((~~109.20~~)) 114.80
(c) **Original certificates (nonrefundable after certificate has been issued)**	
(i) Electrical administrator original certificate (except **09** telecommunication)	$((~~105.40~~)) 110.80
(ii) Telecommunications administrator original certificate (for **09** telecommunications)	$((~~70.20~~)) 73.80
(iii) Master electrician exam application (includes original certificate and application processing fee) **($29.30 is nonrefundable after application is submitted)**	$((~~134.70~~)) 141.70
(iv) Journeyman or specialty electrician application (includes original certificate and application processing fee) **($29.30 is nonrefundable after application is submitted)**	$((~~75.60~~)) 79.50

(v) Training certificate	
(A) Initial application made in person, by mail, or by fax	$((~~37.10~~)) 39.00
(B) Initial application fully completed on-line using the on-line web process	$35.00
(C) 0% supervision modified training certificate. Includes trainee update of hours (i.e., submission of affidavit of experience) **($44.90 is nonrefundable after application is submitted)**	$((~~67.40~~)) 70.90
(D) 75% supervision modified training certificate.	$((~~44.90~~)) 47.20
(E) Unsupervised training certificate as allowed by RCW 19.28.161 (4)(b).	$((~~22.40~~)) 23.50
((~~(vi) Temporary electrician permit (valid as allowed and described in WAC 296-46B-940(27))~~	~~$23.40~~))
(d) **Certificate renewal (nonrefundable)**	
(i) Master electrician or administrator certificate renewal	
(A) Renewal made in person, by mail, or by fax	$((~~133.20~~)) 140.10
(B) Renewal fully completed using the on-line web process	$127.00
(ii) Telecommunications **(09)** administrator certificate renewal	
(A) Renewal made in person, by mail, or by fax	$((~~88.80~~)) 93.40
(B) Renewal fully completed using the on-line web process	$84.00
(iii) Late renewal of master electrician or administrator certificate	
(A) Renewal made in person, by mail, or by fax	$((~~266.40~~)) 280.20
(B) Renewal fully completed using the on-line web process	$254.00
(iv) Late renewal of telecommunications **(09)** administrator certificate	
(A) Renewal made in person, by mail, or by fax	$((~~177.60~~)) 186.80
(B) Renewal fully completed using the on-line web process	$168.00
(v) Journeyman or specialty electrician certificate renewal	
(A) Renewal made in person, by mail, or by fax	$((~~70.20~~)) 73.80
(B) Renewal fully completed using the on-line web process	$67.00
(vi) Late renewal of journeyman or specialty electrician certificate	
(A) Renewal made in person, by mail, or by fax	$((~~140.40~~)) 147.70
(B) Renewal fully completed using the on-line web process	$134.00
(vii) Trainee update of hours outside of renewal period (i.e., submission of affidavit of experience outside of the timeline in WAC 296-46B-965 (7)(d))	$((~~44.90~~)) 47.20
(viii) Trainee certificate renewal	
(A) Renewal made in person, by mail, or by fax	$((~~44.90~~)) 47.20
(B) Renewal fully completed using the on-line web process when the affidavit of experience is submitted per WAC 296-46B-965 (7)(d)	$43.00
(ix) Late trainee certificate renewal	
(A) Renewal made in person, by mail, or by fax	$((~~63.00~~)) 66.20
(B) Renewal fully completed using the on-line web process	$60.00
(e) ((~~**Reciprocal certificate (nonrefundable after certificate has been issued)**~~	
~~(i) Master electrician reciprocal certificate (includes original certificate and application processing fee) ($29.30 is **nonrefundable** after application is submitted)~~	~~$133.30~~
~~(ii) Journeyman or specialty electrician reciprocal certificate (includes original certificate and application processing fee) ($29.30 is **nonrefundable** after application is submitted)~~	~~$75.60~~
~~(f)~~)) **Certificate - reinstatement (nonrefundable)**	
(i) Reinstatement of a suspended master electrician or administrator's certificate (in addition to normal renewal fee)	$((~~47.30~~)) 49.70
(ii) Reinstatement of suspended journeyman, or specialty electrician certificate (in addition to normal renewal fee)	$((~~22.40~~)) 23.50
((~~(g)~~)) (f) **Assignment/unassignment of master electrician/administrator designation (nonrefundable)**	$((~~35.00~~)) 36.80
(3) **Certificate/license.**	
(a) Replacement for lost or damaged certificate/license. (Nonrefundable.)	$((~~15.40~~)) 16.20
(b) Optional display quality General Master Electrician certificate.	$((~~25.00~~)) 26.30
(4) **Continuing education courses or instructors. (Nonrefundable.)**	
(a) If the course or instructor review is performed by the electrical board or the department	
The course or instructor review	$((~~45.00~~)) 47.30
(b) If the course or instructor review is contracted out by the electrical board or the department	
(i) Continuing education course or instructor submittal and approval (per course or instructor)	As set in contract
(ii) Applicant's request for review, by the chief electrical inspector, of the contractor's denial	$((~~109.50~~)) 115.10
(5) **Copy fees. (Nonrefundable.)**	
(a) **Certified copy of each document (maximum charge per file):**	$((~~49.80~~)) 52.30
(i) First page:	$((~~22.40~~)) 23.50
(ii) Each additional page:	$((~~2.00~~)) 2.10
(b) Replacement RCW/WAC printed document:	$((~~5.00~~)) 5.20
(6) **Training school program review fees. Initial training school program review fee. (Nonrefundable.)**	
(a) Initial training school program review fee submitted for approval. Valid for three years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)).	$((~~516.00~~)) 542.80
(b) Renewal of training school program review fee submitted for renewal. Valid for 3 years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)).	$((~~258.00~~)) 271.40

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-915 Civil penalty schedule. Each day that a violation occurs will be a separate offense.

Once a violation of chapter 19.28 RCW or chapter 296-46B WAC becomes a final judgment, any additional violation within three years becomes a "second" or "additional" offense subject to an increased penalty as set forth in the following tables.

In case of continued, repeated or gross violation of the provisions of chapter 19.28 RCW or this chapter, or if property damage or bodily injury occurs as a result of the failure of a person, firm, partnership, corporation, or other entity to comply with chapter 19.28 RCW or this chapter the department may double the penalty amounts shown in subsections (1) through (13) of this section.

Continued or repeated violation may occur if the person, firm, partnership, corporation or other entity who violates a provision of chapter 19.28 RCW, chapter 296-46B WAC has received one or more written warnings or citations of a similar violation within a one-year period.

A person, firm, partnership, corporation or other entity who violates a provision of chapter 19.28 RCW or chapter 296-46B WAC is liable for a civil penalty based upon the following schedule.

(1) **Offering to perform, submitting a bid for, advertising, installing or maintaining cables, conductors or equipment:**

(a) That convey or utilize electrical current without having a valid electrical contractor's license.

(b) Used for information generation, processing, or transporting of signals optically or electronically in telecommunications systems without having a valid telecommunications contractor's license.

First offense:	$500
Second offense:	$1,500
Third offense:	$3,000
Each offense thereafter:	$6,000

(2) **Employing an individual for the purposes of chapter 19.28 RCW who does not possess a valid certificate of competency or training certificate to do electrical work.**

First offense:	$250
Each offense thereafter:	$500

(3) **Performing electrical work without having a valid certificate of competency or electrical training certificate.**

First offense:	$250
Each offense thereafter:	$500

(4) **Employing electricians and electrical trainees for the purposes of chapter 19.28 RCW in an improper ratio. Contractors found to have violated this section three times in a three-year period must be the subject of an electrical audit in accordance with WAC 296-46B-975.**

First offense:	$250
Each offense thereafter:	$500

(5) **Failing to provide proper supervision to an electrical trainee as required by chapter 19.28 RCW. Contractors found to have violated this section three times in a three-year period must be the subject of an electrical audit in accordance with WAC 296-46B-975.**

First offense:	$250
Each offense thereafter:	$500

(6) **Working as an electrical trainee without proper supervision as required by chapter 19.28 RCW.**

First offense:	$50
Second offense:	$250
Each offense thereafter:	$500

(7) **Offering, bidding, advertising, or performing electrical or telecommunications installations, alterations or maintenance outside the scope of the firm's specialty electrical or telecommunications contractors license.**

First offense:	$500
Second offense:	$1,500
Third offense:	$3,000
Each offense thereafter:	$6,000

(8) **Selling or exchanging electrical equipment associated with spas, hot tubs, swimming pools or hydromassage bathtubs which are not listed by an approved laboratory.**

First offense:	$500
Second offense:	$1,000
Each offense thereafter:	$2,000

Definition:
The sale or exchange of electrical equipment associated with hot tubs, spas, swimming pools or hydromassage bathtubs includes to: "Sell, offer for sale, advertise, display for sale, dispose of by way of gift, loan, rental, lease, premium, barter or exchange."

(9) **Covering or concealing installations prior to inspection.**

First offense:	$250
Second offense:	$1,000
Each offense thereafter:	$2,000

(10) **Failing to make corrections within fifteen days of notification by the department.**

Exception:
Where an extension has been requested and granted, this penalty applies to corrections not completed within the extended time period.

First offense:	$250
Second offense:	$1,000
Each offense thereafter:	$2,000

(11) **Failing to obtain or post an electrical/telecommunications work permit or provisional electrical work permit label prior to beginning the electrical/telecommunications installation or alteration.**

Exception:
In cases of emergency repairs, for owners, to existing electrical/telecommunications systems, this penalty will not be charged if the permit is obtained and posted no later than the business day following beginning work on the emergency repair.

First offense:	$250
Second offense:	$1,000
Each offense thereafter:	$2,000

(12) **Violating chapter 19.28 RCW duties of the electrical/telecommunications administrator or master electrician.**

(a) Failing to be a member of the firm or a supervisory employee and shall be available during working hours to carry out the duties of an administrator or master electrician.

First offense:	$1,000
Second offense:	$1,500
Each offense thereafter:	$3,000

(b) Failing to ensure that all electrical work complies with the electrical installation laws and rules of the state.

First offense:	$100
Second offense:	$250
Third offense:	$1,000
Each offense thereafter:	$3,000

(c) Failing to ensure that the proper electrical safety procedures are used.

First offense:	$500

Second offense:	$1,500
Each offense thereafter:	$3,000
(d) Failing to ensure that all electrical labels, permits, and certificates required to perform electrical work are used.	
First offense:	$250
Each offense thereafter:	$500
(e) Failing to ensure that all electrical licenses, required to perform electrical work are used (i.e., work performed must be in the allowed scope of work for the contractor).	
First offense:	$500
Second offense:	$1,500
Third offense:	$3,000
Each offense thereafter:	$6,000
(f) Failing to see that corrective notices issued by an inspecting authority are complied with within fifteen days.	
Exception: Where an extension has been requested and granted, this penalty applies to corrections not completed within the extended time period.	
First offense:	$250
Second offense:	$1,000
Each offense thereafter:	$2,000
(g) Failing to notify the department in writing within ten days if the master electrician or administrator terminates the relationship with the electrical contractor.	
First offense:	$500
Second offense:	$1,000
Each offense thereafter:	$3,000
(13) **Violating any of the provisions of chapter 19.28 RCW or chapter 296-46B WAC which are not identified in subsections (1) through (12) of this section.**	
RCW 19.28.161 through 19.28.271 and the rules developed pursuant to them.	
First offense:	$250
Each offense thereafter:	$500
All other chapter 19.28 RCW provisions and the rules developed pursuant to them.	
First offense:	$250
Second offense:	$750
Each offense thereafter:	$2,000

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-935 Administrator certificate. General.

(1) The department will deny application or renewal of a certificate if an individual owes money as a result of an outstanding final judgment(s) to the department.

(2) For special accommodation see WAC 296-46B-960.

(3) An applicant will not be issued a specialty administrator certificate that is a subspecialty of a certificate the applicant currently holds (i.e., the applicant is not eligible to take the domestic well administrator examination if the applicant currently possesses a pump and irrigation administrator certificate).

Qualifying for examination.

(4) There are no qualification requirements for taking an administrator certificate examination. Applicants should contact the testing agency directly.

Original - administrator certificates.

(5) The scope of work for electrical administrators is described in WAC 296-46B-920. The department will issue an original administrator certificate to a general administrator, or specialty administrator who:

(a) Successfully completes the appropriate administrator examination; and

(b) Submits the appropriate examination passing report from the testing agency with the applicant's: Date of birth, mailing address, and Social Security number; and

(c) Pays all appropriate fees as listed in WAC 296-46B-909.

For an examination report to be considered, all the above must be submitted within ninety days after the completion of the examination. After ninety days, the applicant will be required to successfully retake the complete examination. An individual's original administrator certificate will expire on their birth date at least one year, and not more than three years, from the date of original issue.

Combination - specialty administrator certificate.

(6) The department may issue a combination specialty administrator certificate to an individual who qualifies for more than one specialty administrators' certificate. The combination specialty administrators' certificate will plainly indicate the specialty administrator's certificate(s) the holder has qualified for. Telecommunications cannot be issued a combination because the renewal requirements are different from those required for electrical administrators. ((~~Temporary administrator certificates will not be issued as a part of a combination certificate.~~))

Renewal - administrator certificate.

(7) An individual must apply for renewal of their administrator certificate on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for three years, with the exception of telecommunications administrators, who will be renewed for two years.

(8) An individual may renew their administrator certificate within ninety days after the expiration date without reexamination if the individual pays the late renewal fee listed in WAC 296-46B-909.

(9) All renewals received more than ninety days after the expiration date of the certificate will be denied. The administrator will be required to pass the appropriate administrator examination before being recertified.

(10) All applicants for certificate renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees as listed in WAC 296-46B-909; and

(c) Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in WAC 296-46B-970. If an individual files inaccurate or false evidence of continuing education information when renewing a certificate, the individual's certificate may be suspended or revoked.

Telecommunications administrators are not required to provide continuing education information.

Continuing education for pump and irrigation **(03)** and domestic pump **(03A)** administrators may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(11) An individual who has not completed the required hours of continuing education can renew an administrator's certificate if the individual applies for renewal on or before the certificate expires and pays the appropriate renewal fee. However, the certificate will be placed in an inactive status.

When the certificate is placed in inactive status, an assigned administrator will be automatically unassigned from the electrical contractor. The electrical contractor will be notified of the unassignment and has ninety days to replace the administrator. An assignment fee will then be required per WAC 296-46B-909.

The inactive certificate will be returned to current status upon validation, by the department, of the required continuing education requirements. If the certificate renewal date occurs during the inactive period, the certificate must be renewed on or before the renewal date to allow the return to current status.

(12) An individual may renew a suspended administrator's certificate by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period.

(13) An individual may not renew a revoked ((~~or temporary~~)) administrator's certificate.

((~~**Temporary specialty administrator certificate.**~~

~~(14) See WAC 296-46B-930 for additional information.~~))

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-940 Electrician/training/((~~temporary~~)) certificate of competency or permit required.

Electrician - general.

(1) The department will deny application or renewal of a certificate or permit if an individual owes money as a result of an outstanding final judgment(s) to the department.

Electrician - scope of work.

(2) The scope of work for electricians and trainees is described in WAC 296-46B-920.

Electrician - certificate of competency required.

(3) To work in the electrical construction trade, an individual must possess a current valid:

(a) Master journeyman electrician certificate of competency issued by the department;

(b) Journeyman electrician certificate of competency issued by the department;

(c) Master specialty electrician certificate of competency issued by the department;

(d) Specialty electrician certificate of competency issued by the department; or

(e) ((~~Temporary electrician permit. Unless continually supervised by an appropriately certified electrician, no temporary electrician can install, repair, replace, or maintain any electrical wiring or equipment where the system voltage is more than 600 volts, whether the system is energized or deenergized; or~~

~~(f)~~)) Electrical training certificate, learning the trade in the proper ratio, per RCW 19.28.161, under the supervision of a certified master journeyman electrician, journeyman electrician, master specialty electrician working in their specialty, or specialty electrician working in their specialty.

(4) The department issues master electrician and electrician certificates of competency in the following areas of electrical work:

(a) General journeyman **(01);**

(b) Specialties:

(i) Residential **(02);**

(ii) Pump and irrigation **(03);**

(iii) Domestic pump **(03A);**

(iv) Signs **(04);**

(v) Limited energy system **(06);**

(vi) HVAC/refrigeration **(06A);**

(vii) HVAC/refrigeration - restricted **(06B);**

(viii) Nonresidential maintenance **(07);**

(ix) Nonresidential lighting maintenance and lighting retrofit **(07A);**

(x) Residential maintenance **(07B);**

(xi) Restricted nonresidential maintenance **(07C);**

(xii) Appliance repair **(07D);**

(xiii) Equipment repair **(07E);** and

(xiv) Door, gate, and similar systems **(10).**

Exemptions - linemen.

(5) When performing the work described and allowed in WAC 296-46B-925 (17)(a) or (b)(i), when employed by the serving utility or its contractor or subcontractor(s), a lineman is exempt from the requirements of chapter 19.28 RCW.

(6) When performing the work described and allowed in WAC 296-46B-925 (17)(b)(ii) or (c), when employed by the serving utility or its licensed electrical contractor or subcontractor(s), a lineman must meet the requirements of RCW 19.28.261 (5)(b) or be an appropriately certified electrician. See the definition of a lineman in WAC 296-46B-100.

Exemptions - plumbers.

(7) Coincidental electrical/plumbing work. See RCW 19.28.091(8) for the plumber exemption.

Original - master electrician, journeyman, and specialty electrician certificates of competency.

(8) The department will issue an original certificate of competency to master, journeyman, or specialty electricians who meet the eligibility requirements listed in:

(a) RCW 19.28.191 (1)(a) or (b); and

(i) Submit an application for an original master electrician certificate including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909;

(b) RCW 19.28.191 (1)(d) through (e);

(i) Submit an original master electrician certification examination application including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909; or

(c) RCW 19.28.191 (1)(f) through (g);

(i) Submit an original electrician certification examination application including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909.

(9) An individual's original electrician certificate of competency will expire on their birth date at least two years, and not more than three years, from the date of original issue.

Renewal - master electrician, journeyman, and specialty electrician certificates of competency.

(10) An individual must apply for renewal of their electrician certificate of competency on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for three years.

(11) An individual may renew their certificate of competency within ninety days after the expiration date without reexamination if the individual pays the late renewal fee listed in WAC 296-46B-909.

(12) All applications for renewal received more than ninety days after the expiration date of the certificate of competency require that the electrician pass the appropriate competency examination before being recertified.

(13) All applicants for certificate of competency renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees; and

(c) Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in WAC 296-46B-970. Continuing education classes are only valid when all the requirements of WAC 296-46B-970 are completed. If an individual files inaccurate or false evidence of continuing education information when renewing a certificate of competency, the individual's certificate of competency may be suspended or revoked.

Continuing education for pump and irrigation **(03)** and domestic pump **(03A)** electricians may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(14) An individual who has not completed the required hours of continuing education can renew a certificate of competency if the individual applies for renewal before the certificate of competency expires and pays the appropriate renewal fee. However, the certificate of competency will be placed in an inactive status. The inactive certificate of competency will be returned to current status upon validation, by the department, of the required continuing education. If the certificate renewal date occurs during the inactive period, the certificate must be renewed on or before the renewal date to allow the return to current status.

(15) An individual may renew a suspended certificate of competency by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period.

(16) An individual may not renew a revoked ((~~or temporary~~)) certificate of competency.

((**~~Reciprocal agreements between Washington and other states.~~**

~~(17) The department negotiates reciprocal agreements with states that have equivalent requirements for certification of master electricians, journeymen, or specialty electricians. These agreements allow electricians from those reciprocal states to become certified in the state of Washington without examination and allow Washington certified electricians to become certified in the other states without taking competency examinations. An individual may only apply for reciprocity from another state(s) one time in Washington.~~

~~(18) An individual coming into the state of Washington from a reciprocal state will be issued a reciprocal electrician certificate of competency if all the following conditions are met:~~

~~(a) The department has a valid reciprocal agreement with the other state in the master electrician category requested, journeyman, or specialty category requested;~~

~~(b) The individual makes a complete application for the reciprocity certificate on the form provided by the department. A complete application includes:~~

~~(i) Application for reciprocal certificate of competency;~~

~~(ii) Evidence that the individual meets the eligibility requirements listed in RCW 19.28.191, by presenting a valid journeyman or specialty electrician certificate or certified letter from the issuing state; and~~

~~(iii) All appropriate fees as listed in WAC 296-46B-909.~~

~~(c) The individual obtained the reciprocal state's certificate of competency as a master electrician, journeyman, or specialty electrician by examination and the individual held the reciprocal state's certificate for a period of at least one year;~~

~~(19) An individual is not eligible for a reciprocal electrician certificate of competency if the individual:~~

~~(a) Has failed to renew a similar Washington master electrician or electrician certificate of competency as required in RCW 19.28.211;~~

~~(b) Has a similar Washington master electrician or electrician certificate of competency in suspended, revoked, or inactive status under this chapter;~~

~~(c) Has ever taken and failed a Washington exam; or~~

~~(d) Was a resident of the state of Washington at the time the examination was taken in the other state.~~))

Military/shipyard experience.

(((~~20~~))) (17) An individual who has worked in the electrical construction trade performing work described in WAC 296-46B-920 while serving in the armed forces of the United States may be eligible to take the examination for the certificate of competency as a journeyman or specialty electrician. Credit may be allowed for hours worked or training received.

If an individual has military experience in a specialized electrical field (e.g., rating) that is similar to a specialty electrician category listed in WAC 296-46B-920, credit may be allowed toward the appropriate specialty certificate. Nuclear, marine, shipyard, shipboard, radar, weapons, aeronautical experience, or similar experience may be acceptable for no more than fifty percent of the minimum required work experience for qualifying for electrician examination.

The department will evaluate and determine whether the submitted experience is related specifically to the electrical construction/maintenance trade regulated by chapter 19.28 RCW.

Experience in another country.

((~~(21)~~)) (18) If an individual has a journeyman electrician certificate from a country outside the United States that requires that at least four years of electrical construction training and certification is obtained by examination, the individual may be eligible for four thousand hours of the specialty credit allowed towards the qualification to take the Washington journeyman electrician examination.

No more than two years of the required training to become a Washington journeyman electrician may be for work described for specialty electricians or technicians in WAC 296-46B-920. In addition to the maximum of four thousand hours credit that may be allowed by this subsection, an additional four thousand hours of new commercial/industrial experience must be obtained using a training certificate in the state while under the supervision of a master journeyman electrician or journeyman electrician.

Documentation substantiating the individual's out-of-country experience must be submitted in English.

((~~(22)~~)) (19) Out-of-country experience credit is not allowed toward a specialty electrician certificate.

Training school credit.

((~~(23)~~)) (20) No more than fifty percent of the minimum work experience needed to qualify for specialty electrician certification is allowed for any training school program (e.g., a specialty requiring two thousand hours of minimum required work experience may receive no more than one thousand hours credit from an electrical construction training program).

((~~(24)~~)) (21) See RCW 19.28.191 (1)(h) for training school credit allowed for journeyman applicants.

((~~(25)~~)) (22) See WAC 296-46B-971 for additional information on training schools.

((**~~Temporary electrician permit.~~**

~~(26) Temporary permits are not allowed for master electricians.~~

~~(27) Temporary electrician permit when coming from out-of-state. An individual coming from out-of-state must either obtain a reciprocal electrician certificate, valid training certificate, or make application and receive approval for a temporary electrician permit to perform electrical work in the state, or otherwise obtain an electrician certificate of competency.~~

~~(a) Initial temporary electrician permit when coming from out-of-state.~~

~~(i) If an individual can show evidence of work experience in another state similar to RCW 19.28.191, the department may issue the individual one initial temporary journeyman or specialty electrician permit. The individual must present appropriate evidence at the time of application showing work experience equivalent to that required by RCW 19.28.191.~~

~~The initial temporary electrician permit allows the individual to work as an electrician between the date of filing a completed application for the certification examination and the notification of the results of the examination. This initial permit will be issued for one twenty-day period and will become invalid on the expiration date listed on the temporary electrician permit or the date the individual is notified they have failed the examination, whichever is earlier.~~

~~(ii) To qualify for an initial temporary electrician permit, an individual must:~~

~~(A) Meet the eligibility requirements of RCW 19.28.-191; and~~

~~(B) Submit a complete application for an initial temporary electrician permit and original certification including:~~

~~• Date of birth, mailing address, Social Security number; and~~

~~• All appropriate fees as listed in WAC 296-46B-909.~~

~~(iii) The individual must not have ever possessed a Washington master electrician, journeyman electrician, specialty electrician, or temporary electrician certificate of competency in the specialty requested.~~

~~(iv) If the initial temporary electrician permit becomes invalid, it will not be extended or renewed. To continue to work in the electrical trade, the individual must apply for and receive a:~~

~~(A) Second temporary electrician permit; or~~

~~(B) Training certificate and work in the proper ratio, per RCW 19.28.161, under the direct supervision of either a certified master journeyman electrician, journeyman electrician, master specialty electrician working in the appropriate specialty, or a specialty electrician working in the appropriate specialty.~~

~~(b) Second temporary electrician permit.~~

~~(i) If the individual fails the certification examination during the initial temporary electrician period and provides verification of enrollment in an approved journeyman refresher course or approved appropriate specialty electrician refresher course, as prescribed in RCW 19.28.231, application may be made for a second temporary electrician permit.~~

~~A complete second application must include proof of enrollment in the refresher course and all appropriate fees as listed in WAC 296-46B-909.~~

~~(ii) The second temporary electrician permit will be issued for one ninety-day period and will become invalid: Upon withdrawal from the electrician refresher course, on the expiration date listed on the temporary electrician permit, or the date the individual is notified they have failed the examination, whichever is earlier;~~

~~(iii) After successfully completing the electrician refresher course, the individual must provide appropriate course completion documentation to the department and will be eligible to retake the appropriate competency exam.~~

~~(iv) If the second temporary electrician permit becomes invalid, it will not be extended or renewed. To continue to work in the electrical trade, the individual must apply for and receive a training certificate and work in the proper ratio, per RCW 19.28.161, under the direct supervision of either a certified master journeyman electrician, journeyman electrician, master specialty electrician working in the appropriate spe-~~

~~cialty, or a specialty electrician working in the appropriate specialty.~~))

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-945 Qualifying for master, journeyman, specialty electrician examinations. Qualifying for master, journeyman, specialty electrician examinations.

(1) All applicants must be at least sixteen years of age.

Qualifying for the master electrician examination.

(2) An individual may take the master electrician's certificate of competency examination if the individual meets the requirements described in RCW 19.28.191 (1)(d) or (e).

Qualifying for the master electrician examination from out-of-state.

(3) No credit may be applied from out-of-state toward qualifying for a master electrician certificate of competency examination.

Qualifying for the journeyman electrician competency examination.

(4) An individual may take the journeyman electrician's certificate of competency examination if the individual held a current electrical training certificate and has worked for an employer who employs at least one certified master electrician, journeyman, or specialty electrician on staff and the individual:

(a) Has been employed, in the electrical construction trade, under the direct supervision of a master electrician, journeyman electrician or specialty electrician working in the appropriate specialty in the proper ratio, per RCW 19.28.161, for four years (eight thousand hours). Of the eight thousand hours:

(i) At least two years (four thousand hours) must be in new industrial and/or new commercial electrical installation (excluding all work described for specialty electricians or technicians) under the direct supervision of a master journeyman electrician or journeyman electrician while working for a general electrical contractor; and

(ii) Not more than a total of two years (four thousand hours) may be for work described as an electrical specialty in WAC 296-46B-920(2).

(b) Has completed a four-year apprenticeship program in the electrical construction trade that is registered with the state apprenticeship council while working under the direct supervision of a master journeyman or journeyman electrician in the proper ratio, per RCW 19.28.161; or

(c) Has completed a two-year electrical construction training program as described in RCW 19.28.191 for journeyman electricians, and two years (four thousand hours) of work experience in new industrial and/or new commercial electrical installations (excluding work described for specialty electricians or electrical technicians) under the direct supervision of a journeyman electrician while working for a general electrical contractor in the proper ratio, per RCW 19.28.161. See WAC 296-46B-971 for additional training school information.

Electrical construction training hours gained in specialties requiring less than two years (i.e., four thousand hours) will not be credited towards qualification for journeyman electrician.

The trainee and their employer and/or apprenticeship training director must attest to the accuracy of all information contained on affidavits of experience and apprenticeship graduation certificates used to verify eligibility for the examination.

Qualifying for the journeyman/specialty electrician competency examination when work was performed in a state requiring electrician certification.

(5) An individual may take the journeyman/specialty electrician's competency examination when the appropriate state having authority certifies to the department that:

(a) The work was legally performed under the other state's licensing and certification requirements;

(i) For journeyman applicants who meet the minimum hour requirements described in WAC 296-46B-945(4).

(ii) For specialty applicants who meet the minimum hour requirements described in WAC 296-46B-945(9).

(b) The other state's certificate of competency was obtained by examination.

Electrical construction training hours gained in specialties requiring less than two years (i.e., four thousand hours) may not be credited towards qualification for journeyman electrician.

Qualifying for the journeyman/specialty electrician competency examination when work was performed in a state that does not require electrician certification.

(6) If the other state requires electrical contractor licensing:

(a) An individual may take the journeyman/specialty electrician's competency examination when an appropriately licensed electrical contractor(s), registered apprenticeship training director, or nationally recognized contractor or labor organization files a notarized letter of experience with the department accompanied by payroll documentation which certifies and shows that:

(i) For journeyman applicants: The individual meets the minimum hour requirements described in WAC 296-46B-945(4).

(ii) For specialty applicants: The individual meets the minimum hour requirements described in WAC 296-46B-945(9).

(b) An individual may take the journeyman/specialty electrician's competency examination when an employer(s), acting under a property owner exemption, files a notarized letter of experience from the property owner with the department accompanied by payroll documentation which certifies and shows that:

(i) For journeyman applicants: The individual meets the minimum hour requirements described in WAC 296-46B-945(4).

(ii) For specialty applicants: The individual meets the minimum hour requirements described in WAC 296-46B-945(9).

(7) If the other state does not require electrical contractor licensing or registration: An individual may take the journeyman/specialty electrician's competency examination when the individual's employer(s), registered apprenticeship training director, or nationally recognized contractor or labor organization files a notarized letter(s) of experience with the department accompanied by payroll documentation which certifies and shows that:

(a) For journeyman applicants: The individual meets the minimum work requirements described in WAC 296-46B-945(4).

(b) For specialty applicants: The individual meets the minimum work requirements described in WAC 296-46B-945(9).

(8) The letter of experience described in subsections (6) and (7) of this section should include a complete list of the individual's usual duties with percentages attributed to each.

Qualifying for a specialty electrician certificate of competency or examination.

(9) An individual may qualify for a specialty electrician's examination and certificate of competency if the individual held a current electrical training certificate, and has worked for an employer who employs at least one certified master journeyman electrician, journeyman electrician, appropriate master specialty electrician, or appropriate specialty electrician on staff and the individual:

(a) Has been employed, in the electrical construction trade, under the direct supervision of an appropriate electrician in the appropriate specialty as follows:

Table 945-1 Experience Hours

Specialty	Minimum Hours of Work Experience Required to be Eligible for Examination[4][5]	Minimum Hours of Work Experience Required for Certification
Residential certificate **(02)**	4,000[3]	4,000
Pump and irrigation certificate **(03)**	4,000[3]	4,000
Domestic pump certificate **(03A)**	720[1][2]	2,000[6]
Signs certificate **(04)**	4,000[3]	4,000
Limited energy system certificate **(06)**	4,000[3]	4,000
HVAC/refrigeration system certificate **(06A)**	4,000[3]	4,000[7]
HVAC/refrigeration - restricted **(06B)**	1,000[1][2]	2,000[6]
Nonresidential maintenance certificate **(07)**	4,000[3]	4,000
Nonresidential lighting maintenance and lighting retrofit certificate **(07A)**	720[1][2]	2,000[6]
Residential maintenance certificate **(07B)**	720[1][2]	2,000[6]
Restricted nonresidential maintenance certificate **(07C)**	1,000[1][2]	2,000[6]
Appliance repair certificate **(07D)**	720[1][2]	2,000[6]
Equipment repair certificate **(07E)**	1,000[1][2]	2,000[6]
Door, gate, and similar systems certificate **(10)**	720[1][2]	2,000[6]

Notes:

[1]Until the examination is successfully completed, the trainee must work under one hundred percent supervision. Once the appropriate examination is successfully completed, the modified supervision trainee may work under zero percent supervision.

[2]The trainee may have only one zero percent supervision certificate in a specialty (valid for no more than two years). If the trainee has not gained the required work experience by the time the zero percent supervision certificate has expired, the trainee must get a seventy-five percent supervision certificate and work under supervision until all required work experience hours are gained and credited towards the minimum work experience requirement.

[3]This specialty is not eligible for unsupervised trainee status as allowed in chapter 19.28 RCW.

[4]The trainee and their employer and/or apprenticeship training director must attest to the accuracy of all information contained on affidavits of experience used to verify eligibility for the examination.

[5]Neither previous work experience credit nor training school credit is allowed as a substitute for the initial hours of minimum work experience required to be eligible for examination unless the trainee's work experience hours under direct supervision are provided as required in RCW 19.28.191 (1) (g)(ii).

[6]Electrical construction training hours gained in specialties requiring less than two years for certification may not be credited towards qualification for journeyman electrician.

[7]The 2,000 minimum hours of work experience required for certification as a HVAC/refrigeration-restricted **(06B)** specialty electrician may be credited as 2,000 hours towards the 4,000 minimum hours of work experience required for certification as a HVAC/refrigeration **(06A)** specialty electrician. Hours of work experience credited from the HVAC/refrigeration-restricted **(06B)** specialty cannot be credited towards qualification for taking the general electrician **(01)** examination or minimum work experience requirements.

[8]Experience hours may be coincidentally credited towards qualifying for electrician and plumber certifications. See RCW 19.28.191 (1)(g)(v).

(b) Or has completed an appropriate two-year apprenticeship program in the electrical construction trade that is registered with the state apprenticeship council while working under the direct supervision of an electrician in the appropriate specialty in the proper ratio, per RCW 19.28.161.

Qualifying for a certificate of competency when the Washington electrical work experience is exempt from certification requirements in RCW 19.28.261.

(10) To receive credit for electrical work experience that is exempted in RCW 19.28.261, an individual must provide the department with verification from the employer or owner according to WAC 296-46B-965 (i.e., affidavit(s) of experi-

ence). For the purposes of this section, exempt work does not include work performed on property owned by the individual seeking credit.

(11) All exempt individuals learning the electrical trade must obtain an electrical training certificate from the department and renew it biannually in order to receive credit for hours worked in the trade according to WAC 296-46B-965.

(12) The department may require verification of supervision in the proper ratio from the certified supervising electrician(s).

(13) Telecommunications work experience:

(a) Credit may be verified only by employers exempted by RCW 19.28.261, general electrical **(01)** contractors, and limited energy system **(06)** electrical contractors for limited energy experience for telecommunications work done:

(i) Under the supervision of a certified journeyman or limited energy electrician; and

(ii) In compliance with RCW 19.28.191.

(b) Individuals who want to obtain credit for hours of experience toward electrician certification for work experience doing telecommunications installations must:

(i) Obtain an electrical training certificate;

(ii) Renew the training certificate biannually in order to receive credit for hours worked in the trade according to WAC 296-46B-965.

(c) Telecommunications contractors may not verify telecommunications work experience toward electrician certification.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-960 Administrator and electrician certificate of competency examinations. General.

(1) The minimum passing score on any examination or examination section is seventy percent. If examination is requested to be administered by the department, an application is required and the examination must be successfully completed within one year of application or the individual must submit a new application for exam including all appropriate fees.

(2) All examinations are open book.

(a) Candidates may use:

(i) Any original copyrighted material;

(ii) A silent, nonprinting, nonprogrammable calculator that is not designed for preprogrammed electrical calculations;

(iii) Copies of chapter 19.28 RCW and this chapter; or

(iv) A foreign language dictionary that does not contain definitions.

(b) Candidates may not use:

(i) Copies of copyrighted material;

(ii) Copies of internet publications, except for RCWs or WACs;

(iii) Personal notes; or

(iv) A personal computing device of any type other than the calculator in (a)(ii) of this subsection.

(3) Administrator, master electrician, and electrician examinations may consist of multiple sections. All sections must be successfully completed within a one-year examination period after beginning the examination. Within the one-year examination period, the candidate does not have to retake any sections successfully completed within the examination period. If all sections are not successfully completed within the one-year period, the candidate must begin a new examination period and retake all sections.

Special accommodations for examination.

(4) An applicant for an examination who, due to a specific physical, mental, or sensory impairment, requires special accommodation in examination procedures, may submit a written request to the chief electrical inspector for the specific accommodation needed.

(a) The applicant must also submit to the department a signed and notarized release, authorizing the specifically identified physician or other specialist to discuss the matter with the department representative. The applicant must also submit an individualized written opinion from a physician or other appropriate specialist:

(i) Verifying the existence of a specific physical, mental, or sensory impairment;

(ii) Stating whether special accommodation is needed for a specific examination;

(iii) Stating what special accommodation is necessary; and

(iv) Stating if extra time for an examination is necessary and if so, how much time is required. The maximum allowance for extra time is double the normal time allowed.

(b) The written request for special accommodation and individualized written opinion must be submitted to the department at least six weeks in advance of the examination date and must be accompanied by a completed application and fees as described in WAC 296-46B-909.

(c) Only readers and interpreters provided from the administrative office of the courts and/or approved by the department may be used for reading or interpreting the examination. The applicant will be required to bear all costs associated with providing any reading or interpretive services used for an examination.

(d) Applicants who pass the examination with the assistance of a reader or interpreter will be issued a certificate with the following printed restriction: "Requires reading supervision for product usage." A competent reader or interpreter must be present on any job site where a person with this restriction is performing electrical work as described in chapter 19.28 RCW.

Applicants who pass the examination with the assistance of a mechanical device (e.g., magnifier, etc.) will be issued a certificate with the following printed restriction: "Requires mechanical reading assistance for product usage." Appropriate mechanical reading assistance must be present on any job site where a person with this restriction is performing electrical work as described in chapter 19.28 RCW.

If a candidate successfully retakes the examination without the assistance of a reader or translator, a new certificate will be issued without the restriction.

(5) Applicants who wish to use a foreign language dictionary during an examination must obtain approval at the examination site prior to the examination. Only dictionaries without definitions will be approved for use.

Failed examination appeal procedures.

(6) Any candidate who takes an examination and does not pass the examination may request a review of the examination.

(a) The department will not modify examination results unless the candidate presents clear and convincing evidence of error in the grading of the examination.

(b) The department will not consider any challenge to examination grading unless the total of the potentially revised score would result in a passing score.

(7) The procedure for requesting an informal review of examination results is as follows:

(a) The request must be made in writing to the chief electrical inspector and must be received within twenty days of the date of the examination and must request a rescore of the examination. The written request must include the appropriate fees for examination review described in WAC 296-46B-909.

(b) The following procedures apply to a review of the results of the examination:

(i) The candidate will be allowed one hour to review their examination.

(ii) The candidate must identify the challenged questions of the examination and must state the specific reason(s) why the results should be modified with multiple published reference material supporting the candidate's position.

(iii) Within fifteen days of the candidate's review, the department will review the examination and candidate's justification and notify the candidate in writing of the department's decision.

Subjects included in administrator certificate, or master electrician, journeyman, or specialty electrician competency examinations.

(8) The following subjects are among those that may be included in the examination for an administrator certificate or electrician certificate of competency. The list is not exclusive. The examination may also contain subjects not on the list.

(a) For general administrators, master journeyman, and journeyman electricians:

AC - Generator; 3-phase; meters; characteristics of; power in AC circuits (power factor); mathematics of AC circuits.

Administration - Chapter 19.28 RCW and this chapter.

Air conditioning - Basic.

Blueprints - Surveys and plot plans; floor plans; service and feeders; electrical symbols; elevation views; plan views.

Building wire.

Cable trays.

Calculations.

Capacitive reactance.

Capacitor - Types; in series and parallel.

Circuits - Series; parallel; combination; basic; branch; outside branch circuits; calculations.

Conductor - Voltage drop (line loss); grounded.

Conduit - Wiring methods.

DC - Generator; motors; construction of motors; meters.

Definitions - Electrical.

Electrical units.

Electron theory.

Fastening devices.

Fire alarms - Introduction to; initiating circuits.

Fuses.

Generation - Electrical principles of.

Grounding.

Incandescent lights.

Inductance - Introduction to; reactance.

Insulation - Of wire.

Mathematics - Square root; vectors; figuring percentages.

Motors/controls - Motors vs. generators/CEMF; single phase; capacitor; repulsion; shaded pole; basic principles of AC motors.

Ohm's Law.

Power.

Power factor - AC circuits; correction of; problems.

Rectifiers.

Resistance - Of wire.

Rigging.

Safety - Electrical shock.

Services.

3-wire system.

Tools.

Transformers - Principles of; types; single-phase; 3-phase connections.

Voltage polarity across a load.

Wiring methods - Conduit; general.

Wiring systems - Less than 600 volts; 480/277 volts; single-and 3-phase delta or wye; distribution systems over 600 volts.

Note: The general administrator, master journeyman, and journeyman electrician examinations may also include the subjects listed below for specialty electrician examinations.

(b) For specialty administrators, master specialty and specialty electricians, the following subjects are among those that may be included in the examination. Examination subjects are restricted to those subjects related to the scope of work of the specialty described in WAC 296-46B-920. The list is not exclusive. The examination may also contain subjects not on the list.

AC - Meters.

Administration - Chapter 19.28 RCW and this chapter.

Appliance circuits or controls.

Blueprints - Floor plans; service and feeders.

Cables - Wiring methods.

Calculations.

Circuits - Series; parallel; combination; basic; outside branch.

Conductor - Voltage drop (line loss); grounded; aluminum or copper.

Conduit - Wiring methods.

Electrical signs, circuits, controls, or services.

Electrical units.

First aid.

Fuses.

General lighting.

Grounding of conductors.

Insulation of wire.

Limited energy circuits or systems.

Maintenance of electrical systems.
Mathematics - Figuring percentage.
Motor circuits, controls, feeders, or services.
Ohm's Law.
Overcurrent protection.
Resistance of wire.
Safety - Electrical shock.
Services.
Sizes of building wire.
3-wire system.
Tools.
Transformer - Ratios; single-phase/3-phase connections.

Failing an administrator certificate exam or electrician certificate of competency examination.

(9) Anyone failing an administrator or electrician competency examination may retake the examination by making arrangements with the testing agency and paying the retesting fee.

(10) If the individual makes a failing score ((~~of less than sixty percent~~)), the individual must wait two weeks before being eligible to retest.

(11) ((~~If the individual makes a score of sixty to sixty-nine percent, the individual must wait one day before being eligible to retest.~~

~~(12)~~)) If the individual fails an electrician examination or a part of an administrator or master electrician examination three times within a one-year period, the individual must wait three months to retake the failed portion of the examination.

((~~(13)~~)) (12) Anyone failing an electrician competency examination may continue to work in the electrical trade if they have a valid electrical training certificate and work under the direct supervision of a certified journeyman or specialty electrician in the proper ratio, per RCW 19.28.161.

Cheating on an examination.

((~~(14)~~)) (13) Anyone found cheating on an examination, attempting to bribe a proctor or other agent involved in administering an examination, or using inappropriate materials/equipment during an examination will be required to wait at least eleven months before being allowed to reexamine. All such reexaminations will be administered by the department in Tumwater, Washington and the candidate will be required to apply and schedule for the examination with the chief electrical inspector.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-965 Training certificate required. General.

(1) A training certificate is required for all individuals throughout the individual's enrollment and matriculation in an approved construction electrician training school program described in RCW 19.28.191. A training certificate is required to work in the electrical construction trade if an individual does not:

(a) Possess a current journeyman certificate of competency issued by the department;

(b) Possess a current specialty electrician certificate of competency issued by the department while working in that specialty's scope of work;

(c) ((~~Possess a valid temporary electrician permit;~~

~~(d) Possess a valid temporary specialty electrician permit while working in that specialty's scope of work; or~~

~~(e)~~)) Is not working in exempt status as allowed by chapter 19.28 RCW.

(2) Trainees who have had their training certificates revoked or suspended (during the duration of the revocation or suspension) will not be issued a training certificate.

Original training certificates.

(3) The department will issue an original training certificate when the trainee applicant submits a complete training certificate application including:

(a) Date of birth, mailing address, Social Security number; and

(b) All appropriate fees as listed in WAC 296-46B-909.

All applicants for an electrical training certificate must be at least sixteen years of age. The original training certificate will be valid for two years.

(c) If an individual has previously held an electrical training certificate, then that individual is not eligible for a subsequent original training certificate.

Specialty specific - zero percent and seventy-five percent supervision modified training certificates.

(4) For specialties as allowed in Table 945-1 (i.e., specialties with seven hundred twenty minimum hours of work experience required to be eligible for examination):

(a) The department will approve the trainee to take the appropriate specialty competency examination necessary to qualify for a zero percent supervision modified training certificate. To qualify, the trainee applicant must submit a complete zero percent supervision modified training certificate application including:

(i) Date of birth, mailing address, Social Security number;

(ii) Affidavit of experience fulfilling the minimum work experience hours required to qualify for the specialty examination described in Table 945-1; and

(iii) All appropriate fees as listed in WAC 296-46B-909.

Upon successful completion of the appropriate examination, the trainee will be issued a nonrenewable zero percent supervision modified training certificate for the appropriate specialty. The zero percent supervision modified training certificate will be restricted in duration to the time allowed in Table 945-1, note 2.

(b) Prior to the expiration of the zero percent supervision modified training certificate ((~~or temporary specialty electrician permit obtained as described in WAC 296-46B-940(28)~~)), the individual must submit a complete application for a seventy-five percent supervision modified training certificate for the appropriate specialty including:

(i) Seventy-five percent supervision training certificate application including: Date of birth, mailing address, Social Security number; and

(ii) All appropriate fees as listed in WAC 296-46B-909.

(c) A trainee may possess multiple (i.e., in different specialties) modified supervision training certificates for specialties where reduced supervision is allowed in Table 945-1. Combination training certificates will not be issued.

Renewal of training certificates.

(5) An individual must apply for renewal of their training certificate on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for two years.

(6) An individual may renew their training certificate after the expiration date if the individual pays the late renewal fee listed in WAC 296-46B-909.

(7) All applicants for training certificate renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees; and

(c) Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in WAC 296-46B-970. Continuing education classes are only valid when all the requirements of WAC 296-46B-970 are completed. If an individual files inaccurate or false evidence of continuing education information when renewing a training certificate, the individual's training certificate may be suspended.

Continuing education for trainees seeking pump and irrigation **(03)** and domestic pump **(03A)** experience credit may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(d) Within thirty days after renewing an electrical training certificate, the individual, if not enrolled in a department approved apprenticeship program, must submit a completed, signed, and notarized affidavit(s) of experience for all hours of experience gained since the individual's last training certificate was effective.

Employers are required to provide the necessary documentation and signed affidavit of experience to the trainee within twenty days after the trainee requests the affidavit. See WAC 296-46B-965(6). See WAC 296-46B-985(4) for the penalty for providing a false or inaccurate affidavit of experience. If the individual is enrolled in a department approved apprenticeship program, the program may submit the required affidavit(s) of experience upon the individual's completion of the required experience hours without cost to the individual. The affidavit of experience must accurately attest to:

(i) The electrical installation work performed for each employer the individual worked for in the electrical trade during the previous period;

(ii) The correct electrical category the individual worked in; and

(iii) The actual number of hours worked in each category worked under the proper supervision of a Washington certified, master journeyman electrician, journeyman electrician or appropriate master specialty electrician or specialty electrician under that specific training certificate. If a trainee possesses multiple training certificates, an affidavit must be submitted for each training certificate for the hours worked under that specific training certificate.

If the individual is enrolled in a department approved apprenticeship program, the program may submit the required affidavit(s) of experience upon the individual's completion of the required experience hours without cost to the individual.

(8) An individual who has not completed the required hours of continuing education can renew a training certificate if the individual applies for renewal before the training certificate expires and pays the appropriate renewal fee. However, the training certificate will be placed in an inactive status. The inactive training certificate will be returned to current status upon validation, by the department, of the required continuing education.

(9) An individual may renew a suspended training certificate by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period.

(10) An individual will not be issued a renewed or reinstated training certificate if the individual owes the department money as a result of an outstanding final judgment.

(11) The individual should ask each employer and/or apprenticeship training director for an accurately completed, signed, and notarized affidavit of experience for the previous certification period. The employer(s) or apprenticeship training director(s) must provide the previous period's affidavit of experience to the individual within twenty days of the request. If an individual is enrolled in an approved electrical construction trade apprenticeship program under chapter 49.04 RCW when the individual renews an electrical training certificate, the individual and their apprenticeship training director and/or each employer must give the department an accurately completed, signed, and notarized affidavit of experience accurately attesting to:

(a) The electrical installation work the individual performed in the electrical trade during the previous certification period;

(b) The correct electrical category the individual worked in; and

(c) The actual number of hours worked in each category under the proper supervision of a Washington certified master journeyman electrician, journeyman electrician or appropriate master specialty or specialty electrician for each employer. For apprentices enrolled in a registered apprenticeship program, the applicant and the training director are the only authorized signatures the department will accept on affidavits of experience.

(12) The individual and their employer(s) and/or apprenticeship training director(s) must sign and have notarized the affidavit of experience attesting to the accuracy of all information contained in the affidavit.

Trainees without supervision present on the job site.

(13) When the supervising electrician is found to not be present on the job site, the trainee will be given a form by the inspector that must be returned or postmarked within twenty-four hours to the inspector. If the supervising electrician fails or refuses to assist the trainee in completing the form, the trainee must return the form with a signed and dated statement stating the supervising electrician's name and saying

that the supervising electrician refused to assist. The form will require the following information:

(a) Date and time the form was given to the trainee;

(b) Job site address;

(c) Contractor's name and contractor's license number;

(d) Electrical work permit number;

(e) The times the supervising electrician left and returned to the job site;

(f) The trainee's beginning and ending times for that day for each job;

(g) The trainee's name, training certificate number, and signature;

(h) The supervising electrician's name, electrician certificate number, and signature.

(14) The trainee, supervising electrician, contractor, and assigned administrator or master electrician are responsible for ensuring compliance with subsection (13) of this section. See WAC 296-46B-985 and 296-46B-990 (3)(c) and (f) for information about failing to submit or submitting false/fraudulent documents. Falsifying documents may be considered perjury and might result in criminal prosecution, civil penalty, or certificate revocation or suspension.

Trainees seeking a journeyman electrician certificate - working with no supervision.

(15) Trainee seeking a general **(01)** journeyman electrician certificate of competency. After review by the department, a trainee may be issued a six-month, nonrenewable unsupervised electrical training certificate that will allow the individual to work without supervision if the trainee:

(a) Has submitted a complete application for an unsupervised electrical training certificate;

(b) Has worked over seven thousand hours properly supervised not to include more than four thousand of specialty experience;

(c) Has successfully completed or is currently enrolled in an approved apprenticeship program or an electrical construction trade program in a school approved by the board of community and technical colleges;

(d) Has paid all appropriate training certificate fees listed in WAC 296-46B-909; and

(e) Is currently working for and continues to work for a licensed electrical contractor that employs at least one certified journeyman or specialty electrician in the appropriate specialty.

Trainees seeking certain specialty electrician certificates - working with reduced or no supervision.

(16) After review by the department, a trainee may be issued a nonrenewable zero percent supervision training certificate that will allow the individual to work without supervision if the trainee meets the requirements in subsection (4) of this section.

(17) Electrical trainees may work unsupervised when installing HVAC/R thermostat cable when the HVAC/R system consists of a single thermostat in one- and two-family dwelling units where line voltage power has not been connected to the dwelling's electrical system.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-970 Continuing education. General requirements - continuing education classes requirements for administrator, master electrician, and electrician renewal.

(1) DEFINITIONS - for purposes of this section.

(a) "Applicant" means the entity submitting an application for review.

(b) "Application" means a submittal made by an applicant seeking instructor or class approval.

(c) "Calendar day" means each day of the week, including weekends and holidays.

(d) "Class" means continuing education class or course.

(e) "Contractor" means the entity who has contracted with the department to review and approve/deny continuing education classes and instructors.

(f) "Date of notification" means the date of a request for additional information from the contractor or the approval/denial letter sent to the applicant by the contractor.

(g) "Individual" means an administrator or electrician seeking credit for continuing education.

(h) "Instructor" means an individual who is authorized to instruct an approved continuing education class.

(i) "Working day" means Monday through Friday, excluding state of Washington holidays.

(2) GENERAL.

(a) The department and the electrical board have the right to monitor all approved classes without notice and at no charge.

If the department or electrical board determines that the class or instructor does not meet or exceed the minimum requirements for approval or course length or instructor qualifications, the department may revoke the class or instructor approval and reduce the number of credited hours for the class.

(b) Department-offered classes and the instructors used for those classes are automatically approved and do not need to be sent to the contractor for review.

(c) Instructors who meet the minimum requirements using subsection (5)(b)(i)(D) of this section may only instruct classes sponsored by the manufacturer(s) who verified the instructors' qualifications under subsection (5)(b)(i)(D) of this section.

(d) An individual will not be given credit for the same approved continuing education class taken more than once. A course sponsor may not submit an individual's name on a roster(s) for multiple classes (i.e., multiple class numbers) when the classes are given simultaneously (e.g., code update, industry related, and/or basic electrical classroom training class that have similar class content given during the same class session). No credit will be granted for any class not approved per this section.

(e) Telecommunications administrators do not require continuing educations.

(f) Other administrators, master electricians, and electricians:

(i) To be eligible for renewal of an administrator certificate, master electrician or electrician certificate of competency, the individual must have completed at least eight hours

of approved continuing education for each year of the prior certification period. The individual is not required to take the classes in separate years.

(A) At least eight hours of the total required continuing education must be on the changes in the 2008 National Electrical Code. For certificate renewal, "currently adopted" means a valid course approved as code update by the department and taken by the applicant since their last renewal date.

(B) Four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and its related WAC(s).

(ii) An individual changing an electrical administrator and an electrician certificate of competency into a master electrician's certificate of competency as allowed in RCW 19.28.191 (1)(a) or (b) must have completed at least eight hours of approved continuing education for each year of the prior electrician certificate period. The individual is not required to take the classes in separate years.

(A) Eight hours of the required continuing education must be on the changes in the currently adopted National Electrical Code. For certificate renewal, "currently adopted" means a valid course approved as code update by the department and taken by the applicant since their last renewal date.

(B) Four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and its related WAC(s).

(iii) Any portion of a year of a prior administrator or electrician certificate period is equal to one year for the purposes of the required continuing educations.

(iv) An individual who has both an electrician certificate and an administrator certification may use the same class to fulfill the requirements for continuing education.

(g) Training certificates:

(i) To be eligible for renewal of a training certificate, the individual must have completed:

(A) At least sixteen hours of approved basic classroom electrical training classes. The individual cannot use a basic classroom electrical training class as credit for the continuing education requirements for renewing an electrician or administrator certificate(s) when the class is also used to satisfy the training certificate renewal requirements; or

(B) Equivalent electrical training courses taken as a part of an approved:

• Apprenticeship program under chapter 49.04 RCW; or

• Electrical training program under RCW 19.28.191 (1)(h).

Note that only trainees seeking experience credit in the pump and irrigation **(03)** or domestic pumping **(03A)** specialties may take pumping industry basic classroom training classes;

In addition, trainees working in the pump and irrigation **(03)** or domestic pump **(03A)** specialties may be credited for courses approved as a part of the requirements for plumber trainees required in RCW 18.106.070(5).

(h) A continuing education class attended or completed by an individual before the class's effective date cannot be used to meet the certificate renewal requirements.

(i) If neither the electrical board nor the department has a contract in effect as described in this section, the department may, at its option, elect to act as the contractor. If a contractor is not in place and the department elects not to act as the contractor, the electrical board will act as the contractor. If either the electrical board or the department acts as the contractor, the following will apply:

(i) The fee for class or instructor submittal is as set in WAC 296-46B-909.

(ii) The electrical board or the department will:

(A) Review the application for completeness within fifteen working days after receipt.

(B) If the application is incomplete, notify the applicant within seven working days of the status of the review and what additional information is required.

(C) Complete the review and approval/denial process within fifteen working days upon receipt of a complete application or additional requested information.

(iii) An appeal of a denial by the department will be heard by the full electrical board in accordance with WAC 296-46B-995.

(3) CLASS AND INSTRUCTOR - GENERAL APPROVAL PROCESS.

(a) The contractor will review submitted class and instructor applications to determine whether the application meets the minimum requirements for approval.

(b) The contractor will deny approval of applications that do not meet the minimum requirements.

(c) All applications will be considered to be new applications (i.e., Classes and instructors may not be renewed. All applications must include all information necessary to show conformance with the minimum requirements).

(d) Minimum requirements:

(i) Application review fees:

(A) The contractor may charge a fee for review of an application. Such fees, paid by the applicant, are nonrefundable.

(B) The fee will be as set by contractor between the department and the contractor.

(C) The fee will be set for a minimum of one year.

(D) Upon mutual agreement between the department and the contractor, the fee may be raised or lowered.

(ii) Application:

(A) The applicant must submit a complete application to the contractor at least thirty calendar days prior to offering or instructing a class.

(B) The contractor will only consider material included with the application when reviewing an application.

(C) All applications will consist of:

• One copy of all material;

• Applicant's name, address, contact name, and telephone number;

• All required fees;

• Any other information the applicant wants to consider during the review; and

• Class applications will include:

– Sponsor's name, address, contact name, and telephone number;

– Class title;

– Number of continuing education hours requested for the class;

– Category of class for which approval is sought (i.e., code update, RCW/WAC update, industry related, basic

classroom electrical training, pumping industry, or pumping industry basic classroom training);

– Any required examinations;

– Statement of whether the class is open to the public;

– Class syllabus (e.g., general description of the training, specific NEC articles referenced, time allowed for various subject matter, etc.). Note that for all pumping industry classes, curriculum must include fifty percent electrical and fifty percent plumbing instruction;

– List of resources (e.g., texts, references, etc.);

– Copies of all visual aids;

– Sample of the completion certificate.

• Instructor application will include:

– Instructor's name, address, telephone number;

– Copies of credentials or other information showing conformance with the instructor minimum qualifications.

• The sponsor of a distance learning (i.e., correspondence and internet classes) class will provide the following information with the application:

– How will the sponsor provide an orientation session with the instructor or an affiliated representative of the sponsor.

– The application must include a complete description of any hardware, software, or other technology to be used by the provider and needed by the student to effectively engage in the delivery and completion of the class material. Provide an assessment of the availability and adequacy of the equipment, software, or other technologies. In the case of computer-based instruction, describe how the class software addresses automatic shutdown after a period of inactivity.

– How will the sponsor provide security to ensure that the student who receives credit for the class is the student who enrolled in and completed the class. The approved sponsor and the student must certify that the student has completed the class and the required number of clock hours.

– The application must describe the process and the acceptable methods of how students can contact approved instructors to answer questions regarding the class.

– The application must describe the consistent and regular interactive events appropriate to the delivery method. The interactive elements must be designed to promote student involvement in the learning process and must directly support the student's achievement of the class learning objectives.

– The application must demonstrate that the class includes the same or reasonably similar information content as a course that would otherwise qualify for the requisite number of clock hours of classroom-based instruction.

– The application must demonstrate how you determined the number of clock hours requested.

– The application must demonstrate how mastery of the material is provided by: Describing how the material is divided into major learning units and describing how these learning units are divided into modules of instruction, describing how the student's progress toward completion of the mastery requirement will be measured, and describing how the class will provide a mechanism of individual remediation to correct any deficiencies in each module of instruction.

(e) Contractor's review process:

(i) When the application is received, the contractor must:

(A) Date stamp the application;

(B) Review the application for completeness within seven working days after receipt.

(ii) If the application is incomplete, the contractor must within two working days notify the applicant of the status of the review and what additional information is required.

(A) The applicant must provide any additional information requested by the contractor within five working days after the date of notification.

(B) The contractor will deny the application if the additional required information is not received within the five working days after the date of notification.

(iii) When the contractor has received a complete application, the contractor must review and evaluate the application for compliance with the minimum requirements.

The contractor must complete the review and approval/denial process within seven working days upon receipt of a complete application or additional requested information and within two working days notify:

• The applicant in writing; and

• The chief electrical inspector in writing and electronically. The contractor's electronic notification to the chief electrical inspector must be made in a format approved by the chief electrical inspector.

(iv) A notification of denial must include:

(A) Applicant's name and telephone number;

(B) Date of denial;

(C) Sponsor's name and class title if applicable;

(D) Instructor's name if applicable; and

(E) The reason for denial.

(v) A notification of approval:

(A) For classes must include:

• Applicant's name and telephone number;

• Sponsor's name and telephone number;

• Class title;

• Class number;

• Number of hours approved for the class. Note that the contractor may reduce the hours requested in the application if the review shows that the requested number of hours is excessive;

• Effective date for this class;

• Expiration date of class;

• Category for which the class is approved (i.e., code update, RCW/WAC update, industry related, basic classroom electrical training, pumping industry, or pumping industry basic classroom training);

• Sample of written class roster and attendance sheet;

• Type of class (i.e., classroom, correspondence, internet); and

• Whether the class is open to the public.

(B) For instructors must include:

• Applicant's name and telephone number;

• Instructor's name and telephone number;

• Effective date for the approval; and

• Expiration date of the approval.

(vi) Applicant's request for review of the contractor's decision:

The applicant's may request a review of the contractor's decision to deny or modify an application:

• All requests for review must be:

• Made in writing;

• Received by the chief electrical inspector within twenty calendar days of the contractor's denial; and

• Accompanied by a review fee of $109.50. The review fee is nonrefundable.

(4) CLASS APPROVAL PROCESS.

(a) Class approval will be valid for three years except:

(i) If the class is "code update" and a new NEC is adopted by the department within the class approval period, the class approval will be considered automatically revoked; or

(ii) If the class is modified after the application is approved, the class approval will be considered automatically revoked (i.e., change in syllabus, hours, examination, etc.).

(b) Minimum requirements:

(i) Class content:

(A) Industry-related classes must be based on:

• Codes or rules included in the NEC chapters 19.28 RCW or 296-46B WAC;

• Electrical theory based on currently published documents that are readily available for retail purchase; and/or

• Materials and methods that pertain to electrical construction, building management systems, electrical maintenance, or workplace health and safety such as *NFPA 70E - Handbook for Electrical Safety in the Workplace*. First aid type classes must be approved and will be limited to four hours of credit towards the individual's total continuing education requirement.

(B) Code update classes must be based on the latest adopted version of the NEC and must specify the NEC articles to be addressed in the class presentation.

(C) RCW/WAC update classes must be based on the latest adopted versions of chapter 19.28 RCW and/or chapter 296-46B WAC.

(D) All basic classroom electrical training classes and pumping industry basic classroom training classes must be classroom instruction only and based upon basic electrical theory, use of the NEC, and/or use of the electrical laws and rules. Correspondence and internet classes are not allowed. All basic classroom electrical training classes must include an appropriate written examination to ensure the participant understands the basic concepts of the class. To successfully complete the class, the participant must score at least seventy percent on the examination.

(E) In addition, for pumping industry classes, curriculum must include fifty percent electrical and fifty percent plumbing instruction.

(ii) Class length:

(A) The minimum allowed length of a class is two hours; however, the minimum length for a basic classroom electrical trainee classroom training or pumping industry basic classroom trainee classroom training is eight hours that can be delivered in multiple classroom sessions of not less than two hours each.

(B) The maximum allowed credit for a class is twenty-four hours.

(C) Class length must based on two-hour increments (e.g., 2, 4, 6, 8, etc.).

(D) Class length must be based on the following:

• Classroom instruction will be based on the total hours the individual is in the classroom. A class may be divided into multiple sections so long as each section is not less than two hours in length and all sections are taken within a one month period.

• ((~~Correspondence instruction~~)) Distance learning (i.e., correspondence and internet classes) will be based on((~~:~~

~~– A written examination (i.e., twenty-five questions will equal one hour of classroom instruction). Individuals must be responsible to determine the correct answer without the assistance of the sponsor.~~

~~• Internet instruction will be based on:~~

~~– A written examination (i.e., twenty-five questions will equal one hour of classroom instruction).~~

~~• Examinations must not direct or point the individual to a correct answer or reference. Individuals must be responsible to determine the correct answer without the assistance of the sponsor.~~

~~• To successfully complete a correspondence or internet class, a participant must score at least 70% on the examination required for the class.~~

~~(iii) Class material must include:~~)) clock hours necessary to complete the class if it was presented in a classroom setting. See the application process in subsection (3)(d)(ii) of this section for distance learning classes for additional information.

Supplementary written instruction material appropriate to the type and length of the class.

(iv) Class material may include:

• Supplementary internet material;

• Supplementary texts;

• Other material as appropriate.

(v) Certificates of completion:

(A) The sponsor must award a completion certificate to each individual successfully completing the approved class. To successfully complete a correspondence or internet class, a participant must score at least 70% on the examination required for the class.

(B) The completion certificate must include the:

• Name of participant;

• Participant's Washington certificate number;

• Name of sponsor;

• Name of class;

• Date of class;

• Name of instructor;

• Location of the class:

– If a classroom-type class, the city and state in which the class was given;

– If a correspondence class, state the class is a correspondence class;

– If an internet class, state the class is an internet class;

• Class approval number;

• Number of continuing units; and

• Type of continuing education units.

(vi) Instructors:

(A) For classroom instruction, all instructors must be approved per this section; and

(B) For correspondence and internet instruction, the applicant must show that the sponsor regularly employs at

least one staff member who meets the requirements for instructors in this section.

(5) INSTRUCTOR APPROVAL PROCESS:

(a) Instructor approval will be valid for three years except:

(i) If the instructor's credentials are invalidated (e.g., suspension or revocation by the issuing entity) for any reason, approval will be automatically revoked.

(ii) When the instructor approval expires or is revoked, a new application must be submitted to regain approved instructor status.

(b) Minimum requirements:

(i) The application must show that the instructor meets one of the following:

(A) Has a valid Washington administrator, master electrician, or electrician's certificate and has appropriate knowledge of and experience working as an electrical/electronic trainer; or

(B) Is an instructor in a two-year program in the electrical construction trade licensed by the Washington work force training and education coordinating board. The instructor's normal duties must include providing electrical/electronic education; or

(C) Is a high school vocational teacher, community college, college, qualified instructor with a state of Washington approved electrical apprenticeship program, or university instructor. The instructor's normal duties must include providing electrical/electronic education; or

(D) Works for and is approved by a manufacturer of electrical products to teach electrical continuing education.

(ii) Any other information the applicant wants to be considered during the review.

(6) FORMS:

(a) The contractor will:

Develop an appropriate form(s) for the applicant's use when submitting for instructor or class approval;

(b) Applicants must use the contractor's form when submitting an application for review.

(7) PUBLICATIONS:

The contractor will provide the department with appropriate material for use by the department on the electrical program web site and may post the application process, review, and approval requirements on the contractor's web site.

(8) CLASS ATTENDANCE:

(a) The contractor is not responsible for monitoring any individual's attendance or class completion.

(b) The department is not responsible for providing verification of an individual's continuing education or basic electrical classroom training history with the class sponsor;

(c) Electrical approved classes offered in Washington:

(i) The sponsor must provide the department with an accurate ((~~and typed~~)) course attendance/completion roster for each class given. Class attendance will only be verified based on the attendance/completion roster provided by the sponsor. Completion certificates are not an acceptable method of verifying attendance at a class approved in Washington under this chapter.

(A) ((~~The typed attendance/completion roster must be provided within thirty days of class completion.~~

~~(B) In addition,~~)) Within seven days of a student completing the class, the course sponsor must provide the attendance/completion roster in an internet format provided by the department.

((~~(C)~~)) (B) The attendance/completion roster must show each individual's name, Washington certificate number, class number, location of class, date of completion, and instructor's name. ((~~The typed roster must contain the signature of the class sponsor's authorized representative.~~))

(ii) The sponsor must provide the individual a certificate of completion within fifteen days after successful class completion for the individual's personal records. See subsection (4) of this section.

(iii) Individuals will not be granted credit for ((~~continuing education classes~~)) a class unless the sponsor's attendance/completion roster shows the individual successfully completed the class.

((~~(iv) The department will keep submitted class rosters on file for four years.~~))

(d) For classes approved under chapter 18.106 RCW for the pumping industry ((~~will be verified through the normal roster reporting method for those classes.~~

~~(e) Classes offered in other states:~~

~~(i) For individuals to apply continuing education units earned from out-of-state classes, one of the following conditions must be met:~~

~~(A) The individual must request that the class sponsor submit a complete continuing education class application and gain approval for the class as described in this section for classes and instructors. Application for class or instructor approval will not be considered more than three years after the date the class was offered; or~~

~~(B) The department must have entered into a reciprocal agreement with the state providing class approval.~~

~~(ii) The individual must provide a copy of an accurate and completed award or certificate from the class sponsor identifying the class location, date of completion, individual's names, and Washington certificate number. The department will only accept a copy of the sponsor's certificate or form as evidence that the individual attended and completed the class. The department must verify all out-of-state sponsor's certificates or forms with the issuing state prior to accepting them as evidence of class completion~~)).

(9) Contractor requirements:

(a) The contractor cannot be a sponsor or instructor.

(b) The contractor cannot be an employee of the department.

(c) The contractor must:

(i) Be an independent entity with no organizational, managerial, financial, design, or promotional affiliation with any sponsor or instructor covered under the contractor's review and approval/denial process;

(ii) Employ at least one staff member having a valid 01-General Administrator or 01-General Master Electrician Certificate. This staff member:

(A) Is responsible for reviewing and determining an application's approval or denial; and

(B) Must sign the written notification provided to applicants for all approvals and denials:

(iii) Receive, review, and process all applications as required in this section;

(iv) Allow the department access to the contractor's facilities during normal working hours to audit the contractor's ability to conform to the contract requirements;

(v) Treat all applications as proprietary information;

(vi) Respond to and attempt to resolve complaints contesting the review or approval/denial process performed by the applicant;

(vii) Notify the department within ten working days of any change in business status or ability to conform to this section;

(viii) Maintain one copy, original or electronic, of all applications and associated materials for a period of three years from the date of receipt.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 03-09-111, filed 4/22/03, effective 5/23/03)

WAC 296-46B-980 Enforcement—Installations, licensing, and certification requirements. (1) The department inspects the electrical worksites of individuals, employers, and employees with respect to the methods and installation requirements of chapter 19.28 RCW and this chapter. The department's electrical inspectors and electrical auditors make electrical work inspections. The department's electrical inspectors, electrical auditors, and compliance officers make electrical licensing/certification inspections.

(2) The department ensures that individuals, employers, and employees comply with the electrical licensing and certification requirements of chapter 19.28 RCW and this chapter. To do this, inspections are made by the department's electrical inspectors/auditors and compliance officers.

Compliance officers or electrical inspectors/auditors determine whether:

(a) Each person or entity advertising to do electrical work or doing electrical work on an electrical worksite has a proper license((~~,~~)) or certificate((~~, or temporary electrician permit~~));

(b) The ratio, per RCW 19.28.161, of certified journeyman/specialty electricians to the certified trainees on the job site is correct; and

(c) Each certified trainee is directly supervised by an individual who possesses an appropriate certificate of competency ((~~or temporary electrician permit~~)) for the type of electrical work being performed.

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-985 Penalties for false statements or material misrepresentations. (1) A person who ((~~knowingly~~)) makes a false statement or material misrepresentation on an application, statement of hours, or signed statement to the department may be referred to the county prosecutor for criminal prosecution under RCW 9A.72.020, 9A.72.030, and 9A.72.040. The department may also file a civil action under RCW 19.28.131 or 19.28.271 and may revoke or suspend a certificate under RCW 19.28.241 or 19.28.341.

(2) The department may file a civil action under RCW 19.28.131 or 19.28.271 and may revoke or suspend a certificate of competency under RCW 19.28.341 or 19.28.241 for inaccurate or false reporting of continuing education units on the administrator, master electrician, electrician, or training certificate renewal form.

(3) If the department determines that a course sponsor has issued an inaccurate or incomplete course application or attendance/completion roster, the department may suspend or revoke the course approval and deny future approval of a continuing education course(s) by the course sponsor.

(4) The department may file a civil action under RCW 19.28.271 against both the trainee and the contractor, apprentice training director, or other entity verifying the training hours and may subtract up to two thousand hours of employment from a trainee's total hours if the department determines a false statement or material misrepresentation has been made in an affidavit of experience.

AMENDATORY SECTION (Amending WSR 04-12-049, filed 5/28/04, effective 6/30/04)

WAC 296-46B-990 Failure to comply with the electrical contractor licensing, administrator certification, or electrician certification laws. General.

(1) If the compliance officer or electrical inspector/auditor determines that an individual, employer, or employee has violated chapter 19.28 RCW or this chapter, the department will issue a citation that describes the violation.

Suspension or revocation - of an electrical contractor's license, administrator's certificate, master electrician's certificate of competency, electrician's certificate of competency, ((~~temporary electrician's permit,~~)) or training certificate.

(2) The department may revoke or suspend, for such time as it determines appropriate, an electrical contractor's license, administrator's certificate, master electrician's certificate of competency, electrician's certificate of competency, ((~~temporary electrician's permit, temporary specialty electrician's permit,~~)) or training certificate if:

(a) The license, certificate, or permit was obtained through error or fraud;

(b) The license, certificate, or permit holder is judged to be incompetent to work in the electrical construction trade as a master electrician, journeyman electrician, specialty electrician, electrical technician, ((~~temporary electrician, temporary specialty electrician,~~)) or electrical trainee;

(c) For serious noncompliance as described below. See RCW 19.28.241 and 19.28.341 for other grounds and procedures.

(d) ((~~A temporary electrician permit or temporary specialty electrician permit holder has violated any of the provisions of chapter 19.28 RCW or any rule adopted under chapter 19.28 RCW;~~

~~(e)~~)) The license or certificate holder incompletely or inaccurately reported continuing education units on an application for renewal; or

((~~(f)~~)) (e) The certificate holder falsely, incompletely, or inaccurately reported previous work experience.

The department will deny an application for any license/certificate during the period of revocation or suspension of the same or another license/certificate under chapter 19.28 RCW.

(3) For the purposes of this section, serious noncompliance includes, but is not limited to, any of the following:

(a) Failure to correct a serious violation. A serious violation is a violation of chapter 19.28 RCW or chapter 296-46B WAC that creates a hazard of fire or a danger to life safety. A serious violation is also a violation that presents imminent danger to the public. Imminent danger to the public is present when installations of wire and equipment that convey or utilize electric current have been installed in such a condition that a fire-hazard or a life-safety hazard is present. Imminent danger to the public is also present when unqualified, uncertified, or fraudulently certified electricians or administrators; or unlicensed or fraudulently licensed contractors are continuously or repeatedly performing or supervising the performance of electrical work covered under chapter 19.28 RCW. For the purposes of this section, a certified electrician is considered qualified, provided the electrician is working within his or her certification;

(b) The license or certificate was obtained through error or fraud;

(c) Submitting a fraudulent document to the department;

(d) Continuous noncompliance with the provisions of chapter 19.28 RCW or this chapter. For the purposes of this section, continuous noncompliance will be defined as three or more citations demonstrating a disregard of the electrical law, rules, or regulations within a period of three years, or where it can be otherwise demonstrated that the contractor, master electrician, electrician, or administrator has continuously failed to comply with the applicable electrical standards;

(e) Failure to make any books or records, or certified copies thereof, available to the department for an audit to verify the hours of experience submitted by an electrical trainee;

(f) Making a false statement or material misrepresentation on an application, statement of hours, or signed statement required by the department;

(g) The certificate holder falsely or inaccurately reported continuing education units on an application for renewal;

(h) Installing a shortened rod/pipe grounding electrode, improper splicing of conductors in conduits/raceways or concealed within walls, or installing a fake equipment grounding conductor.

For any act of serious noncompliance, the person, firm, partnership, corporation, or other entity may be referred to the county prosecutor for criminal prosecution under chapter 9A.72 RCW. The department may also file a civil action under chapter 19.28 RCW.

(4) Before a license((~~,~~)) or certificate((~~, or temporary electrician permit~~)) is revoked or suspended, the certificate holder will be given written notice of the department's intention to suspend or revoke. Notification will be sent by registered mail to the certificate holder's last known address. The notification will list the allegations against the certificate holder, and provide the certificate holder with the procedures necessary to request a hearing before the electrical board as described in WAC 296-46B-995.

Confiscation - of an electrical contractor's license, administrator certificate, electrician certificate of competency, ((~~temporary electrician permit,~~)) or training certificate.

(5) The department may confiscate a license((~~,~~)) or certificate((~~, or temporary electrician permit~~)) that is counterfeit, revoked, expired, suspended, or altered. The individual may be referred to the county prosecutor for criminal prosecution under chapter 9A.72 RCW. The department may also file a civil action under chapter 19.28 RCW.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-995 Electrical board—Appeal rights and hearings. General.

(1) Chapter 19.28 RCW provides the authority for the duties and responsibilities of the electrical board. Except as provided in chapter 19.28 RCW and this chapter, all proceedings will be conducted according to chapter 34.05 RCW the Administrative Procedure Act and chapter 10-08 WAC, Model rules of procedure. See chapter 34.05 RCW the Administrative Procedure Act for specific definitions not described in this chapter.

(2) See RCW 19.28.311 for the composition of the electrical board.

(3) The board adopts the current edition of the "*Roberts' Rules of Order, Newly Revised.*"

(4) The board will hold regular meetings on the last Thursday of January, April, July, and October of each year per RCW 19.28.311.

(5) The director or the chairperson of the board may call a special meeting at any time.

(6) Each board member must be notified in writing of the agenda, date, time, and place of each regular and special meeting. "Writing" includes by electronic mail, also known as "e-mail," if the member has provided an e-mail address for such notice.

(7) The board or department may elect to have an appeal heard by the office of administrative hearings either tape recorded or transcribed by a court reporter; and the board may so elect regarding hearings or board reviews heard by the board as a whole.

(8) A majority of the board constitutes a quorum for purposes of rendering any decision.

(a) If a majority does not attend a hearing or board review on an appeal, the board may either continue the hearing or board review to a date certain or may hear the testimony and arguments.

(b) If the board hears the testimony and arguments, the members of the board who are absent may make their decisions after hearing the tape recording or reading the transcript, of the hearing or board review.

(c) If the board selects the method in subsection (8)(b) of this section, at the time of the hearing, the board shall set a date certain for the absent members to complete review of the record and for the board as a whole to vote on the decision. The vote in subsection (8)(b) and (c) of this section may

occur by U.S. mail, facsimile or by electronic mail and shall be determined by the board at the hearing; the members' votes shall be public record.

(9) All filings and documents for any matter before the board must be submitted to the chief electrical inspector, as secretary to the board, 7273 Linderson Way, P.O. Box 44460, Olympia, WA 98504-4460. Twenty copies of filings and documents must be submitted by ordinary mail, certified or registered mail, or by personal delivery. Filings and documents must be received no later than forty-five days prior to the scheduled meeting. When filings or documents are received after the deadlines, the filings and documents will be presented to the board at the second regularly scheduled board meeting.

(10) All hearings before the board as a whole shall be held on regularly scheduled meeting dates, as listed in subsection (4) of this section, unless the board determines that an alternate date is necessary.

(11) All notices of appeal, with a certified check payable to the department in the sum of two hundred dollars if required, must be received in the office of the chief electrical inspector, as secretary to the board, at least forty-five days before the regularly scheduled board meeting at which the hearing would occur. A separate two hundred dollar fee is required for each entity's appeal of a specific violation type (e.g., for a single entity, the designated administrator, multiple alleged violations of RCW 19.28.061 (5)(a) - designated administrator not available, RCW 19.28.061 (5)(d) - designated administrator fails to ensure proper permit is purchased, and RCW 19.28.061 (5)(e) - designated administrator fails to ensure corrections are made would require a six hundred dollar appeal fee). For original appeals to the board, the appellant must submit twenty copies of any written argument, briefs testimony or documents for the board's consideration at least forty-five days prior to the scheduled hearing. When appeals, written argument, briefs, testimony, or documents are received after the deadlines, the appeals, written argument, briefs, testimony, or documents will be presented to the board at the second regularly scheduled board meeting.

Appeals

(((11))) (12) Appeals of penalties issued by the department.

(a) A party may appeal a penalty issued by the department, pursuant to chapter 19.28 RCW and this chapter, to the board. The appeal shall be assigned to the office of administrative hearings.

(b) The appeal must be filed within twenty days after the notice of the decision or penalty is given to the assessed party either by personal service or by certified mail, return receipt requested, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board. The request for an appeal must be accompanied with a certified check payable to the department in the sum of two hundred dollars.

(((12))) (13) Appeals of proposed decisions issued by the office of administrative hearings.

(a) A party may appeal a proposed decision issued by the office of administrative hearings pursuant to chapter 19.28 RCW to the board. The appeal must be filed within twenty days after service of the decision and must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board.

(b) The notice of appeal of a proposed decision must be received in the office of the chief electrical inspector, as secretary to the board, at least ((thirty)) forty-five days before a regularly scheduled board meeting. ((All parties must submit any)) If you want the board to consider written argument, briefs, testimony or other documents ((for the board's consideration)), it must be submitted at least ((twenty)) forty-five days prior to the scheduled hearing.

(((13))) (14) Appeals of suspension, revocation, or nonrenewal.

(a) An appeal of the suspension or revocation of a license or certificate of competency under RCW 19.28.241 and 19.28.341 or of nonrenewal of a license or certificate of competency under this chapter will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars for appeals of a revocation or suspension of a contractor's or administrator's license, must be filed within twenty days after the notice of suspension or revocation is served on the subject of said action, either by personal service or by certified mail, return receipt requested, sent to the last known address of the subject and shall be filed by written notice of appeal with the chief electrical inspector, as secretary to the board.

(((14))) (15) Appeals of decisions on installation.

(a) A party may seek board review for disputes relating to the interpretation and application of electrical/telecommunications installation or maintenance standards under RCW 19.28.111, 19.28.480, and 19.28.531. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars, must be received in the office of the chief electrical inspector, as secretary to the board, at least thirty days before a regularly scheduled board meeting. All parties must submit any written argument, briefs testimony or documents for the board's consideration at least twenty days prior to the scheduled hearing.

(((15))) (16) Appeals of a continuing education class or instructor for denials or revocations.

A party may appeal a decision issued by the department, pursuant to WAC 296-46B-970 (3)(e)(vi), if the department acts as the contractor pursuant to WAC 296-46B-970 (2)(i) to the superior court per RCW 34.05.542(3).

(((16))) (17) Appeals pertaining to engineer approval or electrical testing laboratory recognition and accreditation.

(a) A party may appeal a decision issued by the department pursuant to WAC 296-46B-997 or 296-46B-999. The appeal will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars for appeals pertaining to engineer approval or recognition and accreditation of an electrical testing laboratory, must be filed within twenty days after the notice of the department's decision is served on the subject of said action, either by personal service or by certified mail, return receipt requested, sent to the last known address of the subject and shall be filed by written notice of appeal with the chief electrical inspector, as secretary to the board.

((~~(17)~~)) (18) Judicial review of final decisions of the board.

A party may seek judicial review of a final order of the board within thirty days after service of the decision. Appeals of final decisions and orders must be done in accordance with chapter 34.05 RCW.

((~~(18)~~)) (19) If appeal(s) according to subsections ((~~(11),~~)) (12), (13), ((~~and~~)) (15), and (16) of this section are not filed or the appeal is not filed timely, the proposed decision or action becomes final with no further action on the part of the department or the board.

((~~(19)~~)) (20) Appeals - general requirements.

(a) Appeals according to subsections ((~~(11),~~)) (12), ((~~or~~)) (15), or (16) of this section must specify the contentions of the appellant, and must for subsection ((~~(12)~~)) (13) of this section specify to which conclusions of law and findings of fact the party takes exception. The appeal will be based on the record of the hearing. The board shall not grant a hearing de novo.

(b) In appeals under subsections ((~~(12),~~)) (13), (14), ((~~and~~)) (15), and (16) of this section, the issues to be adjudicated must be made as precise as possible, in order that the board may proceed promptly to conduct the hearing on relevant and material matter only.

(c) In all appeals of chapter 19.28 RCW and this chapter heard before the office of administrative hearings or directly by the board, the department has the burden of proof by a preponderance of the evidence.

(d) In all appeals of a decision by the office of administrative hearings to the board, the party aggrieved by the decision of the office of administrative hearings has the burden of proof by a preponderance of the evidence.

Appearance and practice before board.

((~~(20)~~)) (21) No party may appear as a representative in proceedings other than the following:

(a) Attorneys at law qualified to practice before the supreme court of the state of Washington;

(b) Attorneys at law qualified to practice before the highest court of record of another state, if the attorneys at law of the state of Washington are permitted to appear as representatives before administrative agencies of the other state, and if not otherwise prohibited by Washington law; or

(c) An owner, officer, partner, or full-time employee of a firm, association, organization, partnership, corporation, or other entity who appears for the firm, association, organization, partnership, corporation or other entity.

((~~(21)~~)) (22) All persons appearing in proceedings as a representative must conform to the standards of ethical conduct required of attorneys before the courts of Washington. If a person does not conform to these standards, the board may decline to permit the person to appear as a representative in any proceeding before the board.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-997 Engineer approval. (1) This section describes the methods required to obtain recognition and accreditation of professional engineers registered under chapter 18.43 RCW to approve industrial utilization equipment. This section provides assurance to the general consuming public that electrical products have been tested for safety and identified for their intended use.

(2) Industrial utilization equipment is considered to be safe when it is certified by an engineer accredited by the department.

(a) The department may declare industrial utilization equipment unsafe if:

(i) The equipment is not being manufactured or produced in accordance with all standards of design and construction and all terms and conditions set out in the certification report for the equipment referred to in this chapter;

(ii) The equipment has been shown by field experience to be unduly hazardous to persons or property;

(iii) An examination of the equipment or of the certification report for the equipment shows that the equipment does not comply with all applicable standards; or

(iv) An examination of the certification report or the equipment shows that the equipment cannot be installed in accordance with this chapter.

(b) When the department declares industrial utilization equipment unsafe, the department will notify the product owner and the certifying engineer in writing.

Accreditation - general.

(3) The department's chief electrical inspector's office reviews requests for accreditation. Applicants must submit supporting data to document and verify the requirements of this section have been met.

(4) The accreditation of an engineer will be valid for the period of three years.

(5) On-site inspection of an engineer's facilities.

(a) On-site inspection of the facility(ies) may be required during the initial application process or the renewal process. Representative(s) of the department will evaluate for compliance with accreditation criteria.

(b) The applicant must pay all costs associated with the on-site inspection.

(6) For purposes of chapter 19.28 RCW, all engineers who certify industrial utilization equipment offered for sale in the state of Washington must be accredited by the department.

(7) Fees are payable as required in WAC 296-46B-911.

(8) The engineer must apply for renewal of accreditation at least thirty days prior to the accreditation expiration date. The department will renew accreditation for the period of three years or notify the renewing engineer of the department's reason(s) of refusal following receipt of the completed form and renewal fee.

(9) The department accepts or denies engineer accreditation for engineers seeking to evaluate industrial utilization equipment within the state. Accreditation is determined when an engineer provides evidence to the department that all the requirements of this chapter are met. Accreditation is determined by the department and prior to making a determination, the department may require information and documentation to be provided by the engineer.

(a) Accreditation is subject to review when deemed necessary by the department. The engineer must pay all costs associated with on-site review.

(b) Every accredited engineer must continue to satisfy all the conditions specified in this chapter during the period of the accreditation. An engineer must furnish the department an annual report detailing the extent of its activities for the year. The report must include, but not be limited to:

(i) The number of industrial utilization equipment items approved;

(ii) Organizational structure of the engineer's company;

(iii) Statement of ownership of the engineer's company; and

(iv) Reports of litigation, which in any way were the result of or may affect any accreditation or testing of products covered by this chapter.

(c) The department will notify the applicant of the accreditation results. A letter of accreditation from the department is proof of the accreditation of the engineer.

(10) The engineer will be approved to certify industrial utilization equipment.

Suspension or revocation.

(11) The department may suspend, revoke, or refuse to renew the department's accreditation of any engineer found to be in noncompliance with requirements of this chapter, the laws of the state of Washington, or submitting false information.

(12) The department will serve written notice of intent prior to suspension, revocation, or refusal to renew the accreditation of an engineer.

(13) An engineer, whose accreditation has been suspended, may not reapply for accreditation during the period of such suspension. An engineer, whose accreditation has been revoked, may reapply for accreditation no sooner than two years after the date of revocation of accreditation.

Business structure, practices, and personnel.

(14) The engineer must be an independent, third-party organization with no organizational, managerial, financial, design, or promotional affiliation with owners, manufacturers, suppliers, installers, or vendors of products covered under the engineer's certification or evaluation programs.

The engineer must have an adequate diversity of clients or activity so that the loss or award of a specific contract regarding certification or evaluation would not be a deciding factor in the financial well-being of the engineer.

(15) The engineer must adequately meet the following business practices:

(a) Perform the examinations, tests, evaluations, and inspections required under the certifications programs in accordance with the designated standards and procedures;

(b) Assure that reported values accurately reflect measured and observed data;

(c) Limit work to that for which competence and capacity is available;

(d) Treat test data, records, and reports as proprietary information;

(e) Respond to and attempt to resolve complaints contesting certifications and evaluation results;

(f) Maintain an independent relationship between its clients, affiliates, and other organizations so the engineer's capacity to give certifications and evaluations objectively and without bias is not adversely affected; and

(g) Notify the department within thirty calendar days should it become unable to conform to any of the requirements of this chapter.

(16) Engineers accredited under this chapter must notify the department within thirty calendar days of any of the following:

(a) Change in company name and/or address;

(b) Changes in major test equipment which affect the ability to perform work for which accredited; or

(c) Change in independent status.

(17) The engineer must develop and maintain a certification or evaluation program plan that includes, but is not limited to:

(a) The procedures and authority to ensure the product complies with the standard(s) established by the program;

(b) A quality control system;

(c) Verification and maintenance of facilities and/or equipment; or

(d) Sample selection as applicable for product certifications, and for component testing as necessary for evaluations.

The plan must demonstrate that the engineer has adequate facilities, and equipment to perform all certifications and testing for which it is accredited by the state of Washington. These elements must be contained in the engineer's operations control manual.

(18) The engineer must develop and maintain a quality control system adequate to assure the accuracy and technical integrity of its work as follows:

(a) The engineer's quality control system must include a quality control or engineer's operations control manual;

(b) The quality control or engineer's operations control manual must be adequate to guide a testing technician or inspector in conducting the inspection, evaluation, and/or test in accordance with the test methods and procedures required for the engineer's certification and/or evaluation program(s); and

(c) The engineer must have a current copy of the quality control or engineer operations control manual available for the engineer's use.

(19) The engineer must have training, technical knowledge, and experience adequate to perform the tests, examinations, and evaluations for the certification and/or evaluation activities for which recognition is sought.

(20) The engineer must:

(a) Provide adequate safeguards protecting the engineer's status from the influence or control of manufacturers, vendors, owners, or installers of electrical products certified or tested by the engineer; and

(b) Develop and maintain an adequate training program assuring that the engineer will be able to perform tasks properly and uniformly.

Recordkeeping and reporting - general.

(21) The engineer must develop and maintain records and reports of those testing, inspection, certification, and evaluation activities associated with each piece of industrial utilization equipment. The engineer must retain these records for a minimum of three years.

(22) The engineer must make available to the department, upon request, all records required by the department to verify compliance with this chapter.

(23) Before beginning the work, the engineer must notify the department of the intent to evaluate using forms provided by the department. See WAC ((~~296-46B-905~~)) 296-46B-906 for fee information. The engineer's evaluation report must include:

(a) Name and address of the engineer;

(b) Name of client;

(c) Address where the evaluated product is or will be installed;

(d) Designation of standards used to certify or test the product including edition and latest revision (e.g., UL 508, 16th Edition, Feb. 1993, Revision Oct. 9, 1997);

(e) Description of the overall product evaluated to include full nameplate data and equipment type;

(f) A statement as to whether or not the results comply with the requirements of the standard;

(g) Pertinent test evaluation data and identification of tests or inspections including anomalies;

(h) The engineer's stamp; and

(i) Any condition of acceptability or restrictions on use/relocation.

(24) Within ten calendar days after affixing the evaluation mark, the engineer must submit a copy of the evaluation report to:

(a) The department's chief electrical inspector submitted electronically in a format approved by the department;

(b) Local electrical inspection office submitted electronically in a format approved by the department; and

(c) Client submitted in any format acceptable to the client and engineer.

WSR 09-15-148
PROPOSED RULES
WASHINGTON STATE PATROL
[Filed July 21, 2009, 10:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-12-026.

Title of Rule and Other Identifying Information: Chapter 204-93 WAC, Assistance vans.

Hearing Location(s): General Administration Building Auditorium, 210 11th Avenue, Olympia, WA 98504, on August 25, 2009, at 9:30 a.m.

Date of Intended Adoption: August 26, 2009.

Submit Written Comments to: Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, e-mail melissa.vangorkom@wsp.wa.gov, fax (360) 596-4015, by August 25, 2009.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by August 24, 2009, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating current language for clarification to include the addition of definitions. The language changes will also include new standards for background checks and restrictions on signs, shield markings, accessories and insignia used on uniforms, clothing or equipment which may imply that the operator is a law enforcement officer. In addition, the application process will be updated to include a requirement for authorization by local jurisdictions prior to the issuance of a permit.

Reasons Supporting Proposal: Provides clarification and additional standards that will increase safety.

Statutory Authority for Adoption: RCW 46.37.005, 46.37.194, and 46.52.120.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Melissa Van Gorkom, General Administration Building, P.O. Box 42600, Olympia, WA 98504-2600, (360) 596-4017.

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

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The Washington state patrol equipment and standards review (ESR) unit is proposing amendments to chapter 204-93 WAC, Assistance vans. This chapter replaces chapter 204-93 WAC, Assistance vans.

The purpose of this chapter is to provide minimum standards and operating regulations for assistance vans.

The proposed amendments to this chapter include:

- Updating current language for clarification to include the addition of definitions.
- Update to background check process to include new standards and a fee for processing as outlined in RCW 46.37.194.
- New restrictions on signs, shield markings, accessories and insignia on uniforms, clothing or equipment which may imply that the operator is a law enforcement officer.
- Updates to the application process to include a requirement for authorization by local jurisdictions prior to the issuance of a permit or letter of appointment.
- Adds a new section to outline the revocation and suspension of permits or letter of appointments.

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

The ESR unit has analyzed the proposed rule amendments and has determined that small businesses may be impacted by these changes, with some costs that may [be] considered "more than minor" and disproportionate to some small businesses that may apply for an assistance van application.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS: Since the proposed amendments "make significant amendments to a policy or regulatory program" under RCW 34.05.328 (5)(c)(iii), ESR has determined the proposed rules to be "significant" as defined by the legislature.

As required by RCW 34.05.328 (1)(d), ESR has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

COST OF COMPLIANCE: To consider costs of compliance, ESR has elected to look at cost per application. This is because each applicant will be required to submit fingerprint cards for all drivers/operators of the vehicles in accordance with RCW 46.37.194. Some applicants may be considered small businesses.

Cost of Outcomes Evaluations: The major cost anticipated by small businesses for proposed rule changes is the update to the background check process to require that the applicant submit the fees necessary for processing fingerprint cards in accordance with RCW 46.37.194 (WAC 204-93-040). The language that allowed for free processing of a background investigation has been removed so that the agency can receive funds for the processing of the background checks in accordance with changes made to RCW 46.37.194 in 2006.

The background check is a one time requirement, with a current cost of $49.25 per person. On July 1, 2009, the cost will be reduced to $45.25 per person. The results received from the background check are used to determine whether or not the driver may operate an assistance van under the application. Drivers that will not be approved are individuals who have been convicted of:

- A felony during the last ten years.
- A Class A felony or any "sex offense" as defined in RCW 9.94A.030.
- A DUI as defined in chapter 46.61 RCW, or similar offense regardless of state of conviction.
- Reckless driving or a hit-and-run collision within the last seven years.
- A gross misdemeanor within the last five years.
- A misdemeanor within the last year, or
- Must register as a sex offender.

These standards have been added to this rule change to align with the same standards already in place for other emergency operators' permits under chapters 204-36 and 204-91A WAC for authorized emergency vehicles and tow truck operators.

Summation - Disproportionate Impact and Mitigation: When there are more than minor costs to small businesses as a result of proposed rule changes, the Regulatory Fairness Act requires an analysis to be done comparing these expenses between small businesses and 10% of the largest businesses.

ESR looked at the possible disproportionate impact of this requirement on small businesses, as compared to 10% of the largest businesses. However, since there are no businesses that currently hold an assistance van application, and no known interested businesses, it is not possible to accurately delineate and compare costs between small businesses and 10% of the largest agencies.

ESR also looked at ways that the cost to small businesses could be mitigated. After careful review, it was determined that the agency could not provide any mitigating expenses for a small business as the cost of fingerprint cards is set through a state and federal process, and the requirement for a background check is necessary to ensure the safety of the motoring public that the driver/operator of the assistance van may come in contact with.

Summary of Benefits: The benefit for the proposed rule changes is to increase the scrutiny provided to the driver/operators of an assistance van in order to increase the safety of the citizens that these drivers/operators may come in contact with on the public roadways in the state of Washington.

JOBS CREATED OR LOST: This regulation is not a requirement for small businesses, it is an optional service that a small business can choose to provide if it chooses to apply and follow the guidelines outlined in chapter 204-93 WAC. Therefore, it is not anticipated that the requirements set forth in the current proposal will cause jobs to be lost as a result of small businesses complying with these rules.

CONCLUSION: ESR has given careful consideration to the impact on small businesses of proposed rules in chapter 204-93 WAC, Assistance vans. In accordance with the Regulatory Fairness Act, chapter 19.85 RCW, ESR has analyzed impacts on small businesses and outlined the reasons for the costs and why the cost cannot be mitigated.

Please contact Melissa Van Gorkom if you have any questions at (360) 596-4017.

A copy of the statement may be obtained by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, online at http://www.wsp.wa.gov/information/cr_status.htm, phone (360) 596-4017, fax (360) 596-4015, e-mail melissa.vangorkom@wsp.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, online at http://www.wsp.wa.gov/information/cr_status.htm, phone (360) 596-4017, fax (360) 596-4015, e-mail melissa.vangorkom@wsp.wa.gov.

July 21, 2009

John R. Batiste

Chief

AMENDATORY SECTION (Amending WSR 90-18-049, filed 8/30/90, effective 9/30/90)

WAC 204-93-010 Authority. This rule is promulgated pursuant to RCW 47.52.120 ((~~and~~)), 46.37.005, and 46.37.194.

AMENDATORY SECTION (Amending WSR 90-18-049, filed 8/30/90, effective 9/30/90)

WAC 204-93-030 Definitions. (1) **Assistance van:** A vehicle that has been approved by the state patrol to provide aid, free of charge, to vehicles with equipment or fuel problems. An assistance van will be referred to as "van" in this regulation.

(2) **Commander:** Means the commanding officer, or their designee, of a Washington state patrol district or division.

(3) **ESR:** Equipment and standards review section of the Washington state patrol.

(((3) **Patrol:** Shall mean the Washington state patrol as defined in RCW 43.43.010.

(4) **District commander:** Shall mean the commanding officer of a Washington state patrol district.

(5))) (4) **Driver:** Means any person who drives the van and furnishes the actual service.

(5) **Geographic area:** Means the city, county, state routes or interstate roads on which the vehicle will be operated under the authorized emergency vehicle permit if approved.

(6) **Highway:** Means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(7) **Inspector:** ((Shall mean a commissioned)) Means an officer of the Washington state patrol who has been designated by his/her ((district)) commander to conduct inspections of assistance vans.

(((6))) (8) **Operator:** Means the person(s) or firm so named in the letter of appointment, who operates the assistance van.

(9) **Owner:** ((Shall)) Means the legal owner of the assistance van.

(((7) **Operator:** Shall mean the person(s) or firm so named in the letter of appointment, who operates the assistance van.

(8) **Driver:** Shall mean the person who drives the van and furnishes the actual service.

(9) **Highway:** Means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(10) **Letter of appointment:** Shall mean the document issued by the ESR that authorizes the assistance van to operate within this state.)) (10) **Patrol:** Means the Washington state patrol as defined in RCW 43.43.010.

(11) **Permit:** Means the document issued by ESR that authorized the assistance van to operate.

(12) **Primary jurisdiction:** Means lead department who has jurisdiction on the roads that the applicant wishes to use the emergency lighting on.

(13) **Political subdivision:** Means the individual who has authority over the applicant if the applicant is the chief law enforcement officer or fire chief.

AMENDATORY SECTION (Amending WSR 90-18-049, filed 8/30/90, effective 9/30/90)

WAC 204-93-040 Driver standards. (1) The driver's minimum age is to be 21 years((.

(2) Driver shall possess a valid)), and the driver must possess a valid:

(a) First-aid card.

(((3) Driver shall possess a valid)) (b) Washington operator's license.

(((4) Driver shall not have a previous felony conviction and shall agree to submit to a no fee criminal background investigation by the patrol by submitting a completed fingerprint card with the required application.)) (2) The patrol may refuse to approve the permit or in the case of a permit which lists multiple operators/drivers may refuse to approve any single operator/driver if the applicant/operator/driver:

(a) Has been convicted of a felony during the ten years preceding the date of the application provided the felony for which the applicant was convicted directly relates to the specific occupation, trade, vocation, or business for which the certificate or permit is sought;

(b) Has ever been convicted of any Class A felony or any "sex offense" as defined in RCW 9.94A.030, regardless of the state of conviction;

(c) Has been convicted of DUI as defined in chapter 46.61 RCW, or convicted of a similar offense regardless of the state of conviction, within the last seven years;

(d) Has been convicted of reckless driving, or a hit-and-run, within the last seven years;

(e) Has been convicted of a gross misdemeanor within the last five years;

(f) Has been convicted of any misdemeanor within the last year; or

(g) Must register as a sex offender.

Crimes referenced in this section are as defined in the criminal code as they exist at the time of the violation, as they now exist or may later be amended in the state of Washington. Out-of-state convictions for offenses will be classified according to the comparable offense definitions and sentences provided by Washington law.

AMENDATORY SECTION (Amending WSR 90-18-049, filed 8/30/90, effective 9/30/90)

WAC 204-93-050 Van standards. (1) The minimum size vehicles ((shall)) must be a half-ton rated van or pickup truck.

(2) The van ((shall)) must:

(a) Be equipped with adequate front pushbars of a design that protects the finish of any vehicle being pushed.

(((3) The van shall)) (b) Not have towing capabilities.

(((4))) (c) Have the primary sponsor or operator's name, address, and telephone number ((shall be)) painted on both sides of the vehicle in a contrasting color. The lettering ((shall)) must be at least 3 inches in height with a 3/4 inch stroke. Other sponsors may be shown in smaller lettering.

(((5))) (d) Have the words "assistance van" ((shall be)) painted on the front and rear of the van. The size of the lettering ((shall)) must be the same as the primary sponsor's or operator's name.

(((6) The van shall)) (e) Have the capability to jump start another vehicle without going the wrong direction on the highway.

(((7) The van shall)) (f) Have the ability to transfer fuel, or carry a minimum of 2.5 gallons of gasoline.

(((8) The van shall)) (g) Be maintained in a clean and neat manner.

(((9) The van shall)) (h) Be equipped with an approved light bar that displays amber lighting in a 360° radius. The amber lights ((shall)) must be used only at the scene of a disabled vehicle or when a disabled vehicle is being pushed from the travel lane to the nearest shoulder of the highway. If the van is used for private purposes, or for purposes in an area or by an operator/driver other than as set forth in the application, all emergency equipment which is exposed to public view must be removed or covered with an opaque hood, and must not be operated during such period of time.

(3) The van must not:

(a) Be equipped with the following:

(i) Emergency lighting other than outlined in subsection (2)(h) of this section.

(ii) Signal preemptive device.

(b) Display or use any name that includes the word "police" or "law enforcement" or other word which portrays the individual or business as a public law enforcement agency.

AMENDATORY SECTION (Amending WSR 90-18-049, filed 8/30/90, effective 9/30/90)

WAC 204-93-060 Two-way communications requirements. The van ((shall)) must have:

(1) The capability to monitor channel 9 of the citizen's band radio.

(2) ((Two-way mobile communications with a base station. A CB radio is not adequate for this communication.)) A mobile telephone system ((is acceptable if:

(a) The equipment is of a recognized and established manufacture and is properly installed.

(b) The equipment is)) in proper working order ((and)), functions correctly throughout the assigned area of operation((.

(c) The equipment does not utilize the truck horn or a siren or other sound device to signal incoming calls.

(d) The equipment)), and is used in a correct and lawful manner.

(3) A public address system.

((Note: Communication headsets shall not be used while the van is in motion.))

AMENDATORY SECTION (Amending WSR 90-18-049, filed 8/30/90, effective 9/30/90)

WAC 204-93-070 Equipment requirements. The van ((shall)) must be equipped with the following items:

(1) Floor jack - 2-1/2 ton rating.

(2) Portable tank of compressed air with a gauge indicating a minimum capacity of 100 ((pounds of compressed air)) psi.

(3) One 36 unit first-aid kit or larger.

(4) One 20 BC rated fire extinguisher or two 10 BC rated fire extinguishers.

(5) Mechanics tools for minor repairs.

(6) Five-gallon container of water.

(7) Six orange or red traffic cones.

(8) One case of 20-minute fuses.

(9) Operable 12 volt jump pack and jumper cables that are at least eight feet in length.

(10) Absorbent material capable of absorbing one gallon of vehicular fluid leaks.

(11) Four-way lug wrench in metric and Society of Automotive Engineer (SAE) sizes.

(12) Two wheel chocks or wheel blocking devices.

(13) One pair of heavy duty leather gloves.

AMENDATORY SECTION (Amending WSR 90-18-049, filed 8/30/90, effective 9/30/90)

WAC 204-93-080 Insurance requirements. (1) Each van ((shall)) must be covered with the following minimum insurance coverage:

(((1))) (a) One hundred thousand dollars of legal liability per occurrence to protect against vehicle damage.

(((2))) (b) Two hundred fifty thousand dollars for liability for bodily injury or property damage per occurrence.

(((3))) (2) Proof of insurance ((shall)) must be filed with the ESR section of the patrol. Failure to maintain the required coverage ((shall)) will result in immediate cancellation of the letter of appointment by the state patrol.

AMENDATORY SECTION (Amending WSR 90-18-049, filed 8/30/90, effective 9/30/90)

WAC 204-93-090 ((Application for letter of appointment.)) Permit requirements. (1) An application for a ((letter of appointment)) permit to operate an assistance van shall be filed with the ESR on a form prescribed and furnished by the state patrol.

(2) The application ((shall include)) must furnish the following information to the patrol:

(a) A listing of the names of all operators or drivers of the van and a completed fingerprint card and associated fee for the applicant and each person who operates and/or drives the van.

(((3) The application will be assigned a docket number which shall be its permanent identification number for all matters relating to appointments.)) (b) A description of the specific geographic area in which the vehicle will be used as an assistance van.

(c) A description of each vehicle, to include, year, make, model, VIN, license number, and registered owner.

(d) Certification from each primary jurisdiction identified in (b) of this subsection that the vehicle is to be used as described. Such certification must be by the chief law enforcement officer. If the person making the application is the chief law enforcement officer, certification must be made by the chief executive officer of the political subdivision of the jurisdiction. The certification must state that a need exists in the jurisdiction for the vehicle to be used as described and that the certifier knows of no reason why the application should be denied.

(3) Upon satisfactory application the patrol may issue a permit.

AMENDATORY SECTION (Amending WSR 90-18-049, filed 8/30/90, effective 9/30/90)

WAC 204-93-100 Inspections and approval decals. Upon receipt of an application for a ((~~letter of appointment~~)) permit, the patrol will conduct an inspection of the applicant's van, to determine if the applicant qualifies for the issuance of a ((~~letter of appointment~~)) permit.

(1) After a ((~~letter of appointment~~)) permit has been issued, the state patrol will cause to be affixed to each qualified van a window decal indicating that it has been approved by the state patrol.

The decal will be furnished by the state patrol and affixed to the windshield on the lower right hand corner by the inspector.

(2) Reinspections of approved vans will be conducted at least once a year by an inspector.

(a) Upon subsequent inspections, the inspector may remove the decal from the van if it is no longer found to be qualified, subject to the following procedures:

(i) In the event of a safety-related defect which would render the van a safety hazard upon the public highway, the decal may be removed immediately by the inspector. Upon a protest by the operator that the defect does not represent a safety hazard, the decal may not be removed until such time as the defect is verified as a safety hazard by the inspector's supervisor.

(ii) In the event of missing or defective equipment which is not a safety hazard but is required for initial approval, the inspector ((~~shall~~)) must issue a correction notice for the defect. If after ten days the operator fails or refuses to repair the defect, the decal may be removed.

(iii) Upon repair of a defect which has previously caused removal of a decal, the inspector ((~~shall~~)) will reinspect the equipment which had been defective. If the specified corrections have been satisfactorily completed, the inspector ((~~shall~~)) will reapply another decal to the windshield. In the event that the inspector is not readily available to reinspect and reapply the decal, such other patrol officer as may be appointed by the patrol may reinspect and reapply the decal. The reinspection and reapplication ((~~shall~~)) will be done as soon as possible after the operator advises that the defect has been repaired.

(b) Upon termination of a ((~~letter of appointment~~)) permit, the decal will be immediately removed and the ((~~letter of appointment~~)) permit retrieved by the state patrol.

(c) Upon sale or other transfer of the van from the business, the operator ((~~shall~~)) must so advise the ESR and ((~~shall~~)) must remove the decal prior to the sale or transfer of the vehicle.

(d) Upon the purchase or acquisition of any additional van to be used pursuant to this chapter, the operator ((~~shall~~)) must immediately notify the ESR and request an inspection of the new unit by the patrol. No vehicle will be authorized under the permit until it is approved by the patrol.

AMENDATORY SECTION (Amending WSR 90-18-049, filed 8/30/90, effective 9/30/90)

WAC 204-93-110 Certification. After inspection of the van, driver qualifications, and required equipment, the inspecting officer will certify one of the following:

(1) The van operation of the applicant fully conforms to the requirements established by this rule.

(2) The van operation of the applicant does not fully conform to the requirements. The deficiencies ((~~shall~~)) will be listed on the inspection form. The operator will be informed of the deficiencies by the inspector. The operator may reapply to the inspector or the ESR when he/she has corrected the deficient areas and request another inspection.

Upon certification of compliance by the inspector and after all other requirements of this regulation have been met, the ESR will issue a ((~~letter of appointment~~)) permit to the applicant.

A copy of the current ((~~letter of appointment shall~~)) permit must be posted in the place of business of the applicant, and carried in each vehicle at all times.

Failure of the operator to comply with any of the various regulations in this chapter may result in cancellation of the operator's ((~~letter of appointment~~)) permit by the ESR.

AMENDATORY SECTION (Amending Order 002-85, filed 10/1/85)

WAC 204-93-120 Free service. All services provided to a disabled motorist at the location of the disablement ((~~shall~~)) must be free. This will include any vehicle repair parts that may be furnished by the operator.

AMENDATORY SECTION (Amending Order 002-85, filed 10/1/85)

WAC 204-93-130 Notification to law enforcement agencies. The appropriate law enforcement agency ((~~will~~)) must be notified ((~~under~~)) of the following circumstances:

(1) Motor vehicle accidents

(2) Ill or incapacitated motorists

(3) Intoxicated motorists

(4) If a disabled vehicle is to be left on the highway shoulder and the driver is to be transported away from the scene.

AMENDATORY SECTION (Amending Order 002-85, filed 10/1/85)

WAC 204-93-140 Restrictions to van operation and movement on highway. Any van authorized under this section must:

(1) ((~~No traveling~~)) Not travel in high-occupancy vehicle lane unless ((~~responding to~~)) traveling to assist a disabled vehicle.

(2) ((~~No~~)) Not travel in the wrong direction ((~~travel~~)) on any highway or on/off ramps of highway, unless directed by a law enforcement officer.

(3) Safely push a disabled vehicle ((~~will be pushed~~)) only to the nearest safe highway shoulder area.

(4) Not tow disabled vehicles ((~~will not be towed~~)) for any distance.

(5) Obey all "rules of the road" as defined by ((~~RCW~~)) chapter 46.61 ((~~shall be obeyed~~)) RCW with the exception of RCW 46.61.570 and 46.61.575 as they relate to stopping, standing, or parking restrictions on public highways.

(6) Obey RCW 47.52.120 ((~~shall be obeyed~~)), except section (5) as it relates to the stopping or parking of a vehicle on a limited access highway facility.

AMENDATORY SECTION (Amending WSR 90-18-049, filed 8/30/90, effective 9/30/90)

WAC 204-93-150 Record of assistance furnished. Each van operator ((~~shall~~)) must maintain a permanent daily log or record of all assistance furnished to disabled motorists. These records ((~~shall~~)) will be made available to the inspector, any law enforcement officer, or ESR upon request. This record ((~~shall~~)) must include, but is not limited to, the following items:

(1) Van driver's name

(2) Location and time of assistance

(3) Vehicle license number of vehicle assisted

(4) Type of assistance given

(5) Date and time of day that van is placed in service and taken out of service.

AMENDATORY SECTION (Amending Order 002-85, filed 10/1/85)

WAC 204-93-160 Driver's clothing. The van driver ((~~will~~)) must wear clothing that identifies the operator or primary sponsor.

(1) ((~~The driver will wear~~)) This must include:

(a) A legible name tag.

(((~~2~~))) (b) Clothing ((~~will be~~)) maintained in a presentable and clean manner.

(2) Level III reflective vest and pants. The vest and pants must be approved as meeting the United States Department of Transportation (USDOT) or American National Standards Institution (ANSI) standards.

(3) An operator of an assistance van will not be allowed to display any sign, shield, marking, accessory or insignia on their uniform, clothing, or equipment to imply that he or she is a law enforcement officer, unless all of the following apply:

(a) The sign, shield, marking, accessory or insignia on their uniform or equipment is issued by a public law enforcement agency.

(b) The operator is employed by the public agency that is represented on the sign, shield, marking, accessory or insignia on their uniform or equipment, and approved to operate the vehicle by that agency under the authorized emergency vehicle permit.

NEW SECTION

WAC 204-93-170 Revocation or suspension. (1) Violation of any of these regulations will be grounds for suspension or revocation of the permit. Notice will be furnished to the applicant at least twenty days prior to the effective date of such suspension or revocation. The notice will describe the grounds for the order and will furnish the applicant an opportunity to be heard within the twenty-day period. The notice may provide for immediate suspension of the permit prior to any hearing, or the patrol may suspend the permit following the hearing but prior to final determination, if it is necessary to do so in the interests of the public health, safety, or welfare.

(2) The chief law enforcement officer of each primary jurisdiction in which the vehicle is operated as an assistance van may revoke his certification of the vehicle by notifying the patrol in writing of such revocation and their reasons therefore. Following notice to the applicant and an opportunity to be heard, the permit may be invalidated by the patrol.

(3) Mailing by certified mail of any notice or correspondence by the patrol to the last address of the applicant shown on his/her application will be sufficient service of notice as required by this chapter.

WSR 09-15-149

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed July 21, 2009, 10:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-032.

Title of Rule and Other Identifying Information: Chapter 204-50 WAC, Ignition interlock breath alcohol devices.

Hearing Location(s): General Administration Building Auditorium, 210 11th Avenue, Olympia, WA 98504, on August 25, 2009, at 10:00 a.m.

Date of Intended Adoption: August 26, 2009.

Submit Written Comments to: Trooper Steve Luce, 811 East Roanoke Street, Seattle, WA 98100, e-mail steve.luce@wsp.wa.gov, fax (206) 720-3023, by August 25, 2009.

Assistance for Persons with Disabilities: Contact Trooper Steve Luce by August 24, 2009, (206) 720-3018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating current language for clarification to include the change from the equipment and standards unit to the impaired driving section.

Reasons Supporting Proposal: Provides clarification to the language.

Statutory Authority for Adoption: RCW 46.37.005 and 46.04.215.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Trooper Steve Luce, 811 East Roanoke Street, Seattle, WA 98100, (206) 720-3018.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Does not adopt or make significant amendments to policy or the regulatory program.

A cost-benefit analysis is not required under RCW 34.05.328. Does not adopt or make significant amendments to policy or the regulatory program.

July 21, 2009
John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 05-17-065, filed 8/11/05, effective 9/11/05)

WAC 204-50-030 Definitions. The following definitions ((~~shall~~)) will apply throughout this chapter:

Alcohol - ((~~The generic class of organic compounds known as alcohols and, specifically~~)) Means the unique chemical compound ethyl alcohol. For the purpose of ignition interlock devices, ((~~there is no requirement expressed or implied that the~~)) all devices will be ((~~specifically~~)) specific for ethyl alcohol.

Authorized service provider (ASP) - The person or company meeting all qualifications outlined throughout this chapter and approved and trained by the manufacturer to service, install, monitor, calibrate, and provide information on manufacturer's devices currently certified for use in Washington state.

Bogus sample - Any air sample that is altered, diluted, stored, or filtered human breath, or which is obtained from an air compressor, hot air dryer, balloon, manual air pump, or other mechanical device, and is provided by an individual attempting to start or continue to operate a vehicle equipped with a device.

((~~Ignition interlock device (IID) - An electronic device that is installed in a vehicle which requires the taking of a BAC test prior to the starting of the vehicle and at periodic intervals after the engine has been started. If the unit detects a BAC test result below the alcohol setpoint, the unit will allow the vehicle's ignition switch to start the engine. If the unit detects a BAC test result above the alcohol setpoint, the vehicle will be prohibited from starting.~~))

Breath or blood alcohol concentration (BAC) - Is the amount of alcohol in a person's blood or breath determined by chemical analysis, which shall be measured by grams of alcohol per:

(a) 100 milliliters of blood; or

(b) 210 liters of breath.

((~~Circumvention - Means the attempted or successful bypass of the proper functioning of an ignition interlock device including, but not limited to, the operation of a vehicle without a properly functioning device, the push start of a vehicle with the device, disconnection or alteration of the device, the introduction of a bogus sample other than a deep-lung sample from the driver of the vehicle, introduction of an intentionally contaminated or altered breath sample, continued operation of the interlock vehicle after the device detects excess breath alcohol.~~

~~Court (or originating court) - The particular Washington state court, if any, that has required the use of an ignition interlock device by a particular individual or has responsibility for the preconviction or postconviction supervision of an individual required to use or using the device.~~))

Certification - The testing and approval process required by RCW 46.04.215.

Chief - The chief of the Washington state patrol.

Circumvention - Means the attempted or successful bypass of the proper functioning of an ignition interlock device including, but not limited to, the operation of a vehicle without a properly functioning device, the push start of a vehicle with the device, disconnection or alteration of the device, the introduction of a bogus sample other than a deep-lung sample from the driver of the vehicle, introduction of an intentionally contaminated or altered breath sample, continued operation of the interlock vehicle after the device detects excess breath alcohol.

Court (or originating court) - The particular Washington state court, if any, that has required the use of an ignition interlock device by a particular individual or has responsibility for the preconviction or postconviction supervision of an individual required to use or using the device.

Device - An ignition interlock breath alcohol device (IID).

DOL - The department of licensing of the state of Washington.

((~~ESR - The equipment and standards review unit of the Washington state patrol.~~))

Fail level - The BAC of .025 or a level set by the originating court, if lower, at which the device will prevent the operator from starting the vehicle, and/or once the vehicle is started, the level at which the operator must record a test below, or must shut off the vehicle, to avoid registering a violation reset.

Ignition interlock device (IID) - An electronic device that is installed in a vehicle which requires submitting to a BAC test prior to the starting of the vehicle and at periodic intervals after the engine has been started. If the unit detects a BAC test result below the alcohol setpoint, the unit will allow the vehicle's ignition switch to start the engine. If the unit detects a BAC test result above the alcohol setpoint, the vehicle will be prohibited from starting.

Impaired driving section (IDS) - The impaired driving section of the Washington state patrol.

Lessee - A person who has entered into an agreement with a manufacturer or authorized service provider to lease a device.

Manufacturer - The person, company, or corporation who produces the device, and certifies to ((~~ESR~~)) IDS that a service provider is qualified to service, install, monitor, calibrate, and provide information on devices.

OAC - Office of the administrator of the court.

Restricted operator - A person whose driving privileges are restricted to operating only motor vehicles equipped with an approved, functioning IID.

Simulator - A device which when filled with a certified simulator solution, maintained at a known temperature, provides a vapor sample of a known alcohol concentration.

Tampering - Any act or attempt to disable or circumvent the legal operation of an IID.

Violation reset - The condition caused by the failure of the operator of a vehicle to perform a test or retest as required, or by the operator's inability to achieve such test or retest results at the lower of the maximum allowable alcohol

concentration as set by the originating court or .025 BAC, the device and the vehicle in which it is installed must be returned to the manufacturer or authorized service provider to be reset.

AMENDATORY SECTION (Amending WSR 05-17-065, filed 8/11/05, effective 9/11/05)

WAC 204-50-040 Testing certification, revocation or surrender of certification and recertification. (1) **Testing and certification.**

(a) To be certified, a device must:

(i) Meet all standards set under chapter 204-50 WAC;

(ii) Meet or exceed the minimum test standards in sections one and two of the model specifications for breath alcohol ignition interlock devices (BAIID) as published in the Federal Register, Volume 57, Number 67, Tuesday, April 7, 1992, on pages 11774 - 11787, or as rules are adopted. Only a notarized statement, from a laboratory capable of performing the tests specified, will be accepted as proof of meeting or exceeding the standards. The notarized statement ((~~shall~~)) must include the name and signature of the person in charge of the tests under the following sentence:

Two samples of __(model name)__, manufactured by __(manufacturer)__ were tested by __(laboratory)__. They do meet or exceed all specifications listed in the Federal Register, Volume 57, Number 67, pages 11774 - 11787.

Signed____________________________

(iii) Submit two devices to the IDS for testing and review.

(b) Upon receipt of a statement from a testing laboratory that two samples of a device have successfully passed the test procedures listed in this chapter, and confirmation that all other requirements of this chapter have been met, the chief or designee may issue a letter of certification for the device.

(2) **Revocation or surrender of certification.**

(a) The letter of certification ((~~shall~~)) will be ((~~valid until~~)) subject to review by the IDS on an annual basis. It will be valid for three years or until voluntarily surrendered by the manufacturer or until revoked by the chief or designee for cause. Reasons for revocation include but are not limited to:

((~~(1)~~)) (i) Evidence of repeated device failures due to gross defects in design, materials, and/or workmanship during manufacture, installation, monitoring, or calibration of the device such that the standards for accuracy and reliability of the devices for which the devices were tested are not being met (as determined by ((~~ESR~~)) IDS);

((~~(2)~~)) (ii) Evidence that the features and functionality of a manufacturer's devices are not being programmed properly by ASP(s) or are being circumvented by lessees such that the standards for anticircumvention for which the devices were tested are not being met;

((~~(3)~~)) (iii) Any violation on the part of the manufacturer(s) or ASP(s) of any of the laws or regulations related to the installation, servicing, monitoring, and calibration of devices, including, but not limited to, "other provisions" listed in WAC 204-50-120;

((~~(4)~~)) (iv) Notice of cancellation of manufacturer's and/or ASP's required liability insurance is received;

((~~(5)~~)) (v) Notification that the manufacturer is no longer in business. This notification must be made immediately to the IDS;

((~~(6)~~)) (vi) Notification that material modification or alteration in the components and/or the design of the certified device is not provided or the recertification process is not completed as outlined in WAC 204-50-050.

((~~(7)~~)) (b) Unless necessary for the immediate good and welfare of the public, revocation ((~~shall~~)) will be effective thirty days from the date of the letter sent to the manufacturer via certified mail, return receipt requested. A copy of each notice of revocation ((~~shall~~)) will be provided to the director of the DOL and to the OAC for the state of Washington. The manufacturer's device(s) will be removed from the list of certified devices on the WSP web site.

((~~(8)~~)) (c) Upon voluntary surrender, or revocation of a letter of certification for a manufacturer's device, all like devices ((~~shall~~)) must be removed and replaced by a certified device, within sixty-five days of the effective date of such surrender or revocation. The ASP must notify all affected lessees of decertification and the requirements for a new device to be installed by an existing ASP.

((~~(9)~~)) (d) The ((~~ESR shall~~)) IDS will maintain a file of all current, revoked, and voluntarily surrendered letters of certification for the period of time as outlined in the WSP records retention schedule.

(3) **Review for recertification.**

A manufacturer whose letter of certification has been revoked may request a review of revocation by submitting the request in writing to the chief or designee within thirty days from the date on the revocation letter. The request must be made in writing and mailed to WSP ((~~ESR Unit, P.O. Box 42614, Olympia, WA 98504-2614~~)) Impaired Driving Section, 811 East Roanoke St., Seattle, WA 98102.

AMENDATORY SECTION (Amending WSR 05-17-065, filed 8/11/05, effective 9/11/05)

WAC 204-50-050 Modifications to a certified device. The manufacturer ((~~shall~~)) must notify ((~~ESR~~)) IDS, in writing, of any material modification or alteration in the components and/or the design of the certified device. Within ninety days of notifying the ((~~ESR~~)) IDS of the material modification or alteration to a certified device, the manufacturer must resubmit to ((~~ESR~~)) IDS the evidence of compliance as required in WAC 204-50-040.

AMENDATORY SECTION (Amending WSR 05-17-065, filed 8/11/05, effective 9/11/05)

WAC 204-50-070 Variable calibration. To be certified, a device must be capable of being preset, by the manufacturer or by an ASP, at any fail level from .02 through .09% BAC (plus or minus .005% BAC). The actual setting of each device, unless otherwise mandated by the originating court, ((~~shall~~)) must be .025 BAC. The capability to change this setting ((~~shall~~)) must be made secure, by the manufacturer, or by an ASP.

AMENDATORY SECTION (Amending WSR 05-17-065, filed 8/11/05, effective 9/11/05)

WAC 204-50-080 Device maintenance and reports. (1) Each lessee ((~~shall~~)) must have the device examined by the manufacturer or by an ASP for correct calibration and evidence of tampering at intervals not to exceed sixty-five days, or more often as may be ordered by the originating court.

(2) The device must be calibrated for accuracy according to the manufacturer's and the IDS's procedures, using a wet bath simulator or dry gas standard.

(a) Wet bath simulators must use a mercury in glass or digital thermometer with a scale graduated in tenths of a degree measuring a range between 33.5 and 34.5 degrees centigrade. These thermometers must be certified annually using a National Institute of Standards and Technology (NIST) certified digital reference thermometer.

(b) Dry gas alcohol standards must be certified to a known reference value and traceable to National Institute of Standards and Technology - NIST Traceable Reference Material (NIST-NTRM) ethanol standards. This known value will also be adjusted for pressure changes due to elevation to which the dry gas is being used.

(3) All data contained in the device's memory must be downloaded and the manufacturer and/or the ASP ((~~shall~~)) must make a hard copy or electronic equivalent of the client data and the results of each examination. Any evidence of noncompliance, violations, or signs of tampering or circumvention ((~~shall~~)) must be reported as requested by and in a format acceptable to the originating court, IDS and/or DOL. All information obtained as a result of each inspection ((~~shall~~)) must be retained by the manufacturer or approved service provider for two years from the date the device is removed from the vehicle.

((~~(3)~~)) (4) Any ASP proposing to offer a mail-in calibration and examination program to their lessees must obtain approval from ((~~ESR~~)) IDS prior to implementing the mail-in program. To obtain approval the ASP must submit procedures outlining how the mail-in program will work. ASP must also provide the customer with written instructions on how to utilize the mail-in program. A mail-in program does not eliminate or take the place of any requirements outlined in WAC 204-50-120.

((~~(4)~~)) (5) The manufacturer and/or ASP must provide upon request, additional reports in a format acceptable to and at no cost to DOL, IDS and/or the originating court.

(6) The ASP must maintain records documenting all calibrations, downloads and any other service performed, to include violation reset service. Charges for installations, calibrations, downloads and service must be made using a numbered billing invoice. The billing invoice must contain the date of service and all fees for service must be itemized.

(7) Retention of the record of installation, calibrations, downloads, service and associated invoices must be maintained on site for a minimum of two years.

AMENDATORY SECTION (Amending WSR 05-17-065, filed 8/11/05, effective 9/11/05)

WAC 204-50-090 Device security. The manufacturer and its approved service provider(s) ((~~shall~~)) must take all reasonable steps necessary to prevent tampering or physical circumvention of the device. These steps ((~~shall~~)) must include:

(1) Special locks, seals, and installation procedures that prevent or record evidence of tampering and/or circumvention attempts.

(2) In addition, the approved service provider will affix to the device a label containing the following notation: "Warning - This device has been installed under the laws of the state of Washington. Attempts to disconnect, tamper with, or circumvent this device may subject you to criminal prosecution. For more information, call (insert manufacturer's or approved service provider's toll free number)."

(3) No owner or employee of a manufacturer of ASP may authorize or assist with the disconnection of a device, or enable the use of any "emergency bypass" mechanism or any other "bypass" procedure that allows a person restricted to use the vehicle equipped with a functioning ignition interlock, to start or operate a vehicle without providing all required breath samples. Doing so may subject the person to criminal prosecution under RCW 46.20.750 and may cause the revocation of a manufacturer's certification under WAC 204-50-040.

(4) All known device circumventions or tampering must be reported to the IDS upon request.

AMENDATORY SECTION (Amending WSR 05-17-065, filed 8/11/05, effective 9/11/05)

WAC 204-50-110 Mandatory operational features. Notwithstanding other provisions of this chapter, a certified device must ((~~comply with the following~~)):

(1) ((~~The device shall~~)) Be designed to permit a "restart" within two minutes of a stall or when the ignition has been turned off.

(2) ((~~The device shall~~)) Automatically and completely purge residual alcohol before allowing subsequent tests.

(3) ((~~The device shall~~)) Be installed in such a manner that it will not interfere with the normal operation of the vehicle after it has been started.

(4) ((~~Each device shall~~)) Be provided with an ample supply of disposable mouth pieces designed to minimize the introduction of saliva into the device.

(5) ((~~Each device shall~~)) Be uniquely serial numbered. Along with any other information required by DOL or by an originating court, all reports to DOL or to an originating court concerning a particular device ((~~shall~~)) must include the name, address, and driver's license number of the lessee, and the unique number of the device. The name, address, telephone number (toll free), and contact person of the manufacturer or approved service provider furnishing such report ((~~shall~~)) must also be included as part of the report.

(6) ((~~Each device shall~~)) Record each time the vehicle is started, the results of the test, how long the vehicle was operated, and any indication of bypassing or tampering with the device.

(7) ((~~Each device shall~~)) Require the operator of the vehicle to submit to a retest within ten minutes of starting the vehicle. Retesting ((~~shall~~)) must continue at intervals not to exceed sixty minutes after the first retest. The device ((~~shall~~)) must:

(a) Be equipped with a method of immediately notifying peace officers if the required retest(s) above is not performed, or if the result of the retest exceeds the lower of .025 BAC or the alcohol concentration as prescribed by the originating court. Examples of acceptable forms of notification are repeated honking of the vehicle's horn, repeated flashing of the vehicle's headlamps, or the wailing of a small siren. Such notification may be disabled only by switching the engine off, or by the achievement of a retest at a level the lower of .025 BAC or the maximum allowable alcohol concentration as set by the originating court.

((~~(8) In addition, if a retest is not performed when called for by the device, or if the operator is unable to achieve a retest at a level the lower of .025 BAC or the maximum allowable alcohol concentration as set by the originating court, the device shall~~)) (b) Automatically enter a violation reset condition. A device which enters a violation reset condition and the vehicle in which it is installed, must be returned to the manufacturer or ASP to be serviced within five days or the device ((~~shall~~)) must render the vehicle inoperable. The manufacturer or approved service provider ((~~shall~~)) must notify the originating court (if any) of such violation reset conditions in a format acceptable to the originating court within five days of servicing the device. The manufacturer or ASP ((~~shall~~)) must provide notification to DOL and IDS in a format acceptable should DOL or IDS promulgate rules requiring such notification.

AMENDATORY SECTION (Amending WSR 05-17-065, filed 8/11/05, effective 9/11/05)

WAC 204-50-120 Other provisions. Notwithstanding other provisions of this chapter, each manufacturer of a certified device, either on its own or through its approved service provider(s) must:

(1) ((~~Shall~~)) Guarantee repair or replacement of a defective device within the state of Washington within a maximum of forty-eight hours of receipt of a complaint.

(2) ((~~Shall~~)) Demonstrate to the satisfaction of ((~~ESR~~)) IDS, a service delivery plan under which any restricted operator may obtain installation and routine service of that manufacturer's device within a seventy-five mile radius of his or her place of residence. ((~~Further, shall~~))

(3) Provide ((~~ESR~~)) IDS, a map of the state of Washington showing the area covered by each approved service provider, and the name, address, and telephone number of each approved service provider. ((~~The manufacturer shall provide ESR a revised map showing~~))

(a) Any changes to its authorized service provider network within ten days of such change. ((~~Also within thirty days of~~))

(b) Any additions to the approved service provider network, provide evidence to ((~~ESR~~)) IDS that any added ASPs have the insurance coverage as required by subsection (7) of this section.

((~~(3) Shall~~)) (4) Maintain a twenty-four hour, three hundred sixty-five days a year toll-free telephone number for lessees to call if they have problems with the device they have leased from the manufacturer or approved service provider. Calls must either be answered by a technician qualified to service the manufacturer's devices, or the call must be returned by a qualified technician within thirty minutes of the original call.

((~~(4) Shall~~)) (5) Provide the lessee a statement of charges clearly specifying warranty details, monthly lease amount, any additional charges anticipated for routine calibration and service checks and what items, if any, are provided without charge. To ensure equal accessibility of the benefits of this technology to all citizens of the state of Washington, such pricing ((~~shall~~)) must be uniform statewide.

((~~(5) Shall~~)) (6) Provide the lessee written notice of any changes in the statement of charges regardless of what person or agency requested the change, prior to the implementation of such changes.

((~~(6) Shall~~)) (7) Provide to ((~~ESR~~)) IDS proof that the manufacturer has products liability insurance coverage with minimum liability limits of one million dollars per occurrence, and three million dollar aggregate. Liability covered ((~~shall~~)) must include, but not limited to: Defects in product design, materials, and workmanship during manufacture, calibration, installation, removal, and all completed operations. Such insurance must be provided by a company authorized to offer such coverage in the state, and such company ((~~shall~~)) must include the state of Washington as an additional insured, and ((~~shall~~)) must agree to notify ((~~ESR~~)) IDS not less than thirty days before the expiration or termination of such coverage. Insurance coverage required in this subsection must be in addition to, and not considered a replacement for coverage required in subsection ((~~(7)~~)) (8) of this section.

((~~(7) Shall~~)) (8) Provide ((~~ESR~~)) IDS proof that each and every ASP has garage keepers liability insurance coverage with minimum liability limits of fifty thousand dollars. Liability covered ((~~shall~~)) must include, but not be limited to, damage to lessee's vehicle and personal property while in the care and/or custody of the ASP. Further ((~~shall~~)) must provide ((~~ESR~~)) IDS proof that each and every ASP has completed operations insurance coverage with minimum liability limits of one million dollars per occurrence, and two million dollars aggregate. Liability covered ((~~shall~~)) must include, but not be limited to, defects in materials and workmanship during installation, removal, service, calibration, and monitoring. All such insurance must be provided by a company authorized to offer such coverage in the state, and such company ((~~shall~~)) must include the state of Washington as an additional insured, and ((~~shall~~)) must agree to notify ((~~ESR~~)) IDS not less than thirty days before expiration or termination of such coverage. Insurance coverage required in this subsection must be in addition to and not considered a replacement for coverage required in subsection (6) of this section.

((~~(8) Shall,~~)) (9) If so requested by the originating court, notify the originating court, if any, of the removal of a device under any circumstances other than:

(a) Immediate device repair needs.

(b) Removal of the device in order to switch it to a replacement vehicle to be operated by the restricted operator.

Report of such a vehicle switch must be transmitted to the originating court within two business days of such a switch, if so requested by the originating court at the time of initial installation of the device. Report of such a vehicle switch must be transmitted to the DOL within two business days of such a switch, if so requested by the DOL. **NOTE:** Whenever a device is removed for repair, and cannot be immediately reinstalled, a substitute device ((~~shall~~)) must be utilized. Under no circumstances ((~~shall~~)) will a manufacturer or ASP knowingly permit a restricted operator to drive a vehicle not equipped with a functioning device.

AMENDATORY SECTION (Amending WSR 05-17-065, filed 8/11/05, effective 9/11/05)

WAC 204-50-130 Removal procedures. The manufacturer or its approved service provider ((~~shall~~)) must remove the device and return the vehicle in normal operating condition. The manufacturer or its ASP ((~~shall~~)) must provide any final report requested by the originating court, IDS and/or requested by DOL.

WSR 09-15-151
PROPOSED RULES
WASHINGTON STATE PATROL
[Filed July 21, 2009, 10:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-031.

Title of Rule and Other Identifying Information: WAC 204-10-022 Body requirements.

Hearing Location(s): General Administration Building Auditorium, 210 11th Avenue, Olympia, WA 98504, on August 25, 2009, at 9:00 a.m.

Date of Intended Adoption: August 26, 2009.

Submit Written Comments to: Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, e-mail melissa.vangorkom@wsp.wa.gov, fax (360) 596-4015, by August 25, 2009.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by August 24, 2009, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Provides clarification for frame certification. Removes welding requirements and requires that the builder certify the structural strength of the frame.

Reasons Supporting Proposal: Provides clarification for frame certification.

Statutory Authority for Adoption: RCW 46.37.005 and 46.37.240.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Melissa Van Gorkom, General Administration Building, P.O. Box 42600, Olympia, WA 98504-2600, (360) 596-4017; and Enforcement: VIN specialists, General Administration Building, P.O. Box 42600, Olympia, WA 98504-2600, (360) 704-2954.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A certified letter from the builder of the frame does not create more than a minor cost.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, phone (360) 596-4017, fax (360) 596-4015, e-mail melissa.vangorkom@wsp.wa.gov.

Cost-Benefit Analysis

SUMMARY OF PROPOSED RULES: The Washington state patrol equipment and standards review (ESR) unit is proposing amendments to WAC 204-10-022 Body requirements.

The purpose of the chapter is to outline body requirements necessary to ensure that equipment used on motor vehicles complies with current safety standards.

The proposed major changes to the chapter are:

- Elimination of the welding requirement.
- Updating the certification requirement so that the certification now comes from the builder instead of an engineer, and outlines the documentation required as being either:
  1. A notarized letter from the building of the frame outlining the portions of the Federal Motor Vehicle Safety Standards (FMVSS) which have been met, or
  2. Certification provided on the vehicle in the form of a label which has been affixed in accordance with FMVSS standards outlining the portions of FMVSS which have been met.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS: Since the proposed amendments "make significant amendments to a policy or regulatory program" under RCW 34.05.328 (5)(c)(iii), ESR has determined the proposed rules to be "significant" as defined by the legislature.

As required by RCW 34.05.328 (1)(d), ESR has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

COSTS: ESR analysis revealed that the cost associated with requiring a notarized letter from the builder would be minor if any.

BENEFITS: The benefit of these proposed amendments include:

- Clarifying the requirement for those who use WAC 204-10-022 to clearly outline the certification required for the vehicle.
- Ensuring that the frame for the vehicle has been certified by its builder as meeting the applicable safety standards.

CONCLUSION: ESR concludes that the probable benefits of the proposed rule amendments exceed the probable cost. ESR has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

Please contact Melissa Van Gorkom if you have any questions at (360) 596-4017.

July 21, 2009
John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 08-19-079, filed 9/16/08, effective 10/17/08)

WAC 204-10-022 Body requirements. (1) Defroster and defogging devices: Every enclosed motor vehicle must be equipped with a device capable of defogging and defrosting the windshield area. Vehicles or exact replicas of vehicles manufactured prior to January 1938 are exempt from this requirement.

(2) Door latches: Every enclosed motor vehicle equipped with side doors leading directly into a compartment that contains one or more seating accommodations must be equipped with door latches which firmly and automatically secure the door when pushed closed and which allow each door to be opened both from the inside and outside.

(3) Hoodlatches: A front opening hood must be equipped with a primary and a secondary latching system to hold the hood in a closed position.

Hoods are optional equipment on vehicles defined as street rods and kit vehicles by the Washington state patrol vehicle inspectors.

(4) Enclosed passenger compartment: A motor vehicle with an enclosed passenger compartment and powered by an internal combustion engine must be constructed to prevent the entry of exhaust fumes into the passenger compartment.

(5) Floor pan: A motor vehicle must be equipped with a floor pan under the entire passenger compartment capable of supporting the weight of the number of occupants that the vehicle is designed to carry.

(6) Bumpers: A motor vehicle must be equipped with a bumper on both the front and rear of the vehicle with the exception of motor vehicles where the original or predominant body configuration, provided by a recognized manufacturer, did not include such bumper or bumpers in the design of the vehicle. For the relevant model year, bumpers must accommodate recognized manufacturer impact absorption systems pursuant to applicable SAE Bumper Standards or equivalent standards.

Bumpers are optional equipment on vehicles defined as street rods and kit vehicles by the Washington state patrol vehicle inspectors.

Bumpers, unless specifically exempted above, must:

(a) Be at least four and one-half inches in vertical height.

(b) Be centered on the vehicle's centerline.

(c) Extend no less than the width of the respective wheel track distances.

(d) Be attached to the vehicle in a manner equivalent to the original manufacturer's installation.

(e) Be horizontal load bearing and attach to the vehicle frame to effectively transfer energy when impacted.

(f) Be mounted at a maximum height based on the original gross vehicle weight rating (GVWR) of the vehicle, measured from a level surface to the highest point on the bottom of the bumper. For vehicles exempted from the bumper requirement for the reasons stated above, a maximum frame elevation measurement must be made to the bottom of the frame rail. Maximum heights are as follows:

	Front	Back
Passenger Vehicles	22 Inches	22 Inches
4,500 lbs. and under GVWR	24 Inches	26 Inches
4,501 lbs. to 7,500 lbs. GVWR	27 Inches	29 Inches
7,501 lbs. and over GVWR	28 Inches	30 Inches

A blocker beam or additional bumper may not be used to meet the above requirements.

(g) If an existing bumper from a recognized manufacturer is not used and a special bumper is fabricated, it must be certified as meeting the bumper standards set under 49 CFR 581.

(7) Fenders: All wheels of a motor vehicle must be equipped with fenders designed to cover the entire tire tread width that comes in contact with the road surface. Coverage of the tire tread circumference must be from at least fifteen degrees in front and to at least seventy-five degrees to the rear of the vertical centerline at each wheel measured from the center of the wheel rotation. At no time can the tire come in contact with the body, fender, chassis, or suspension of the vehicle. Street rods and kit vehicles which are more than forty years old and are owned and operated primarily as a collector's item need not be equipped with fenders when the vehicle is used and driven during fair weather on well-maintained, hard-surfaced roads.

(8) Frame: A motor vehicle must be equipped with a frame. If an existing frame from a recognized manufacturer is not used and a special frame is fabricated, it must be constructed of wall box or continuous section tubing, wall channel, or unitized construction capable of supporting the vehicle, its load, and the torque produced by the power source under all conditions of operation. ((~~All welding on the frame must be completed by a certified welder and~~)) The structural strength of the frame must be certified by ((~~an engineer~~)) the builder as meeting the applicable standards set under 49 CFR 571 Parts 201, 214, 216, and 220 through 224, and the SAE Standards. Such certification must be made by either:

(a) A notarized letter from the builder of the frame outlining the portions of the Federal Motor Vehicle Safety Standards (FMVSS) which have been met; or

(b) Certification provided on the vehicle in the form of a label which has been affixed in accordance with FMVSS outlining the portions of the FMVSS which have been met.

WSR 09-15-159
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed July 21, 2009, 12:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-10-055.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-406-0005 Can I apply for cash, medical, or Basic Food?, 388-406-0035 How long does the department have to process my application?, and 388-406-0045 Is there a good reason my application for cash or medical assistance has not been processed?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6094), on August 25, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 26, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAU-RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on August 25, 2009.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by August 4, 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 purpose of the proposed rule change is to eliminate the forty-five day processing timeframe for general assistance applications filed by a person in confinement in a correctional facility or institution.

Reasons Supporting Proposal: The proposed amendments are needed to comply with the statutory changes made to RCW 74.08.060 by the enactment of SSB 6024 (chapter 198, Laws of 2009). The governor signed the law on April 23, 2009, which goes into effect on November 1, 2009.

Statutory Authority for Adoption: RCW 74.08.060, 74.04.050, 74.04.057, and 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.-057, 74.04.660, and 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Melissa Mathson, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4563.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by defining when applications are accepted and when they will be processed.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to… rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." These rules affect client applications for benefits.

July 17, 2009
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-09-042, filed 4/10/08, effective 5/11/08)

WAC 388-406-0005 Can I apply for cash, medical, or Basic Food? (1) You can apply for any benefit the department offers, including cash assistance, medical assistance, or Basic Food.

(2) You must meet certain eligibility requirements in order to receive a program benefit.

(3) You can apply for someone else if you are:

(a) A legal guardian, caretaker, or authorized representative applying for:

(i) A dependent child;

(ii) An incapacitated person; or

(iii) Someone who is deceased.

(b) Applying for someone who cannot apply for some other reason. We may ask why the applicant is unable to apply on their own behalf.

(4) If you get Supplemental Security Income (SSI), you do not need to apply for medical benefits. We automatically open medical benefits for you.

(5) A person or agency may apply for GAU or medical assistance for you if:

(a) You temporarily live out-of-state; and

(b) You are a Washington state resident.

(6) When you are confined or incarcerated in a Washington state public institution, you may apply for cash or medical assistance ((~~within forty-five days prior to your expected release date~~)) if you meet the following criteria:

(a) You are confined by or in the following public institutions:

(i) Department of corrections;

(ii) City or county jail; or

(iii) Institution for mental diseases (IMD).

(b) Staff at the public institution provide medical records including diagnosis by a mental health professional that you have a mental disorder (as defined in the Diagnostic and Statistical Manual of Psychiatric Disorders, most recent edition) that affects your thoughts, mood or behavior so severely that it prevents you from performing any kind of work.

(7) We will make an eligibility determination for medical assistance prior to your release from confinement and will authorize medical benefits upon your release from confinement when you:

(a) Meet the criteria of subsection (6) in this section; and

(b) Were receiving medicaid or general assistance benefits immediately before confinement or within the five years prior to confinement.

(8) If you meet the criteria in subsection (6) but did not receive medicaid or general assistance benefits within the five years prior to confinement, the department will process your request for medical assistance within the time frames in WAC 388-406-0035.

(9) If you are applying for assistance for a youth leaving incarceration in a juvenile rehabilitation administration or county juvenile detention facility, you may apply for assistance within forty-five days prior to release. We will process your application for medical assistance when we receive it, and if eligible, we will authorize medical benefits upon the youth's release from confinement.

AMENDATORY SECTION (Amending WSR 03-22-039, filed 10/28/03, effective 12/1/03)

WAC 388-406-0035 How long does the department have to process my application? (1) We must process your application as quickly as possible. We must respond promptly to your application and to any information you give us. We cannot delay processing your request by using the time limits stated in this section as a waiting period for determining eligibility.

(2) Unless your ((~~application~~)) eligibility determination is delayed for good cause under WAC 388-406-0040, we process your application for benefits within thirty calendar days, except:

(a) If you are pregnant, we must process your application for medical within fifteen working days;

(b) If you are applying for general assistance (GA-U), alcohol or drug addiction treatment (ADATSA), or medical assistance, we must process your application within forty-five calendar days unless there is good cause as described in WAC 388-406-0045; and

(c) If you are applying for medical assistance that requires a disability decision, we must process your application within sixty calendar days.

(3) For calculating time limits, "day one" is the date following the date:

(a) The department received your application for benefits under WAC 388-406-0010;

(b) Social Security gets a request for food benefits from a Basic Food assistance unit in which all members either get or are applying for Supplemental Security Income (SSI);

(c) You are released from an institution if you get or are authorized to get SSI and request Basic Food through Social Security prior to your release.

AMENDATORY SECTION (Amending WSR 02-14-023, filed 6/21/02, effective 7/1/02)

WAC 388-406-0045 Is there a good reason my application for cash or medical assistance has not been processed? If your application for cash or medical assistance is not processed within the time limits under WAC 388-406-0035, the department must decide if there is a good reason for the delay. This good reason is also called "good cause."

(1) We do not have a good reason for not processing your application for TANF or SFA within thirty days if:

(a) We did not give or send you a notice of what information we needed to determine your eligibility within twenty days from the date of your application;

(b) We did not give or send you a notice that we needed additional information or action within five calendar days of the date we learned that more information was needed to determine eligibility;

(c) We did not process your application within five calendar days from getting the information needed to decide eligibility; and

(d) We decide good cause exists but do not document our decision in the case record on or before the time limit for processing the application ends.

(2) We do have a good reason for not processing your application timely if:

(a) You do not give us the information or take an action needed for us to determine eligibility;

(b) We have an emergency beyond our control; or

(c) There is no other available verification for us to determine eligibility and the eligibility decision depends on information that has been delayed such as:

(i) Medical documentation;

(ii) For cash assistance, extensive property appraisals; or

(iii) Out-of-state documents or correspondence.

(3) For medical assistance, good cause exists only when the department otherwise acted promptly at all stages of the application process.

(4) For general assistance (GA), good cause exists if you apply when you are confined in a Washington State public institution as defined in WAC 388-406-0005 (6)(a)

WSR 09-15-160
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed July 21, 2009, 12:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-104.

Title of Rule and Other Identifying Information: The community services division is proposing to amend WAC 388-450-0175 Does the department offer income deduction for the general assistance program as an incentive for clients to work?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6094), on August 25, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 26, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on August 25, 2009.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by August 4, 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 in order to align the general assistance earned income deductions with RCW 74.04.266 General assistance—Earned income exemption to be established for unemployable persons, and the earned income incentive offered under the temporary assistance for needy families (TANF) program.

Reasons Supporting Proposal: The changes are necessary to comply with RCW 74.04.266 and ESHB 1244, chapter 564, as passed the legislature in 2009.

Statutory Authority for Adoption: RCW 74.04.266, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510 and chapter 564, Laws of 2009 (ESHB 1244).

Statute Being Implemented: RCW 74.04.266, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510 and chapter 564, Laws of 2009 (ESHB 1244).

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Melissa Mathson, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4563.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by changing the earned income incentives to match the incentives offered under the TANF program.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to… rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

July 17, 2009

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-12-031, filed 5/29/08, effective 7/1/08)

WAC 388-450-0175 Does the department offer an income deduction for the general assistance program as an incentive for clients to work? The department gives ((~~special~~)) a deduction((~~s~~)) to people who receive income from work while receiving general assistance. The deduction((~~s apply~~)) applies to general assistance cash benefits only. We allow the following income deduction((~~s~~)) when we determine the amount of your benefits:

(1) ((~~We subtract eighty-five dollars plus one half of the remainder of your monthly gross earned income as an incentive to employment.~~

~~(2) We also subtract an amount equal to twenty percent of your gross earned income to allow for work expenses~~)) We only count fifty percent of your monthly gross earned income. We do this to encourage you to work.

WSR 09-15-161
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
(Division of Developmental Disabilities)
[Filed July 21, 2009, 12:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-07-039.

Title of Rule and Other Identifying Information: The department is amending WAC 388-825-068 What medicaid state plan services can DDD authorize?

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 25, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 26, 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 DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on August 25, 2009.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by August 4, 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 amending WAC 388-825-068, maintain consistency with the updated requirements in chapters 388-106 and 388-71 WAC regarding adult day health services.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040, 71A.14.030.

Statute Being Implemented: Title 71A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98504; (360) 725-3400; Implementation: Shannon Manion, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3454; and Enforcement: Don Clintsman, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3421.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business impact statement was prepared as these rules incorporate Washington state statute and rules of other Washington state agencies per RCW 19.85.025(3).

RCW 34.05.328 (5)(b), rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide signifi-

cance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are not considered significant rules as defined in RCW 34.05.328 (5)(b).

RCW 34.05.328(5)(b), rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

July 15, 2009
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-068 What medicaid state plan services can DDD authorize? DDD ((~~can~~)) may authorize the following medicaid state plan services:

(1) Medicaid personal care, per chapter 388-106 WAC;

(2) Private duty nursing for adults age eighteen and older; per chapter 388-106 WAC;

(3) Private duty nursing for children under the age of eighteen, per WAC 388-551-3000;

(4) Adult day health for adults, per chapter 388-106 WAC ((~~388-106-0810 and 388-106-0815~~)); and

(5) ICF/MR services, per chapters 388-835 and 388-837 WAC.

((~~**Medicaid State Plan Services**~~))	
((~~Adult day health~~ ~~ICF/MR services~~ ~~Medically intensive home care program for children~~ ~~Private duty nursing for adults~~))	((~~Medicaid personal care~~ ~~• In-home~~ ~~• Adult family home~~ ~~• Adult residential care~~))

WSR 09-15-169
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed July 21, 2009, 1:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-114.

Title of Rule and Other Identifying Information: Chapter 308-96A WAC, Vehicle licenses, specifically WAC 308-96A-300 Changing assigned registration year.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on August 25, 2009, at 10 a.m.

Date of Intended Adoption: September 22, 2009.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48205, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-7821 or 902-7822, by August 24, 2009.

Assistance for Persons with Disabilities: Contact Dale R. Brown by August 24, 2009, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to comply with HB 1478 passed by the legislature 2009 regular session.

Reasons Supporting Proposal: Changing the assigned registration year when the registered owner is a member of the armed forces stationed outside of Washington.

Statutory Authority for Adoption: RCW 46.01.110.

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

Name of Agency Personnel Responsible for Drafting: Dale R. Brown, 1125 Washington Street S.E., Olympia, WA, (360) 902-4020; Implementation and Enforcement: Toni Wilson, 1125 Washington Street S.E., Olympia, WA, (360) 902-3811.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

July 21, 2009
Mykel D. Gable
Assistant Director
Driver and Vehicle Services

AMENDATORY SECTION (Amending WSR 01-17-017, filed 8/3/01, effective 9/3/01)

WAC 308-96A-300 Changing assigned registration year. When will the assigned registration year of a vehicle be changed?

(1) The department will change the registration year of a vehicle if the vehicle remains unlicensed for more than the entire assigned registration year.

(2) The registered owner may request a change of registration expiration month. This can only be done at the time of renewal and requires the registered owner to purchase more than twelve months of registration, limited to the vehicle field system constraints and license tab availability.

(3) When the vehicle is being added to a fleet.

(4) When a vehicle has been sold and the registration is no longer valid. (Example: When a vehicle has been sold with expired tabs, a new expiration date will be assigned at the time of registration renewal.)

(5) When the registered owner is a member of the armed forces stationed outside of Washington. See RCW 46.16.-006.

WSR 09-15-173
PROPOSED RULES
DEPARTMENT OF COMMERCE
[Filed July 21, 2009, 3:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-19-125.

Title of Rule and Other Identifying Information: The department is amending chapter 365-190 WAC, Minimum guidelines to classify agricultural, forest and mineral lands and critical areas. The department is also amending and repealing specific sections of chapter 365-195 WAC, Procedural criteria for adopting comprehensive plans and development regulations. The department is proposing a new chapter 365-196 WAC to replace the sections amended and repealed under chapter 365-195 WAC.

Hearing Location(s): Wednesday, September 30, 2009, from 9:00 a.m. to 10:30 a.m.*, Big Bend Community College, ATEC Building, 7662 Chanute Street N.E., Moses Lake, WA; on Thursday, October 1, 2009, from 9:00 a.m. to 10:30 a.m.*, General Administration Building, Auditorium, 210 11th Avenue S.W., Olympia, WA; and on Friday, October 2, 2009, from 9:00 a.m. to 10:30 a.m.*, Everett Community College, Whitehorse Hall, 801 Wetmore Avenue, Everett, WA.

*Hearings can go till noon if necessary to take all testimony.

All hearings are accessible. If you need reasonable accommodation, call Dave Andersen at (360) 725-3052.

If you have any questions, contact Dave Andersen, AICP, Plan Review and Technical Assistance Manager, Growth Management Services Office, Washington State Department of Commerce, dave.andersen@commerce.wa.gov, (360) 725-3052.

Date of Intended Adoption: November 1, 2009.

Submit Written Comments to: Dave Andersen, AICP, Growth Management Services, Washington State Department of Commerce, P.O. Box 42525, Olympia, WA 98504-2525, e-mail wacupdate@commerce.wa.gov, by October 2, 2009.

Assistance for Persons with Disabilities: Contact Dave Andersen by September 15, 2009, TTY (360) 586-0772 or (360) 725-3052.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules address several statutory amendments to chapter 36.70A RCW, and they revise recommendations regarding county and city implementation of chapter 36.70A RCW. The proposed rule amends chapter 365-190 WAC. The proposed rule replaces WAC 365-195-010 through 365-195-865 with a new chapter 365-196 WAC for improved organization and clarity. Finally, the heading for chapter 365-195 WAC is renamed to better describe the existing sections that remain within that chapter.

Reasons Supporting Proposal: The original WAC guidelines were designed to assist with adoption of a local government's first full Growth Management Act (GMA) plan. Local governments have now completed this task and guidelines more appropriate and relevant to current state GMA planning are needed. Amendments to the GMA have been adopted in almost every legislative session since 1992 and, with some exceptions, have not been incorporated into the WAC. The courts and Washington state growth management hearings boards have also interpreted and clarified significant portions of the GMA. These proposed amendments bring the WAC up-to-date with current law and the state of the practice.

Statutory Authority for Adoption: RCW 36.70A.050 and 36.70A.190.

Statute Being Implemented: Chapters 36.70A, 36.70B RCW.

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

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

Name of Agency Personnel Responsible for Drafting: David Andersen, 906 Columbia Street S.W., Olympia, WA 98504, (360) 725-3052; Implementation: Leonard Bauer, 906 Columbia Street S.W., Olympia, WA 98504, (360) 725-3055; and Enforcement: The rules contain no enforcement authority.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapters 365-190 and 365-195 WAC provide guidance to counties and cities regarding implementation of the GMA. Counties and cities consider these rules, but they are not binding on counties and cities. In choosing how to implement the GMA, using the guidance in the rules, counties and cities may or may not choose to revise their comprehensive plans, development regulations, and other local land use ordinances. The rules are not substantive and if the local government does not follow the rules, they are not subject to any penalty or sanction nor do the rules establish standards for the issuance of a license.

Although the choices made by local governments may result in some impacts to many types and sizes of businesses, these rules do not directly regulate any businesses. Instead, they provide guidance to local governments in developing their plans and regulations. Thus, it can be determined that the rules do not impose more than minor costs on businesses in an industry, and a small business economic impact statement is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The department of commerce is not listed as one of the agencies to which this section applies, and does not wish to make this section voluntarily applicable to the rule per subsection (5)(a)(ii). Therefore, unless subsection (5)(a)(ii) is invoked by the joint administrative rules review committee after the filing of the CR-102, no cost-benefit analysis needs to be prepared for this rule.

July 16, 2009
Marie Sullivan
Government Relations Director

AMENDATORY SECTION (Amending WSR 91-07-041, filed 3/15/91, effective 4/15/91)

WAC 365-190-020 Purpose. (1) The intent of this chapter is to establish minimum guidelines to assist all counties and cities ((~~statewide~~)) in classifying and designating agricultural lands, forest lands, mineral resource lands, and

critical areas. ((These guidelines shall be considered by counties and cities in designating these lands.))

(2) Growth management, natural resource land conservation, and critical areas protection share problems related to governmental costs and efficiency. ((Sprawl and)) The unwise development of natural resource lands or areas susceptible to natural hazards may lead to inefficient use of limited public resources, jeopardize environmental resource functions and values, subject persons and property to unsafe conditions, and affect the perceived quality of life. It is more costly to remedy the loss of natural resource lands or critical areas than to conserve and protect them from loss or degradation. The inherent economic, ecological, social, and cultural values of natural resource lands and critical areas should be considered in the development of strategies designed to conserve and protect these lands.

(3) In recognition of these common concerns, classification and designation of natural resource lands and critical areas is intended to assure the long-term conservation of natural resource lands and the protection of critical areas, and to preclude land uses and developments which are incompatible with natural resource lands and critical areas. When classifying and designating natural resource lands and critical areas, counties and cities should integrate regulatory and nonregulatory approaches together in a comprehensive program that relates to existing local, state, and federal efforts. An integrated approach should also consider other applicable planning requirements, including the need to identify open space corridors in RCW 36.70A.160, and the need to include the best available science in policies and regulations protecting critical areas in RCW 36.70A.172.

(4) There are qualitative differences between and among ((natural resource lands and)) critical areas. Not all areas and ecosystems are critical for the same reasons. Some are critical because of the hazard they present to public health and safety, some because of the values they represent to the public welfare. In some cases, the risk posed to the public by use or development of a critical area can be mitigated or reduced by engineering or design; in other cases that risk cannot be effectively reduced except by avoidance of the critical area. ((Hence,)) Classification and designation of critical areas is intended to lead counties and cities to recognize the differences among these areas, and to develop appropriate regulatory and nonregulatory actions in response.

(5) There are also qualitative differences between and among natural resource lands. The three types of natural resource lands (agricultural, forest, and mineral) vary widely in their use, location, and size. One type may overlap another type. For example, designated forest resource lands may also include designated mineral resource lands. Agricultural resource lands vary based on the types of crops produced, their location on the landscape, and their relative economic importance to sustaining agricultural industries in an identified geographic area.

(6) Counties and cities required or opting to plan under the ((Growth Management)) act ((of 1990)) should consider the definitions and guidelines in this chapter when preparing development regulations ((which)) that preclude uses and development incompatible with natural resource lands and critical areas (see RCW 36.70A.060). Precluding incompatible uses and development does not mean a prohibition of all uses or development. Rather, it means governing changes in land uses, new activities, or development that could adversely affect critical areas. ((Thus)) For each natural resource land type and for each critical area, counties and cities planning under the act should define classification schemes and prepare development regulations that govern changes in land uses and new activities by prohibiting clearly inappropriate actions and restricting, allowing, or conditioning other activities as appropriate.

(7) It is the intent of these guidelines that critical areas designations overlay other land uses including designated natural resource lands. ((That is)) For example, if two or more land use designations apply to a given parcel or a portion of a parcel, both or all designations ((shall)) must be made. Regarding natural resource lands, counties and cities should allow existing and ongoing resource management operations, that have long-term commercial significance, to continue. Counties and cities should encourage ((utilization of)) resource land managers to use the best management practices of their industry, especially where existing and ongoing resource management operations that have long-term commercial significance include designated critical areas. Future operations or expansion of existing operations should be done in consideration of protecting critical areas, and with special consideration for conservation or protection measures needed to preserve or enhance anadromous fisheries.

AMENDATORY SECTION (Amending WSR 91-07-041, filed 3/15/91, effective 4/15/91)

WAC 365-190-030 Definitions. (1) "Agricultural land" is land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production. These lands are referred to in this chapter as agricultural resource lands to distinguish between formally designated lands, and other lands used for agricultural purposes.

(2) "Critical aquifer recharge areas" are areas with a critical recharging effect on aquifers used for potable water ((are)), including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge due to impervious surfaces. Some aquifers may also have critical recharging effects on streams, lakes, and wetlands that provide critical fish and wildlife habitat.

(3) "City" means any city or town, including a code city.

(4) "Critical areas" include the following ((areas and ecosystems)):

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable water, referred to in this chapter as critical aquifer recharge areas;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(5) "Erosion hazard areas" are those areas containing soils which, according to the United States Department of Agriculture ((Soil)) Natural Resources Conservation Service Soil ((Classification System)) Survey Program, may experience ((severe to very severe)) significant erosion. Erosion hazard areas also include coastal erosion-prone areas and channel migration zones.

(6) "Forest land" is land primarily ((useful for)) devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.-140, ((for commercial purposes,)) and that has long-term commercial significance ((for growing trees commercially)). These lands are referred to in this chapter as forest resource lands to distinguish between formally designated lands, and other lands used for forestry purposes.

(7) "Frequently flooded areas" are lands in the flood plain subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high ground water. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and ((the like)) areas subject to ponding.

(8) "Geologically hazardous" areas are areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting commercial, residential, or industrial development consistent with public health or safety concerns.

(9) ((Habitats of local importance include, a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration, such as cliffs, talus, and wetlands.)) (a) "Fish and wildlife habitat conservation areas" are areas designated for the critical role they serve in sustaining needed habitats and species for the functional integrity of the ecosystem. These areas include a seasonal range or habitat element where a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative population density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration, such as cliffs, talus, and wetlands. Counties and cities may also designate locally important habitats and species.

(b) "Habitats of local importance" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by counties and cities.

(10) "Landslide hazard areas" are areas potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.

(11) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of land. Long-term commercial significance means the land is capable of producing the specified natural resources at commercially sustainable levels for at least the twenty-year planning period if adequately conserved. Designated mineral resource lands of long-term commercial significance may have alternative post-mining land uses, as provided by the Surface Mining Reclamation Act, comprehensive plan and development regulations, or other laws.

(12) "Minerals" include gravel, sand, and valuable metallic substances.

(13) "Mine hazard areas" are those areas directly underlain by, adjacent to, or affected by mine workings such as adits, tunnels, drifts, or air shafts.

(14) "Mineral resource lands" means lands primarily devoted to the extraction of minerals or that have known or potential long-term commercial significance for the extraction of minerals.

(15) "Natural resource lands" means agricultural, forest and mineral resource lands which have long-term commercial significance.

(16) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(17) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(18) "Seismic hazard areas" are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, ((or)) soil liquefaction, debris flows, lahars, or tsunamis.

(19) "Species of local importance" are those species that are of local concern due to their population status or their sensitivity to habitat manipulation or that are game species as designated locally.

(20) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. ((When allowed to spread over wide areas,)) Urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(21) "Volcanic hazard" areas shall include areas subject to pyroclastic flows, lava flows, and inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

(22) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, grass-lined swales,

canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas ((created)) to mitigate conversion of wetlands, if permitted by the county or city.

AMENDATORY SECTION (Amending WSR 91-07-041, filed 3/15/91, effective 4/15/91)

WAC 365-190-040 Process. (1) The classification and designation of natural resource lands and critical areas is an important step among several in the overall growth management process. ((Together)) These steps, outlined in subsections (4) and (5) of this section comprise a vision of the future, and that vision gives direction to the steps in the form of specific goals and objectives. Under the ((Growth Management)) act, the timing of the first steps ((coincides)) coincided with development of the larger vision through the comprehensive planning process. ((People are asked to take the first steps, designation and classification of natural resource lands and critical areas, before the goals, objectives, and implementing policies of the comprehensive plan are finalized. Jurisdictions planning under the Growth Management Act must also adopt interim regulations for the conservation of natural resource lands and protection of critical areas. In this way, the classification and designation help give shape to the content of the plan, and at the same time natural resource lands are conserved and critical areas are protected from incompatible development while the plan is in process.

Under)) (2) The ((Growth Management)) act((,)) required preliminary classifications and designations ((will)) of natural resource lands and critical areas to be completed in 1991. ((Those)) Counties and cities planning under the act ((must also)) were to enact interim regulations to protect and conserve these natural resource lands and critical areas by September 1, 1991. By July 1, 1992, counties and cities not planning under the act ((must)) were to bring their development regulations into conformance with their comprehensive plans. By July 1, 1993, counties and cities planning under the act ((must)) were to adopt comprehensive plans, consistent with the goals of the act. Implementation of the comprehensive plans ((will)) was to occur by the following year.

(((1))) (3) Under RCW 36.70A.130, all counties and cities must review, and if needed, update their natural resource lands and critical areas designations. Counties and cities fully planning under the act must also review and, if needed, update their natural resource lands conservation provisions, comprehensive plans and development regulations. Legal challenges to some updates have led to clarifications of the ongoing review and update requirements in RCW 36.70A.-130, and the process for implementing those requirements. The process description and recommendations in this section incorporate those clarifications and describe both the initial designation and conservation or protection of natural resource lands and critical areas, as well as subsequent local actions to amend those designations and provisions.

(4) Classification is the first step in implementing RCW ((36.70A.050. It means)) 36.70A.170 and requires defining categories to which natural resource lands and critical areas will be assigned.

(a) Counties and cities are encouraged to adopt classification schemes that are consistent with federal and state classification schemes and those of adjacent jurisdictions to ensure regional consistency. Specific classification schemes for natural resource lands and critical areas are described in WAC 365-190-050 through 365-190-130.

(b) When classifying natural resource lands, counties and cities should consider how the range of classifications may change over time due to changes in demand, energy costs, and resource availability. Mineral resource lands are a unique type of natural resource land with potential for different land uses after mining is completed.

(c) State agency classification schemes are available for specific critical area types, including the wetlands rating systems for eastern and western Washington from the department of ecology, and the priority habitats and species categories and recommendations from the department of fish and wildlife. The department of natural resources provides significant information on geologic hazards and aquatic resources that may be useful in classifying these critical areas. Not all areas classified by state agencies must be designated, but such areas may be likely candidates for designation.

(5) Designation is the second step in implementing RCW 36.70A.170.

(a) Pursuant to RCW 36.70A.170, natural resource lands and critical areas ((will)) must be designated based on ((the)) their defined classifications. ((Designation establishes,)) For planning purposes, designation establishes:

(i) The classification scheme;

(ii) The general distribution, location, and extent of the uses of land, where appropriate, for agriculture, forestry, and mineral extraction; and

(iii) The general distribution, location, and extent of critical areas.

(b) Inventories and maps can indicate designations of natural resource lands. In ((the)) circumstances where critical areas (((e.g., aquifer recharge areas, wetlands, significant wildlife habitat, etc.))) cannot be readily identified, these areas should be designated by performance standards or definitions, so they can be specifically identified during the processing of a permit or development authorization.

(c) Designation means, at ((least)) a minimum, formal adoption of a policy statement, and may include further legislative action. Designating inventoried lands for comprehensive planning and policy definition may be less precise than subsequent regulation of specific parcels for conservation and protection.

(d) When designating natural resource lands, counties and cities should consider the economic conditions affecting resource industries, the minimum amount of natural resource lands needed to support ancillary processing businesses, and the need to buffer these land uses from surrounding development impacts over time. Mineral resource lands especially should be designated as close as possible to their likely end use areas, to avoid losing access to those valuable minerals by development, and to minimize the costs of production and transport. It is expected that mineral resource lands will be

depleted of minerals over time, and that subsequent land uses may occur on these lands after mining is completed.

(6) Classifying, inventorying, and designating lands or areas does not imply a change in a landowner's right to use his or her land under current law. The law requires that natural resource land uses be protected from land uses on adjacent lands that would restrict resource production. Development regulations adopted to protect critical areas may limit some land development options. Land uses are regulated on a parcel basis and innovative land use management techniques should be applied when counties and cities adopt development regulations to conserve and protect designated natural resource lands and critical areas. The purpose of designating natural resource lands is to enable industries to maintain access to lands with long-term commercial significance for agricultural, forest, and mineral resource production. The purpose is not to confine all natural resource production activity only to designated lands nor to require designation as the basis for a permit to engage in natural resource production. The department ((~~of community development will~~)) provides technical assistance to counties and cities on a wide array of regulatory options and alternative land use management techniques.

((~~These guidelines~~)) (7) Overlapping designations. The designation process may result in critical area designations that overlay other critical area or natural resource land classifications. ((~~That is,~~)) Overlapping designations should not necessarily be considered inconsistent. If two or more critical area designations apply to a given parcel, or portion of a given parcel, both or all designations apply.

(a) If a critical area designation overlies a natural resource land designation, both designations apply. For counties and cities required or opting to plan under ((~~chapter 36.70A RCW~~)) the act, reconciling these multiple designations will be the subject of local development regulations adopted pursuant to RCW 36.70A.060.

((~~(2)~~)) (b) If two or more natural resource land designations apply, counties and cities must determine if these designations are incompatible. If they are incompatible, counties and cities should examine the criteria to determine which use has the greatest long-term commercial significance, and that resource use should be assigned to the lands being designated.

(8) Counties and cities ((~~shall~~)) must involve the public in classifying and designating natural resource lands and critical areas. The process should include:

(a) Public participation program:

(i) Public participation should include, at a minimum, representative participation from the following entities: Landowners; representatives of agriculture, forestry, mining, business, environmental, and community groups; tribal governments; representatives of adjacent counties and cities; and state agencies. The public participation program should include early and timely public notice of pending designations and regulations and should address proposed nonregulatory incentive programs.

(ii) Counties and cities ((~~should~~)) are encouraged to consider ((~~using: Technical and citizen advisory committees with broad representation, press releases, news conferences, neighborhood meetings, paid advertising (e.g., newspaper, radio, T.V., transit), newsletters, and other means beyond the required normal legal advertising and public notices. Plain, understandable language should be used~~)) a variety of opportunities to adequately communicate with the public. These methods of notification may include, but are not limited to, traditional forms of mailed notices, published announcements, electronic mail, and internet sites to distribute informational brochures, meeting times, project timelines, and design and map proposals to provide an opportunity for the public to participate.

(iii) The department ((~~of community development will~~)) provides technical assistance in preparing public participation ((~~plans, including: A pamphlet series, workshops, and a list of agencies available to provide help~~)) programs.

(b) Adoption process. Statutory and local processes already in place governing land use decisions are the minimum processes required for designation and regulation pursuant to RCW 36.70A.060 and 36.70A.170. At ((~~least these~~)) a minimum the following steps should be included in the adoption process:

(i) Accept the requirements of chapter 36.70A RCW((~~, especially definitions of agricultural lands, forest lands, minerals, long-term commercial significance, critical areas, geologically hazardous areas, and wetlands as mandatory minimums.~~));

(ii) Consider minimum guidelines developed by the department ((~~of community development~~)) under RCW 36.70A.050((~~.~~));

(iii) Consider other definitions used by state and federal regulatory agencies((~~.~~));

(iv) Consider definitions used by ((~~the county and city and other~~)) similarly situated counties and cities((~~.~~));

(v) Determine recommended definitions and check conformance with minimum definitions ((~~of~~)) in chapter 36.70A RCW((~~.~~));

(vi) Adopt definitions, classifications, and standards((~~.~~));

(vii) Apply definitions ((~~to the land~~)) by mapping designated natural resource lands((~~.~~)); and

(viii) Establish ((~~designation amendment~~)) procedures for amending natural resource lands and critical areas designations.

(c) Intergovernmental coordination.

(i) The ((~~Growth Management~~)) act requires coordination among ((~~communities and jurisdictions~~)) counties and cities to reconcile conflicts and strive for consistent definitions, standards, and designations within regions. The minimum coordination process ((~~required under these guidelines~~)) may ((~~take~~)) include one of two ((~~forms~~)) options:

((~~(i)~~)) (A) Notification option: Adjacent cities (or those with overlapping or adjacent planning areas); counties and the cities within them; and adjacent counties would provide each other and ((~~all adjacent~~)) special purpose districts and special purpose districts within them notice of their intent to classify and designate natural resource lands and critical areas within their jurisdiction. Counties or cities receiving notice may provide comments and input to the notifying jurisdiction. The notifying jurisdiction specifies a comment period prior to adoption. Within forty-five days of the jurisdiction's date of adoption of classifications or designations, affected jurisdictions are supplied information on how to

locate a copy of the proposal. The department ((~~of community development~~)) may provide mediation services to counties and cities to help resolve disputed classifications or designations.

((~~(ii)~~)) (B) Interlocal agreement option: Adjacent ((~~jurisdictions~~)) counties and cities; all the cities within a county; or ((~~all the cities and~~)) several counties and the cities within them may choose to cooperatively classify and designate natural resource lands and critical areas within their jurisdictions. Counties and cities by interlocal agreement would identify the definitions, classification, designation, and process that will be used to classify and designate lands within their areas. State and federal agencies or tribes may participate in the interlocal agreement or be provided a method of commenting on designations and classifications prior to adoption by jurisdictions.

(ii) Counties ((~~and/~~))or cities may begin with the notification option ((~~(~~)) in (c)(i)(A) of this subsection((~~)~~)) and choose to change to the interlocal agreement method ((~~(~~)) in (c)((~~(ii)~~)) (i)(B) of this subsection((~~)~~)) prior to completion of the classification and designations within their jurisdictions. Approaches to intergovernmental coordination may vary between natural resource land and critical area designation. It is intended that state and federal agencies with land ownership or management responsibilities, special purpose districts, and Indian tribes with interests within the ((~~jurisdictions~~)) counties or cities adopting classification and designation be consulted and their input considered in the development and adoption of designations and classifications. The department ((~~of community development~~)) may provide mediation services to help resolve disputes between counties and cities that are using either the notification or interlocal agreement method of coordinating between jurisdictions.

(d) Mapping natural resource lands. Mapping should be done to identify designated natural resource lands ((~~and to identify known critical areas~~)). ((~~Counties and cities should clearly articulate that the maps are for information or illustrative purposes only unless the map is an integral component of a regulatory scheme.~~

~~Although there is no specific requirement for inventorying or mapping either natural resource lands or critical areas, chapter 36.70A RCW requires that counties and cities planning under chapter 36.70A RCW adopt development regulations for uses adjacent to natural resource lands. Logically, the only way to regulate adjacent lands is to know where the protected lands are. Therefore, mapping natural resource lands is a practical way to make regulation effective.~~

~~For critical areas, performance standards are preferred, as any attempt to map wetlands, for example, will be too inexact for regulatory purposes. Standards will be applied upon land use application. Even so, mapping critical areas for information but not regulatory purposes, is advisable.~~

~~(e) Reporting. Chapter 36.70A RCW requires that counties and cities annually report their progress to department of community development. Department of community development will maintain a central file including examples of successful public involvement programs, interjurisdictional coordination, definitions, maps, and other materials. This file will serve as an information source for counties and cities and a planning library for state agencies and citizens.~~

~~(f)~~)) For counties and cities fully planning under the act, natural resource lands designations must be incorporated into the comprehensive plan land use element and should be shown on the future land use map required under RCW 36.70A.070.

(9) Evaluation. When counties and cities adopt a comprehensive plan, ((~~chapter 36.70A RCW~~)) the act requires ((~~that they~~)) them to evaluate their designations and development regulations to assure that they are consistent with and implement the comprehensive plan. When considering changes to the designations or development regulations, counties and cities should seek interjurisdictional coordination and must include public participation.

((~~(g)~~)) (10) Designation amendment process.

(a) Land use planning is a dynamic process. Designation procedures ((~~for designation~~)) should provide a rational and predictable basis for accommodating change. These designation procedures should, at a minimum, provide for a sustainable amount of designated natural resource lands to ensure continued commercial production.

((~~Land use designations must provide landowners and public service providers with the information necessary to make decisions. This includes: Determining when and where growth will occur, what services are and will be available, how they might be financed, and what type and level of land use is reasonable and/or appropriate. Resource managers need to know where and when conversions of rural land might occur in response to growth pressures and how those changes will affect resource management.~~)) (b) Reviewing natural resource lands designation. In classifying and designating natural resource lands, counties must approach the effort as a county-wide or regional process. Counties and cities should not review natural resource lands designations solely on a parcel-by-parcel process. Designation ((~~changes~~)) amendments should be based on consistency with one or more of the following criteria:

(i) A change in circumstances pertaining to the comprehensive plan or public policy((~~.~~));

(ii) A change in circumstances to the subject property, which is beyond the control of the landowner ((~~pertaining to the subject property.~~));

(iii) An error in designation((~~.~~));

(iv) New information on natural resource land or critical area status((~~.~~

~~(h)~~)); or

(v) A change in population growth rates, or consumption rates, especially of mineral resources.

(11) Use of innovative land use management techniques.

(a) Natural resource uses have preferred and primary status in designated natural resource lands ((~~of long-term commercial significance~~)). Counties and cities must determine if and to what extent other uses will be allowed. If other uses are allowed, counties and cities should consider using innovative land management techniques ((~~which~~)) that minimize land use incompatibilities and most effectively maintain current and future natural resource lands.

(b) Techniques to conserve and protect agricultural, forest lands, and mineral resource lands ((~~of long-term commer-~~

~~cial significance~~)) include the purchase or transfer of development rights, fee simple purchase of the land, less than fee simple purchase, purchase with leaseback, buffering, land trades, conservation easements, current use assessments, innovative zoning, or other innovations which maintain current uses and assure the conservation of these natural resource lands.

(12) Development in and adjacent to agricultural ((~~and~~)), forest, and mineral resource lands ((~~of long-term commercial significance~~)) shall assure the continued management of these lands for their long-term commercial uses. Counties and cities should consider the adoption of right-to-farm provisions, and may also adopt measures to conserve and enhance marine aquaculture. Covenants or easements ((~~that recognize~~)) recognizing that farming ((~~and forest~~)), forestry, and mining activities will occur should be imposed on new development in or adjacent to agricultural ((~~or~~)), forest, or mineral resource lands. Where buffering is used it should be on land within the adjacent development unless an alternative is mutually agreed on by adjacent landowners. It is expected that mineral resource lands will be depleted of minerals over time, and that subsequent land uses may occur on these lands after mining is completed.

((~~Counties and cities planning under the act should define a strategy for conserving natural resource lands and for protecting critical areas, and this strategy should integrate the use of innovative regulatory and nonregulatory techniques.~~))

AMENDATORY SECTION (Amending WSR 91-07-041, filed 3/15/91, effective 4/15/91)

WAC 365-190-050 Agricultural resource lands. (1) In classifying and designating agricultural resource lands ((~~of long-term significance for the production of food or other agricultural products, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Soil Conservation Service as defined in Agriculture Handbook No. 210.~~)), counties must approach the effort as a county-wide or area-wide process. Counties and cities should not review resource lands designations solely on a parcel-by-parcel process. Counties and cities must have a program for the transfer or purchase of development rights prior to designating agricultural resource lands in urban growth areas. Cities are encouraged to coordinate their agricultural resource lands designations with their county and any adjacent jurisdictions.

(2) Once lands are designated, counties and cities planning under the act must adopt development regulations that assure the conservation of agricultural resource lands. Recommendations for those regulations are found in WAC 365-196-815.

(3) Lands should be designated as agricultural resource lands based on three factors:

(a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities should use the criteria contained in WAC 365-196-310.

(b) The land is used or capable of being used for agricultural production. This factor evaluates whether lands are well suited to agricultural use based primarily on their physical and geographic characteristics. Some agricultural operations are less dependent on soil quality than others, including some livestock production operations.

(i) Lands that are currently used for agricultural production and lands that are capable of such use must be evaluated for designation. The intent of a landowner to use land for agriculture or to cease such use is not the controlling factor in determining if land is used or capable of being used for agricultural production. Land enrolled in federal conservation reserve programs is recommended for designation based on previous agricultural use, management requirements, and potential for reuse as agricultural land.

(ii) In determining whether lands are used or capable of being used for agricultural production, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Natural Resources Conservation Service as defined in relevant Field Office Technical Guides. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys((~~. These categories incorporate consideration of~~)), and are based on the growing capacity, productivity and soil composition of the land. ((~~Counties and cities shall also consider the combined effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:~~

~~(a)~~)) (c) The land has long-term commercial significance for agriculture. In determining this factor, counties and cities should consider the following nonexclusive criteria, as applicable:

(i) The classification of prime and unique farmland soils as mapped by the Natural Resources Conservation Service;

(ii) The types of agriculture that exist in the area and their interaction and contribution to the regional economy;

(iii) The availability of water for agriculture and, if appropriate, the availability of large-scale irrigation or surface water management infrastructure;

(iv) The availability of public facilities, including roads used in transporting agricultural products;

((~~(b)~~)) (v) Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW and whether the optional public benefit rating system is used locally, and whether there is the ability to purchase or transfer land development rights;

((~~(c)~~)) (vi) The availability of public services;

((~~(d)~~)) (vii) Relationship or proximity to urban growth areas and to markets and suppliers;

((~~(e)~~)) (viii) Predominant parcel size;

((~~(f)~~)) (ix) Land use settlement patterns and their compatibility with agricultural practices;

((~~(g)~~)) (x) Intensity of nearby land uses;

((~~(h)~~)) (xi) History of land development permits issued nearby((~~;~~

~~(i)~~)), and the extent that plats and permits issued on lands within five hundred feet of designated agricultural resource lands have included a notice of potential incompatibility of residential development with activities associated with resource land uses per RCW 36.70A.060 (1)(b); and

(xii) Land values under alternative uses((~~; and~~

~~(j) Proximity of markets~~)).

((~~(2) In defining categories of agricultural lands of long-term commercial significance for agricultural production,~~

~~counties and cities should consider using the classification of prime and unique farmland soils as mapped by the Soil Conservation Service. If a county or city chooses to not use these categories, the rationale for that decision must be included in its next annual report to department of community development.~~

(~~(3)~~)) (4) When designating agricultural resource lands, counties and cities may consider food security issues, which may include providing local food supplies for food banks, schools and institutions, vocational training opportunities in agricultural operations, and preserving heritage or artisanal foods.

(5) When applying the criteria in subsection (3)(c) of this section, the process should result in designating at least the minimum amount of agricultural resource lands needed to maintain economic viability for the agricultural industry and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities. Economic viability in this context is that amount of designated agricultural resource land needed to maintain the economic viability of the agricultural sector in the county over the long term.

(6) Counties and cities may further classify additional agricultural lands of local importance. Classifying additional agricultural lands of local importance should include, in addition to general public involvement, consultation with the board of the local conservation district and the local ((~~agriculture stabilization and conservation service~~)) committee of the farm service agency. It may also be useful to consult with any existing local organizations marketing or using local produce, including the boards of local farmers markets, school districts, other large institutions, such as hospitals, correctional facilities, or existing food cooperatives.

These additional lands may ((~~also~~)) include designated critical areas, such as bogs used to grow cranberries or farmed wetlands. Where these lands are also designated critical areas, counties and cities planning under the act must weigh the compatibility of adjacent land uses and development with the continuing need to protect the functions and values of critical areas and ecosystems.

AMENDATORY SECTION (Amending WSR 91-07-041, filed 3/15/91, effective 4/15/91)

WAC 365-190-060 Forest resource lands ((~~resources~~)). (1) In classifying ((~~forest land, counties and cities should use the private forest land grades of the department of revenue (WAC 458-40-530). This system incorporates consideration of growing capacity, productivity and soil composition of the land. Forest land of long-term commercial significance will generally have a predominance of the higher private forest land grades. However, the presence of lower private forest land grades within the areas of predominantly higher grades need not preclude designation as forest land.~~

~~Each county and city shall~~)) and designating forest resource lands, counties must approach the effort as a county-wide or regional process. Cities are encouraged to coordinate their forest resource lands designations with their county and any adjacent jurisdictions. Counties and cities should not review forest resource lands designations solely on a parcel-by-parcel basis.

(2) Lands should be designated as forest resource lands of long-term commercial significance based on three factors:

(a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities should use the criteria contained in WAC 365-196-310.

(b) The land is used or capable of being used for forestry production. To evaluate this factor, counties and cities should determine whether lands are well suited for forestry use based primarily on their physical and geographic characteristics.

Lands that are currently used for forestry production and lands that are capable of such use must be evaluated for designation. The landowner's intent to either use land for forestry or to cease such use is not the controlling factor in determining if land is used or capable of being used for forestry production.

(c) The land has long-term commercial significance. When determining whether lands are used or capable of being used for forestry production, counties and cities should determine which land grade constitutes forest land of long-term commercial significance, based on local ((~~and regional~~)) physical, biological, economic, and land use considerations.

(3) Counties and cities may also consider secondary benefits from retaining commercial forestry operations. Benefits from retaining commercial forestry may include protecting air and water quality, maintaining adequate aquifer recharge areas, reducing forest fire risks, supporting tourism and access to recreational opportunities, providing carbon emission off-sets, and improving wildlife habitat and connectivity for upland species.

(4) Counties and cities ((~~shall~~)) must also consider the effects of proximity to population areas and the possibility of more intense uses of the land as indicated by the following criteria as applicable:

((~~(1)~~)) (a) The availability of public services and facilities conducive to the conversion of forest land((~~.~~));

((~~(2)~~)) (b) The proximity of forest land to urban and suburban areas and rural settlements: Forest lands of long-term commercial significance are located outside the urban and suburban areas and rural settlements((~~.~~));

((~~(3)~~)) (c) The size of the parcels: Forest lands consist of predominantly large parcels((~~.~~));

((~~(4)~~)) (d) The compatibility and intensity of adjacent and nearby land use and settlement patterns with forest lands of long-term commercial significance((~~.~~));

((~~(5)~~)) (e) Property tax classification: Property is assessed as open space or forest land pursuant to chapter 84.33 or 84.34 RCW((~~.~~));

((~~(6)~~)) (f) Local economic conditions which affect the ability to manage timberlands for long-term commercial production((~~.~~

~~(7)~~)); and

(g) History of land development permits issued nearby.

(5) When applying the criteria in subsection (4) of this section, counties or cities should designate at least the minimum amount of forest resource lands needed to maintain economic viability for the forestry industry and to retain supporting forestry businesses, such as loggers, mills, forest product

processors, equipment suppliers, and equipment maintenance and repair facilities. Economic viability in this context is that amount of designated forestry resource land needed to maintain economic viability of the forestry industry in the region over the long term.

AMENDATORY SECTION (Amending WSR 91-07-041, filed 3/15/91, effective 4/15/91)

WAC 365-190-070 Mineral resource lands. (1) In designating mineral resource lands, counties and cities must approach the effort as a county-wide or regional process, with the exception of owner-initiated requests for designation. Counties and cities should not review mineral resource lands designations solely on a parcel-by-parcel basis.

(2) Counties and cities ((~~shall~~)) must identify and classify ((~~aggregate and~~)) mineral resource lands from which the extraction of minerals occurs or can be anticipated. Counties and cites may consider the need for a longer planning period specifically to address mineral resource lands, based on the need to assure availability of minerals for future uses, and to not inadvertently preclude access to available mineral resources due to incompatible development. Other proposed land uses within these areas may require special attention to ensure future supply of aggregate and mineral resource material, while maintaining a balance of land uses.

(((~~2~~))) (3) Classification criteria. ((~~Areas shall be classified as~~))

(a) Counties and cities classify mineral resource lands based on geologic, environmental, and economic factors, existing land uses, and land ownership. ((~~The areas to be studied and their order of study shall be specified by counties and cities.~~

~~(a)~~)) Mineral resource lands are expected to be depleted of minerals over time, and counties and cities may approve and permit land uses on these mineral resource lands to occur after mining is completed.

(b) Counties and cities should classify lands with potential long-term commercial significance for extracting at least the following minerals: Sand, gravel, and valuable metallic substances. Other minerals may be classified as appropriate.

((~~(b) In~~)) (c) When classifying these areas, counties and cities should ((~~consider~~)) use maps and information on location and extent of mineral deposits provided by the ((~~Washington state~~)) department of natural resources, the United States Geological Service and ((~~the United States Bureau of Mines. Additionally, the department of natural resources has a detailed minerals classification system counties and cities may choose to use.~~

~~(c)~~)) any relevant information provided by property owners. Counties and cities may also use all or part of a detailed minerals classification system developed by the department of natural resources.

(d) Classifying mineral resource lands should be based initially on the geology and the distance to market of potential mineral resource lands, including:

(i) Physical and topographic characteristics of the mineral resource site, including the depth and quantity of the resource and depth of the overburden;

(ii) Physical properties of the resource including quality and type;

(iii) Projected life of the resource;

(iv) Resource availability in the region; and

(v) Accessibility and proximity to the point of use or market.

(e) Other factors to consider when classifying potential mineral resource lands should include three aspects of mineral resource lands:

(i) Surface mines are temporary extractive uses that allow alternative land uses after mining is completed and the mine land is reclaimed, subject to approval;

(ii) The ability to access needed minerals may be lost if suitable mineral resource lands are not classified and designated; and

(iii) The effects of proximity to population areas and the possibility of more intense uses of the land in both the short and long-term, as indicated by the following:

(A) General land use patterns in the area;

(B) Availability of utilities, including water supply;

(C) Surrounding parcel sizes and surrounding uses;

(D) Availability of public roads and other public services; and

(E) Subdivision or zoning for urban or small lots.

(4) Designation of mineral resource lands.

(a) Counties and cities ((~~should consider classifying~~)) must designate known and potential mineral deposits so that access to mineral resources of long-term commercial significance is not knowingly precluded. Priority land use for mineral extraction should be retained for all designated mineral resource lands.

(((~~d) In classifying mineral resource lands, counties and cities shall also consider the effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:~~

~~(i) General land use patterns in the area;~~

~~(ii) Availability of utilities;~~

~~(iii) Availability and adequacy of water supply;~~

~~(iv) Surrounding parcel sizes and surrounding uses;~~

~~(v) Availability of public roads and other public services;~~

~~(vi) Subdivision or zoning for urban or small lots;~~

~~(vii) Accessibility and proximity to the point of use or market;~~

~~(viii) Physical and topographic characteristics of the mineral resource site;~~

~~(ix) Depth of the resource;~~

~~(x) Depth of the overburden;~~

~~(xi) Physical properties of the resource including quality and type;~~

~~(xii) Life of the resource; and~~

~~(xiii) Resource availability in the region.~~)) (b) In designating mineral resource lands, counties and cities should determine if adequate mineral resources are available for projected needs from currently designated mineral resource lands.

(c) Counties and cities may consult with the department of transportation and the regional transportation planning organization to determine projected future mineral resource needs for large transportation projects planned in their area.

(d) In designating mineral resource lands, counties and cities must also consider that mining may be a temporary use at any given mine, depending on the amount of minerals available and the consumption rate, and that other land uses can occur on the mine site after mining is completed, subject to approval.

AMENDATORY SECTION (Amending WSR 91-07-041, filed 3/15/91, effective 4/15/91)

WAC 365-190-080 Critical areas. ((~~(1) Wetlands. The wetlands of Washington state are fragile ecosystems which serve a number of important beneficial functions. Wetlands assist in the reduction of erosion, siltation, flooding, ground and surface water pollution, and provide wildlife, plant, and fisheries habitats. Wetlands destruction or impairment may result in increased public and private costs or property losses.~~

~~In designating wetlands for regulatory purposes, counties and cities shall use the definition of wetlands in RCW 36.70A.030(22). Counties and cities are requested and encouraged to make their actions consistent with the intent and goals of "protection of wetlands," Executive Orders 89-10 and 90-04 as they exist on September 1, 1990. Additionally, counties and cities should consider wetlands protection guidance provided by the department of ecology including the model wetlands protection ordinance.~~

~~(a) Counties and cities that do not now rate wetlands shall consider a wetlands rating system to reflect the relative function, value and uniqueness of wetlands in their jurisdictions. In developing wetlands rating systems, counties and cities should consider the following:~~

~~(i) The Washington state four-tier wetlands rating system;~~

~~(ii) Wetlands functions and values;~~

~~(iii) Degree of sensitivity to disturbance;~~

~~(iv) Rarity; and~~

~~(v) Ability to compensate for destruction or degradation.~~

~~If a county or city chooses to not use the state four-tier wetlands rating system, the rationale for that decision must be included in its next annual report to department of community development.~~

~~(b) Counties and cities may use the National Wetlands Inventory as an information source for determining the approximate distribution and extent of wetlands. This inventory provides maps of wetland areas according to the definition of wetlands issued by the United States Department of Interior - Fish and Wildlife Service, and its wetland boundaries should be delineated for regulation consistent with the wetlands definition in RCW 36.70A.030(22).~~

~~(c) Counties and cities should consider using the methodology in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, cooperatively produced by the United States Army Corps of Engineers, United States Environmental Protection Agency, United States Department of Agriculture Soil Conservation Service, and United States Fish and Wildlife Service, that was issued in January 1989, and regulatory guidance letter 90-7 issued by the United States Corps of Engineers on November 29, 1990, for regulatory delineations.~~

~~(2) Aquifer recharge areas. Potable water is an essential life sustaining element. Much of Washington's drinking water comes from ground water supplies. Once ground water is contaminated it is difficult, costly, and sometimes impossible to clean up. Preventing contamination is necessary to avoid exorbitant costs, hardships, and potential physical harm to people.~~

~~The quality of ground water in an aquifer is inextricably linked to its recharge area. Few studies have been done on aquifers and their recharge areas in Washington state. In the cases in which aquifers and their recharge areas have been studied, affected counties and cities should use this information as the base for classifying and designating these areas.~~

~~Where no specific studies have been done, counties and cities may use existing soil and surficial geologic information to determine where recharge areas are. To determine the threat to ground water quality, existing land use activities and their potential to lead to contamination should be evaluated.~~

~~Counties and cities shall classify recharge areas for aquifers according to the vulnerability of the aquifer. Vulnerability is the combined effect of hydrogeological susceptibility to contamination and the contamination loading potential. High vulnerability is indicated by land uses that contribute contamination that may degrade ground water, and hydrogeologic conditions that facilitate degradation. Low vulnerability is indicated by land uses that do not contribute contaminants that will degrade ground water, and by hydrogeologic conditions that do not facilitate degradation.~~

~~(a) To characterize hydrogeologic susceptibility of the recharge area to contamination, counties and cities may consider the following physical characteristics:~~

~~(i) Depth to ground water;~~

~~(ii) Aquifer properties such as hydraulic conductivity and gradients;~~

~~(iii) Soil (texture, permeability, and contaminant attenuation properties);~~

~~(iv) Characteristics of the vadose zone including permeability and attenuation properties; and~~

~~(v) Other relevant factors.~~

~~(b) The following may be considered to evaluate the contaminant loading potential:~~

~~(i) General land use;~~

~~(ii) Waste disposal sites;~~

~~(iii) Agriculture activities;~~

~~(iv) Well logs and water quality test results; and~~

~~(v) Other information about the potential for contamination.~~

~~(c) Classification strategy for recharge areas should be to maintain the quality of the ground water, with particular attention to recharge areas of high susceptibility. In recharge areas that are highly vulnerable, studies should be initiated to determine if ground water contamination has occurred. Classification of these areas should include consideration of the degree to which the aquifer is used as a potable water source, feasibility of protective measures to preclude further degradation, availability of treatment measures to maintain potability, and availability of alternative potable water sources.~~

~~(d) Examples of areas with a critical recharging effect on aquifers used for potable water, may include:~~

~~(i) Sole source aquifer recharge areas designated pursuant to the Federal Safe Drinking Water Act.~~

~~(ii) Areas established for special protection pursuant to a ground water management program, chapters 90.44, 90.48, and 90.54 RCW, and chapters 173-100 and 173-200 WAC.~~

~~(iii) Areas designated for wellhead protection pursuant to the Federal Safe Drinking Water Act.~~

~~(iv) Other areas meeting the definition of "areas with a critical recharging effect on aquifers used for potable water" in these guidelines.~~

~~(3) Frequently flooded areas. Flood plains and other areas subject to flooding perform important hydrologic functions and may present a risk to persons and property. Classifications of frequently flooded areas should include, at a minimum, the 100-year flood plain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.~~

~~Counties and cities should consider the following when designating and classifying frequently flooded areas:~~

~~(a) Effects of flooding on human health and safety, and to public facilities and services;~~

~~(b) Available documentation including federal, state, and local laws, regulations, and programs, local studies and maps, and federal flood insurance programs;~~

~~(c) The future flow flood plain, defined as the channel of the stream and that portion of the adjoining flood plain that is necessary to contain and discharge the base flood flow at build out without any measurable increase in flood heights;~~

~~(d) The potential effects of tsunami, high tides with strong winds, sea level rise resulting from global climate change, and greater surface runoff caused by increasing impervious surfaces.~~

~~(4) Geologically hazardous areas.~~

~~(a) Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible commercial, residential, or industrial development is sited in areas of significant hazard. Some geological hazards can be reduced or mitigated by engineering, design, or modified construction or mining practices so that risks to health and safety are acceptable. When technology cannot reduce risks to acceptable levels, building in geologically hazardous areas is best avoided. This distinction should be considered by counties and cities that do not now classify geological hazards as they develop their classification scheme.~~

~~(a) Areas that are susceptible to one or more of the following types of hazards shall be classified as a geologically hazardous area:~~

~~(i) Erosion hazard;~~

~~(ii) Landslide hazard;~~

~~(iii) Seismic hazard; or~~

~~(iv) Areas subject to other geological events such as coal mine hazards and volcanic hazards including: Mass wasting, debris flows, rockfalls, and differential settlement.~~

~~(b) Counties and cities should classify geologically hazardous area as either:~~

~~(i) Known or suspected risk;~~

~~(ii) No risk;~~

~~(iii) Risk unknown - data are not available to determine the presence or absence of a geological hazard.~~

~~(c) Erosion hazard areas are at least those areas identified by the United States Department of Agriculture Soil Conservation Service as having a "severe" rill and inter-rill erosion hazard.~~

~~(d) Landslide hazard areas shall include areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include any areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Example of these may include, but are not limited to the following:~~

~~(i) Areas of historic failures, such as:~~

~~(A) Those areas delineated by the United States Department of Agriculture Soil Conservation Service as having a "severe" limitation for building site development;~~

~~(B) Those areas mapped as class u (unstable), uos (unstable old slides), and urs (unstable recent slides) in the department of ecology coastal zone atlas; or~~

~~(C) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published as the United States Geological Survey or department of natural resources division of geology and earth resources.~~

~~(ii) Areas with all three of the following characteristics:~~

~~(A) Slopes steeper than fifteen percent; and~~

~~(B) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and~~

~~(C) Springs or ground water seepage;~~

~~(iii) Areas that have shown movement during the holocene epoch (from ten thousand years ago to the present) or which are underlain or covered by mass wastage debris of that epoch;~~

~~(iv) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;~~

~~(v) Slopes having gradients steeper than eighty percent subject to rockfall during seismic shaking;~~

~~(vi) Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action;~~

~~(vii) Areas that show evidence of, or are at risk from snow avalanches;~~

~~(viii) Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding;~~

~~(ix) Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief.~~

~~(e) Seismic hazard areas shall include areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, or surface faulting. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington. The strength of ground shaking is primarily affected by:~~

~~(i) The magnitude of an earthquake;~~

~~(ii) The distance from the source of an earthquake;~~

~~(iii) The type of thickness of geologic materials at the surface; and~~

~~(iv) The type of subsurface geologic structure.~~

~~Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density, typically in association with a shallow ground water table.~~

~~(f) Other geological events:~~

~~(i) Volcanic hazard areas shall include areas subject to pyroclastic flows, lava flows, debris avalanche, inundation by debris flows, mudflows, or related flooding resulting from volcanic activity.~~

~~(ii) Mine hazard areas are those areas underlain by, adjacent to, or affected by mine workings such as adits, gangways, tunnels, drifts, or air shafts. Factors which should be considered include: Proximity to development, depth from ground surface to the mine working, and geologic material.~~

~~(5) Fish and wildlife habitat conservation areas. Fish and wildlife habitat conservation means land management for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean cooperative and coordinated land use planning is critically important among counties and cities in a region. In some cases, intergovernmental cooperation and coordination may show that it is sufficient to assure that a species will usually be found in certain regions across the state.~~

~~(a) Fish and wildlife habitat conservation areas include:~~

~~(i) Areas with which endangered, threatened, and sensitive species have a primary association;~~

~~(ii) Habitats and species of local importance;~~

~~(iii) Commercial and recreational shellfish areas;~~

~~(iv) Kelp and eelgrass beds; herring and smelt spawning areas;~~

~~(v) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;~~

~~(vi) Waters of the state;~~

~~(vii) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; or~~

~~(viii) State natural area preserves and natural resource conservation areas.~~

~~(b) Counties and cities may consider the following when classifying and designating these areas:~~

~~(i) Creating a system of fish and wildlife habitat with connections between larger habitat blocks and open spaces;~~

~~(ii) Level of human activity in such areas including presence of roads and level of recreation type (passive or active recreation may be appropriate for certain areas and habitats);~~

~~(iii) Protecting riparian ecosystems;~~

~~(iv) Evaluating land uses surrounding ponds and fish and wildlife habitat areas that may negatively impact these areas;~~

~~(v) Establishing buffer zones around these areas to separate incompatible uses from the habitat areas; and~~

~~(vi) Restoring of lost salmonid habitat.~~

~~(c) Sources and methods~~

~~(i) Counties and cities should classify seasonal ranges and habitat elements with which federal and state listed endangered, threatened and sensitive species have a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.~~

~~(ii) Counties and cities should determine which habitats and species are of local importance. Habitats and species may be further classified in terms of their relative importance.~~

~~Counties and cities may use information prepared by the Washington department of wildlife to classify and designate locally important habitats and species. Priority habitats and priority species are being identified by the department of wildlife for all lands in Washington state. While these priorities are those of the department, they and the data on which they are based may be considered by counties and cities.~~

~~(iii) Shellfish areas. All public and private tidelands or bedlands suitable for shellfish harvest shall be classified as critical areas. Counties and cities should consider both commercial and recreational shellfish areas. Counties and cities should at least consider the Washington department of health classification of commercial and recreational shellfish growing areas to determine the existing condition of these areas. Further consideration should be given to the vulnerability of these areas to contamination. Shellfish protection districts established pursuant to chapter 90.72 RCW shall be included in the classification of critical shellfish areas.~~

~~(iv) Kelp and eelgrass beds; herring and smelt spawning areas. Counties and cities shall classify kelp and eelgrass beds, identified by department of natural resources aquatic lands division and the department of ecology. Though not an inclusive inventory, locations of kelp and eelgrass beds are compiled in the *Puget Sound Environmental Atlas, Volumes 1 and 2.* Herring and smelt spawning times and locations are outlined in WAC 220-110-240 through 220-110-260 and the *Puget Sound Environmental Atlas.*~~

~~(v) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat.~~

~~Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds (of less than three years duration) and landscape amenities. However, naturally occurring ponds may include those artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority.~~

~~(vi) Waters of the state. Waters of the state are defined in Title 222 WAC, the forest practices rules and regulations. Counties and cities should use the classification system established in WAC 222-16-030 to classify waters of the state.~~

~~Counties and cities may consider the following factors when classifying waters of the state as fish and wildlife habitats:~~

~~(A) Species present which are endangered, threatened or sensitive, and other species of concern;~~

~~(B) Species present which are sensitive to habitat manipulation;~~

~~(C) Historic presence of species of local concern;~~

~~(D) Existing surrounding land uses that are incompatible with salmonid habitat;~~

~~(E) Presence and size of riparian ecosystems;~~

~~(F) Existing water rights; and~~

~~(G) The intermittent nature of some of the higher classes of waters of the state.~~

~~(vii) Lakes, ponds, streams, and rivers planted with game fish.~~

~~This includes game fish planted in these water bodies under the auspices of a federal, state, local, or tribal program or which supports priority fish species as identified by the department of wildlife.~~

~~(viii) State natural area preserves and natural resource conservation areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by department of natural resources.~~)) (1) Counties and cities must protect critical areas. Counties and cities required or opting to plan under the act must consider the definitions and guidelines in this chapter when designating critical areas and when preparing development regulations that protect the function and values of critical areas. The department provides additional recommendations for adopting critical areas regulations in WAC 365-196-485.

(2) Counties and cities must include the best available science as described in chapter 365-195 WAC, when designating critical areas and when developing policies and regulations that protect critical areas. Counties and cities must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Counties are encouraged to also protect both surface and ground water resources, because these waters often recharge wetlands, streams and lakes that support listed species.

(3) Counties and cities are encouraged to develop a coordinated regional critical areas protection program that combines interjurisdictional cooperation, public education, incentives to promote voluntary protective measures, and regulatory standards that serve to protect these critical areas.

(4) Counties and cities should designate critical areas by using maps and performance standards.

(a) Maps may benefit the public by increasing public awareness of critical areas and their locations. County and city staff may also benefit from maps which provide a useful tool for determining whether a particular land use permit application may affect a critical area. However, because maps may be too inexact for regulatory purposes, counties and cities should rely primarily on performance standards to protect critical areas. Counties and cities should apply performance standards to protect critical areas when a land use permit decision is made.

(b) Counties and cities should clearly state that maps showing known critical areas are only for information or illustrative purposes.

NEW SECTION

WAC 365-190-090 Wetlands. (1) The wetlands of Washington state are fragile ecosystems that serve a number of important beneficial functions. Wetlands assist in reducing erosion, siltation, flooding, ground and surface water pollution, and provide wildlife, plant, and fisheries habitats. Wetlands destruction or impairment may result in increased public and private costs and property losses.

(2) In designating wetlands for regulatory purposes, counties and cities must use the definition of wetlands in RCW 36.70A.030. Counties and cities are requested and encouraged to make their actions consistent with the intent and goals of "protection of wetlands," Executive Orders 89-10 and 90-04 as they existed on September 1, 1990. Additionally, counties and cities should consider wetlands protection guidance provided by the department of ecology, including the management recommendations based on the best available science, mitigation guidance, and provisions addressing the option of using wetland mitigation banks.

(3) Wetlands rating systems. Wetland functions vary widely.

(a) When designating wetlands, counties and cities should use a rating system that evaluates the existing wetland functions and values to determine what functions must be protected.

(b) In developing wetlands rating systems, counties and cities should consider using the wetland rating system developed jointly by the department of ecology and the United States Army Corps of Engineers.

(c) If a county or city chooses to use an alternative rating system, it must include the best available science.

(d) A rating system should evaluate, at a minimum, the following factors:

(i) Wetlands functions and values;

(ii) Degree of sensitivity to disturbance;

(iii) Rarity;

(iv) The degree to which a wetland contributes to functions and values of a larger ecosystem. Rating systems should generally rate wetlands higher when they are well-connected to adjacent or nearby habitats, are part of an intact ecosystem or function in a network of critical areas; and

(v) The ability to replace the functions and values through compensatory mitigation.

(4) Counties and cities may use the National Wetlands Inventory and a landscape-scale watershed characterization as information sources for determining the approximate distribution and extent of wetlands. The National Wetlands Inventory is an inventory providing maps of wetland areas according to the definition of wetlands issued by the United States Department of Interior Fish and Wildlife Service. A landscape-scale watershed characterization may identify areas that are conducive to forming wetlands based on topography, soils and geology, and hydrology. Any potential locations of wetlands based on the National Wetlands Inventory or landscape-scale watershed characterization should be confirmed by field visits, either before or as part of permitting activities, and identified wetlands should have their boundaries delineated for regulation consistent with the wetlands definition in RCW 36.70A.030.

(5) Counties and cities must use the methodology for regulatory delineations in the adopted state manual identified in RCW 36.70A.175.

NEW SECTION

WAC 365-190-100 Critical aquifer recharge areas. (1) Potable water is an essential life sustaining element for people and many other species. Much of Washington's drink-

ing water comes from ground water. Once ground water is contaminated it is difficult, costly, and sometimes impossible to clean up. Preventing contamination is necessary to avoid exorbitant costs, hardships, and potential physical harm to people and ecosystems.

(2) The quality and quantity of ground water in an aquifer is inextricably linked to its recharge area. Where aquifers and their recharge areas have been studied, affected counties and cities should use this information as the basis for classifying and designating these areas. Where no specific studies have been done, counties and cities may use existing soil and surficial geologic information to determine where recharge areas exist. To determine the threat to ground water quality, existing land use activities and their potential to lead to contamination should be evaluated.

(3) Counties and cities must classify recharge areas for aquifers according to the aquifer vulnerability. Vulnerability is the combined effect of hydrogeological susceptibility to contamination and the contamination loading potential. High vulnerability is indicated by land uses that contribute contamination that may degrade ground water, and hydrogeologic conditions that facilitate degradation. Low vulnerability is indicated by land uses that do not contribute contaminants that will degrade ground water, and by hydrogeologic conditions that do not facilitate degradation. Hydrological conditions may include those induced by limited recharge of an aquifer. Reduced aquifer recharge from effective impervious surfaces may result in higher concentrations of contaminants than would otherwise occur.

(a) To characterize hydrogeologic susceptibility of the recharge area to contamination, counties and cities may consider the following physical characteristics:

(i) Depth to ground water;

(ii) Aquifer properties such as hydraulic conductivity, gradients, and size;

(iii) Soil (texture, permeability, and contaminant attenuation properties);

(iv) Characteristics of the vadose zone including permeability and attenuation properties; and

(v) Other relevant factors.

(b) The following may be considered to evaluate vulnerability based on the contaminant loading potential:

(i) General land use;

(ii) Waste disposal sites;

(iii) Agriculture activities;

(iv) Well logs and water quality test results; and

(v) Other information about the potential for contamination.

(4) A classification strategy for aquifer recharge areas should be to maintain the quality, and if needed, the quantity of the ground water, with particular attention to recharge areas of high susceptibility.

(a) In recharge areas that are highly vulnerable, studies should be initiated to determine if ground water contamination has occurred. Classification of these areas should include consideration of the degree to which the aquifer is used as a potable water source, feasibility of protective measures to preclude further degradation, availability of treatment measures to maintain potability, and availability of alternative potable water sources.

(b) Examples of areas with a critical recharging effect on aquifers used for potable water may include:

(i) Recharge areas for sole source aquifers designated pursuant to the Federal Safe Drinking Water Act;

(ii) Areas established for special protection pursuant to a ground water management program, chapters 90.44, 90.48, and 90.54 RCW, and chapters 173-100 and 173-200 WAC;

(iii) Areas designated for wellhead protection pursuant to the Federal Safe Drinking Water Act;

(iv) Areas near marine waters where aquifers may be subject to saltwater intrusion; and

(v) Other areas meeting the definition of "areas with a critical recharging effect on aquifers used for potable water" in these guidelines.

(c) Counties and cities may limit the number, location, and allowed uses of permit-exempt wells, especially within critical aquifer recharge areas. Counties and cities choosing this approach should consult with the department of ecology.

NEW SECTION

WAC 365-190-110 Frequently flooded areas. Frequently flooded areas. Flood plains and other areas subject to flooding perform important hydrologic functions and may present a risk to persons and property.

(1) Classifications of frequently flooded areas should include, at a minimum, the 100-year flood plain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

(2) Counties and cities should consider the following when designating and classifying frequently flooded areas:

(a) Effects of flooding on human health and safety, and to public facilities and services;

(b) Available documentation including federal, state, and local laws, regulations, and programs, local studies and maps, and federal flood insurance programs, including the provisions for urban growth areas in RCW 36.70A.110;

(c) The future flow flood plain, defined as the channel of the stream and that portion of the adjoining flood plain that is necessary to contain and discharge the base flood flow at build out;

(d) The potential effects of tsunami, high tides with strong winds, sea level rise, and extreme weather events, including those potentially resulting from global climate change;

(e) Greater surface runoff caused by increasing impervious surfaces.

NEW SECTION

WAC 365-190-120 Geologically hazardous areas. (1) Geologically hazardous areas. Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible commercial, residential, or industrial development is sited in areas of significant hazard.

(2) Some geological hazards can be reduced or mitigated by engineering, design, or modified construction or mining practices so that risks to public health and safety are minimized. When technology cannot reduce risks to acceptable

levels, building in geologically hazardous areas must be avoided. The distinction between avoidance and compensatory mitigation should be considered by counties and cities that do not currently classify geological hazards, as they develop their classification scheme.

(3) Areas that are susceptible to one or more of the following types of hazards shall be classified as a geologically hazardous area:

(a) Erosion hazard;

(b) Landslide hazard;

(c) Seismic hazard; or

(d) Areas subject to other geological events such as coal mine hazards and volcanic hazards including: Mass wasting, debris flows, rock falls, and differential settlement.

(4) Counties and cities should assess the risks and classify geologically hazardous areas as either:

(a) Known or suspected risk;

(b) No known risk; or

(c) Risk unknown - data are not available to determine the presence or absence of risk.

(5) Erosion hazard areas include, at a minimum, those areas identified by the United States Department of Agriculture Natural Resources Conservation Service as having a likely significant erosion hazard. Erosion hazard areas include areas likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils. Erosion hazard areas may also include coastal erosion areas: This information can be found in the Washington state coastal atlas available from the department of ecology.

(6) Landslide hazard areas include areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include any areas susceptible to landslide because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors, and include, at a minimum, the following:

(a) Areas of historic failures, such as:

(i) Those areas delineated by the United States Department of Agriculture Natural Resources Conservation Service as having a significant limitation for building site development;

(ii) Those coastal areas mapped as class u (unstable), uos (unstable old slides), and urs (unstable recent slides) in the department of ecology Washington coastal atlas; or

(iii) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geological Survey or Washington department of natural resources.

(b) Areas with all three of the following characteristics:

(i) Slopes steeper than fifteen percent;

(ii) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

(iii) Springs or ground water seepage.

(c) Areas that have shown movement during the holocene epoch (from ten thousand years ago to the present) or which are underlain or covered by mass wastage debris of this epoch;

(d) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

(e) Slopes having gradients steeper than eighty percent subject to rockfall during seismic shaking;

(f) Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action, including stream channel migration zones;

(g) Areas that show evidence of, or are at risk from snow avalanches;

(h) Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and

(i) Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief.

(7) Seismic hazard areas must include areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, surface faulting, or tsunamis. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density, typically in association with a shallow ground water table. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington, and ground settlement may occur with shaking. The strength of ground shaking is primarily affected by:

(a) The magnitude of an earthquake;

(b) The distance from the source of an earthquake;

(c) The type or thickness of geologic materials at the surface; and

(d) The type of subsurface geologic structure.

(8) Other geological hazard areas:

(a) Volcanic hazard areas must include areas subject to pyroclastic flows, lava flows, debris avalanche, or inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

(b) Mine hazard areas are those areas underlain by, adjacent to, or affected by mine workings such as adits, gangways, tunnels, drifts, or air shafts. Factors which should be considered include: Proximity to development, depth from ground surface to the mine working, and geologic material.

NEW SECTION

WAC 365-190-130 Fish and wildlife habitat conservation areas. (1) "Fish and wildlife habitat conservation" means land management for maintaining populations of species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean cooperative and coordinated land use planning is critically important among counties and cities in a region. Intergovernmental cooperation and coordination may show that it is sufficient to assure that a species will usually be found in certain regions across the state.

Fish and wildlife habitat conservation areas contribute to the state's biodiversity and occur on both publicly and privately owned lands. Designating these areas is an important part of land use planning for appropriate development densi-

ties, urban growth area boundaries, open space corridors, and incentive-based land conservation and stewardship programs.

(2) Fish and wildlife habitat conservation areas that must be considered for classification and designation include:

(a) Areas where endangered, threatened, and sensitive species have a primary association;

(b) Habitats and species of local importance, as determined locally;

(c) Commercial and recreational shellfish areas;

(d) Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas;

(e) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;

(f) Waters of the state;

(g) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and

(h) State natural area preserves, natural resource conservation areas, and state wildlife areas.

(3) When classifying and designating these areas, counties and cities must include the best available science, as described in chapter 365-195 WAC, and should consider the following:

(a) Creating a system of fish and wildlife habitat with connections between larger habitat blocks and open spaces, integrating with open space corridor planning where appropriate;

(b) Level of human activity in such areas including presence of roads and level of recreation type (passive or active recreation may be appropriate for certain areas and habitats);

(c) Protecting riparian ecosystems including salmonid habitat, which also includes marine nearshore areas;

(d) Evaluating land uses surrounding ponds and fish and wildlife habitat conservation areas that may negatively impact these areas, or conversely, that may contribute positively to their function;

(e) Establishing buffer zones around these areas to separate incompatible uses from habitat areas;

(f) Potential for restoring lost and impaired salmonid habitat;

(g) Potential for designating areas important for local and ecoregional biodiversity; and

(h) Establishing or enhancing nonregulatory approaches in addition to regulatory methods to protect fish and wildlife habitat conservation areas.

(4) Sources and methods.

(a) Endangered, threatened and sensitive species. Counties and cities should identify and classify seasonal ranges and habitat elements where federal and state listed endangered, threatened and sensitive species have a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. Recovery plans and management recommendations for many of these species are available from the Unites States Fish and Wildlife Service, the National Marine Fisheries Service and the Washington state department of fish and wildlife.

(b) Habitats and species areas of local importance. Counties and cities should identify, classify and designate locally important habitats and species. Counties and cities should consult current information on priority habitats and species identified by the department of fish and wildlife. Priority habitat and species information includes endangered, threatened and sensitive species, but also includes candidate species and other vulnerable and unique species and habitats. While these priorities are those of the department of fish and wildlife, they should be considered by counties and cities as they include the best available science. The department of fish and wildlife can also provide assistance with identifying and mapping important habitat areas at various landscape scales.

(c) Shellfish areas. All public and private tidelands or bedlands suitable for shellfish harvest shall be classified as critical areas. Counties and cities should consider both commercial and recreational shellfish areas. Counties and cities should consider the department of health classification of commercial and recreational shellfish growing areas to determine the existing condition of these areas. Further consideration should be given to the vulnerability of these areas to contamination. Shellfish protection districts established pursuant to chapter 90.72 RCW shall be included in the classification of critical shellfish areas.

(d) Kelp and eelgrass beds; herring, smelt and other forage fish spawning areas. Counties and cities must classify kelp and eelgrass beds, identified by the department of natural resources and the department of ecology. Though not an inclusive inventory, locations of kelp and eelgrass beds are compiled in the Washington coastal atlas published by the department of ecology. Herring, smelt and other forage fish spawning times and locations are outlined in WAC 220-110-240 through 220-110-271.

(e) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farmponds, temporary construction ponds (of less than three years duration) and landscape amenities. However, naturally occurring ponds may include those artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority.

(f) Waters of the state.

(i) Waters of the state are defined in RCW 90.48.020 and include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and water courses in Washington. Stream types are defined and classified in Title 222 WAC, the forest practices regulations. Counties and cities may use the classification system established in WAC 222-16-030 to classify waters of the state. Counties and cities using the water types defined in WAC 222-16-030 or 222-16-031 (interim) should not rely solely on department of natural resources maps of these stream types for purposes of regulating land uses or establishing stream buffers.

(ii) Counties and cities that use the stream typing system developed by the department of natural resources should develop a process to verify actual stream conditions, identify flow alterations, and locate fish passage barriers by conducting a field visit. Field verification of all intermittent or non-

fish bearing streams should occur during the wet season months of October to March or as determined locally.

(iii) Counties and cities may consider the following factors when classifying waters of the state as fish and wildlife habitat conservation areas:

(A) Species present which are endangered, threatened or sensitive, and other species of concern;

(B) Species present which are sensitive to habitat manipulation (e.g., priority habitats and species program);

(C) Historic presence of species of local importance;

(D) Existing surrounding land uses that are incompatible with salmonid habitat;

(E) Presence and size of riparian ecosystems;

(F) Existing water rights; and

(G) The intermittent nature of some waters of the state.

(g) Lakes, ponds, streams, and rivers planted with game fish. This includes game fish planted in these water bodies under the auspices of a federal, state, local, or tribal program or which supports priority fish species as identified by the department of fish and wildlife.

(h) State natural area preserves, natural resource conservation areas, and state wildlife areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the department of natural resources. State wildlife areas are defined, established, and managed by the department of fish and wildlife, which provides information about state wildlife areas for each county.

(i) Salmonid habitat. Counties and cities should consider recommendations found in salmon recovery plans (see the governor's salmon recovery office). Counties and cities may use information prepared by the United States Department of the Interior Fish and Wildlife Service, National Marine Fisheries Service, the Washington department of fish and wildlife, the state recreation and conservation office, and the Puget Sound partnership to designate, protect and restore salmonid habitat.

Chapter 365-195 WAC

GROWTH MANAGEMENT ACT—((~~PROCEDURAL CRITERIA FOR ADOPTING COMPREHENSIVE PLANS AND DEVELOPMENT REGULATIONS~~)) BEST AVAILABLE SCIENCE

((~~PART ONE GENERAL CONSIDERATIONS~~))

((~~PART TWO DEFINITIONS~~))

((~~PART THREE FEATURES OF THE COMPREHENSIVE PLAN~~))

((~~PART FOUR INVENTORIES AND REVIEWS~~))

((~~PART FIVE CONSISTENCY~~))

((~~PART SIX ADOPTION PROCEDURES~~))

((~~PART SEVEN RELATIONSHIP OF GROWTH MANAGEMENT PLANNING TO OTHER LAWS~~))

((~~PART EIGHT DEVELOPMENT REGULATIONS~~))

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 365-195-010	Background.
WAC 365-195-020	Purpose.
WAC 365-195-030	Applicability.
WAC 365-195-040	General method.
WAC 365-195-050	Presumption of validity.
WAC 365-195-060	Regional and local variations.
WAC 365-195-070	Interpretations.
WAC 365-195-200	Statutory definitions.
WAC 365-195-210	Definitions of terms as used in this chapter.
WAC 365-195-220	Additional definitions to be adopted locally.
WAC 365-195-300	Mandatory elements.
WAC 365-195-305	Land use element.
WAC 365-195-310	Housing element.
WAC 365-195-315	Capital facilities element.
WAC 365-195-320	Utilities element.
WAC 365-195-325	Transportation element.
WAC 365-195-330	Rural element.
WAC 365-195-335	Urban growth areas.
WAC 365-195-340	Siting essential public facilities.
WAC 365-195-345	Optional elements.
WAC 365-195-400	Natural resource lands.
WAC 365-195-410	Critical areas.
WAC 365-195-420	Identification of open space corridors.
WAC 365-195-430	Identification of lands useful for public purposes.

WAC 365-195-500	Internal consistency.
WAC 365-195-510	Concurrency.
WAC 365-195-520	Interjurisdictional consistency.
WAC 365-195-530	Coordination with other plans.
WAC 365-195-540	Analysis of cumulative effects.
WAC 365-195-600	Public participation.
WAC 365-195-610	State Environmental Policy Act (SEPA).
WAC 365-195-620	Submissions to state.
WAC 365-195-630	Amendment.
WAC 365-195-640	Record of process.
WAC 365-195-700	Background.
WAC 365-195-705	Basic assumptions.
WAC 365-195-710	Identification of other laws.
WAC 365-195-715	Integrating external considerations.
WAC 365-195-720	Sources of law.
WAC 365-195-725	Constitutional provisions.
WAC 365-195-730	Federal authorities.
WAC 365-195-735	State and regional authorities.
WAC 365-195-740	Regional perspective.
WAC 365-195-745	Special siting statutes.
WAC 365-195-750	Explicit statutory directions.
WAC 365-195-755	Voluntary interjurisdictional planning efforts.
WAC 365-195-760	Integration of SEPA process with creation and adoption of comprehensive plans and development regulations.
WAC 365-195-765	State agency compliance.
WAC 365-195-770	Compliance by regional agencies and special districts.
WAC 365-195-800	Relationship to comprehensive plans.
WAC 365-195-805	Implementation strategy.
WAC 365-195-810	Timing of initial adoption.
WAC 365-195-815	Review for compliance.
WAC 365-195-820	Submissions to state.
WAC 365-195-825	Regulations specifically required by the act.
WAC 365-195-830	Optional authorizations.
WAC 365-195-835	Concurrency regulations.
WAC 365-195-840	Essential public facilities.
WAC 365-195-845	Permit process.
WAC 365-195-850	Impact fees.
WAC 365-195-855	Protection of private property.
WAC 365-195-860	Housing for persons with handicaps.
WAC 365-195-865	Supplementing, amending and monitoring.

Chapter 365-196 WAC

GROWTH MANAGEMENT ACT—PROCEDURAL CRITERIA FOR ADOPTING COMPREHENSIVE PLANS AND DEVELOPMENT REGULATIONS

PART ONE
GENERAL CONSIDERATIONS

NEW SECTION

WAC 365-196-010 Background. Through the Growth Management Act, the legislature provided a new framework for land use planning and the regulation of development in Washington state. The act was enacted in response to problems associated with uncoordinated and unplanned growth and a lack of common goals in the conservation and the wise use of our lands. The problems included increased traffic congestion, pollution, school overcrowding, urban sprawl, and the loss of rural lands.

(1) Major features of the act's framework include:

(a) A requirement that counties with specified populations and rates of growth and the cities within them adopt comprehensive plans and development regulations under the act. Other counties can choose to be covered by this requirement, thereby including the cities they contain.

(b) A set of common goals to guide the development of comprehensive plans and development regulations.

(c) The concept that the process should be a "bottom up" effort, involving early and continuous public participation, with the central locus of decision-making at the local level.

(d) Requirements for the locally developed plans to be internally consistent, consistent with county-wide planning policies and multicounty planning policies, and consistent with the plans of other counties and cities where there are common borders or related regional issues.

(e) A requirement that development regulations adopted to implement the comprehensive plans be consistent with such plans.

(f) The principle that development and the providing of public facilities and services needed to support development should occur concurrently.

(g) A determination that planning and plan implementation actions should address difficult issues that have resisted resolution in the past, such as:

(i) The timely financing of needed infrastructure;

(ii) Providing adequate and affordable housing for all economic segments of the population;

(iii) Concentrating growth in urban areas, provided with adequate urban services;

(iv) The siting of essential public facilities;

(v) The designation and conservation of agricultural, forest, and mineral resource lands;

(vi) The designation and protection of environmentally critical areas.

(h) A determination that comprehensive planning can simultaneously address these multiple issues by focusing on the land development process as a common underlying factor.

(i) An intention that economic development be encouraged and fostered within the planning and regulatory scheme established for managing growth.

(j) A recognition that the act is a fundamental building block of regulatory reform. The state and local government have invested considerable resources in an act that should serve as the integrating framework for other land use related laws.

(k) A desire to recognize the importance of rural areas and provide for rural economic development.

(l) A requirement that counties and cities must periodically review and update their comprehensive plans and development regulations to ensure continued compliance with the goals and requirements of the act.

(2) The pattern of development established in the act. The act calls for a pattern of development that consists of different types of land uses existing on the landscape. These types generally include urban land, rural land, resource lands and critical areas. Critical areas exist in rural, urban, and resource lands. Counties and cities must designate lands in these categories and develop policies governing development consistent with these designations. The act establishes criteria to guide the designation process and to guide the character of development in these lands.

(3) How the act applies to existing developed areas. The act is prospective in nature. It establishes a framework for how counties and cities plan for future growth. In many areas, the pattern called for in the act is a departure from the pattern that existed prior to the act. As a consequence, areas developed prior to the act may not clearly fit into the pattern of development established in the act. In rural areas, comprehensive plans developed under the act should find locally appropriate ways to recognize these areas without allowing these patterns to spread into new undeveloped areas. In urban areas, comprehensive plans should find locally appropriate ways to encourage redevelopment of these areas in a manner consistent with the pattern of development envisioned by the act.

NEW SECTION

WAC 365-196-020 Purpose. (1) Within the framework established by the act, counties and cities may accommodate a wide diversity of local visions. There is no exclusive method for accomplishing the requirements of the act.

(2) In light of the complexity and difficulty of the task, the legislature required the department to establish a technical assistance program. As part of that program, the department must adopt by rule procedural criteria to assist counties and cities in adopting comprehensive plans and development regulations that meet the goals and requirements of the act.

(3) Definitions and interpretations made in this chapter by the department, but not expressly set forth in the act, are identified as such. The department's purpose is to provide assistance in interpreting the act, not to add provisions and meanings beyond those intended by the legislature. For definitions of specific terms used in this chapter see WAC 365-196-210.

NEW SECTION

WAC 365-196-030 Applicability. (1) Where these guidelines apply.

(a) This chapter applies to all counties and cities that are required to plan or choose to plan under RCW 36.70A.040.

(b) Guidelines addressing protection of critical areas apply to all counties and cities, including those that do not plan under RCW 36.70A.040.

(c) As of May 1, 2009, the following counties and cities within them are not required to plan under RCW 36.70A.040: Adams, Asotin, Columbia, Franklin, Grays Harbor, Klickitat, Lincoln, Okanogan, Wahkiakum, and Whitman.

(2) Compliance with the procedural criteria is not a prerequisite for compliance with the act. This chapter makes recommendations for meeting the requirements of the act, it does not set a minimum list of actions or criteria that a county or city must take. Counties and cities can achieve compliance with the goals and requirements of the act by adopting other approaches.

(3) How the growth management hearings boards use these guidelines. The growth management hearings boards must determine, in cases brought before them, whether comprehensive plans or development regulations are in compliance with the goals and requirements of the act. When doing so, boards must consider the procedural criteria contained in this chapter, but determination of compliance must be based on the act itself.

(4) When a county or city should consider the procedural criteria. Counties and cities should consider these procedural criteria when amending or updating their comprehensive plans, development regulations or county-wide planning policies. Since adoption of the act, counties and cities and others have adopted a variety of agreements and frameworks to collaboratively address issues of local concern and their responsibilities under the act. The procedural criteria do not trigger an independent obligation to revisit those agreements. Any local land use planning agreements should, where possible, be construed as consistent with these procedural criteria. Changes to these procedural criteria do not trigger an obligation to review and update local plans and regulations to be consistent with these criteria.

NEW SECTION

WAC 365-196-040 Standard of review. (1) Comprehensive plans and development regulations adopted under the act are presumed valid upon adoption. No state approval is required.

(2) An appeal of a local comprehensive plan or development regulation alleging a violation of the act must be filed with the appropriate growth management hearings board (the board). The board must find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of the act. To find an action clearly erroneous, the board must be left with a firm and definite conclusion that a mistake was made.

(3) Although a county or city does not have to prove compliance, if challenged, it must provide to the hearings board an index of "the record" - all material used in taking the action which is the subject of the challenge. See WAC 242-02-520. This record should include the documents containing the factual basis for determining that the challenged action complies with the act. This information may be contained in the comprehensive plan or development regulations, in the findings of the adopting ordinance or resolution, or in accompanying background documents, such as staff reports.

NEW SECTION

WAC 365-196-050 Regional and local variations. (1) Regional and local variations and the diversity that exist among different counties and cities should be reflected in the use and application of these procedural criteria.

(2) Recognition of variations and diversity is implicit in the act's framework, with an emphasis on a "bottom up" planning process and on public participation. Such recognition is also inherent in the listing of goals without assignment of priority. Accordingly, this chapter seeks to accommodate regional and local differences by focusing on an analytical process, instead of on specific outcomes.

(3) Local plans and development regulations are expected to vary in complexity and in level of detail depending on population size, growth rates, resources available for planning and scale of public facilities, and services provided.

(4) In general, smaller jurisdictions will not be expected to engage in extensive original research, but will be able to rely upon reasonable assumptions derived from available data of a statewide or regional nature or representative of jurisdictions of comparable size and growth rates.

(5) When commenting on plans and regulations proposed for adoption, state agencies, including the department, should be guided by a common sense appreciation of the size of the jurisdiction involved, the magnitude of the problems addressed, and the context of the submitted changes.

(6) The department has developed a variety of technical assistance materials for counties and cities that may be used to help guide local planning.

NEW SECTION

WAC 365-196-060 Goals. The act lists thirteen overall goals in RCW 36.70A.020, plus the shoreline goal added in RCW 36.70A.480(1). Counties and cities should design comprehensive plans and development regulations to meet these goals.

(1) This list of fourteen goals is not exclusive. Counties and cities may adopt additional goals. However, these additional goals must be supplementary. They may not conflict with the fourteen statutory goals.

(2) Balancing the goals in the act.

(a) The act's goals are not listed in order of priority. The ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community. Differences in emphasis are expected from jurisdiction to jurisdiction. Although there may be an inherent tension between the act's goals, counties and cities must give some effect to all the goals. Counties and cities should consider developing a written record demonstrating that it considered the planning goals during the development of the comprehensive plan and development regulations.

(b) When there is a conflict between the general planning goals and more specific requirements of the act, the specific requirements control.

(c) In some cases, counties and cities may support activities outside their jurisdictional boundaries in order to meet goals of the act.

(d) Development regulations must be consistent with the goals and requirements of the act and the comprehensive plan. In most cases, if a comprehensive plan meets the statutory goals, development regulations consistent with the comprehensive plan will meet the goals.

PART TWO
DEFINITIONS

NEW SECTION

WAC 365-196-200 Statutory definitions. The following definitions are contained in chapter 36.70A RCW and provided under this section for convenience. Most statutory definitions included in this section are located in RCW 36.70A.030. Other relevant statutory terms defined elsewhere in chapter 36.70A RCW are also included in this section.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock and that has long-term commercial significance for agricultural production.

(3) "City" means any city or town, including a code city.

(4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(5) "Critical areas" includes the following areas and ecosystems:

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable water;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(6) "Department" means the department of commerce.

(7) "Development regulations" or "regulation" means any controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

(8) "Essential public facilities" includes those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

(9) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW 84.33.100 and 84.33.110, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered:

(a) The proximity of the land to urban, suburban, and rural settlements;

(b) Surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses;

(c) Long-term local economic conditions that affect the ability to manage for timber production; and

(d) The availability of public facilities and services conducive to conversion of forest land to other uses.

(10) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(11) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

(12) "Master planned resort" means a self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities.

(13) "Minerals" includes gravel, sand, and valuable metallic substances.

(14) "Public facilities" includes streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(15) "Public services" includes fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(16) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

(17) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(18) "Rural governmental services" or "rural services" includes those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

(19) "Urban governmental services" or "urban services" includes those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

(20) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible

with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.170 (1)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(21) "Urban growth area" means those areas designated by a county pursuant to RCW 36.70A.110.

(22) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

* RCW 84.33.100 through 84.33.118 were repealed or decodified by 2001 c 249 §§ 15 and 16. RCW 84.33.120 was repealed by 2001 c 249 § 16 and by 2003 c 170 § 7.

NEW SECTION

WAC 365-196-210 Definitions of terms as used in this chapter. The following are definitions which are not defined in RCW 36.70A.030 but are defined here for purposes of the procedural criteria.

(1) "Act" means the Growth Management Act, as enacted in chapter 17, Laws of 1990 1st ex. sess., and chapter 32, Laws of 1991 sp. sess., state of Washington as amended. The act is codified primarily in chapter 36.70A RCW.

(2) "Achieved density" means the average density at which new development occurred in the planning period preceding the analysis required in either RCW 36.70A.130(3) or 36.70A.215.

(3) "Adequate public facilities" means facilities which have the capacity to serve development without decreasing levels of service below locally established minimums.

(4) "Affordable housing" means residential housing that is rented or owned by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed thirty percent of the household's monthly income.

(5) "Allowed densities" means the density, expressed in dwelling units per acre, allowed under a county's or city's development regulations when considering the combined effects of all applicable development regulations. Allowed densities are often expressed as a range between a maximum or minimum density. Allowed densities are also referred to in RCW 36.70A.110 as permitted densities.

(6) "Assumed densities" means the average density at which future development is expected to occur.

(7) "Available public facilities" means that facilities or services are in place, or that a financial commitment is in place, to provide the facilities or services within a specified time. In the case of transportation, the specified time is six years from the time of development.

(8) "Concurrency" means that adequate public facilities are available when the impacts of development occur, or within a specified time thereafter. This definition includes the two concepts or "adequate public facilities" and of "available public facilities" as defined above.

(9) "Consistency" means that no feature of a plan or regulation is incompatible with any other feature of a plan or regulation. Consistency is indicative of a capacity for orderly integration or operation with other elements in a system.

(10) "Contiguous development" means development of areas immediately adjacent to one another.

(11) "Coordination" means consultation and cooperation among jurisdictions.

(12) "Cultural resources" is a term used interchangeably with "lands, sites, and structures, which have historical or archaeological and traditional cultural significance."

(13) "Demand management strategies," or "transportation demand management strategies" means strategies designed to change travel behavior to make more efficient use of existing facilities to meet travel demand. Examples of demand management strategies can include:

(a) Shift demand outside of the peak travel time;

(b) Shift demand to other modes of transportation;

(c) Increase the average number of occupants per vehicle;

(d) Decrease the length of trips; and

(e) Avoid the need for vehicle trips.

(14) "Domestic water system" means any system providing a supply of potable water which is deemed adequate pursuant to RCW 19.27.097 for the intended use of a development.

(15) "Family day-care provider" is defined in RCW 43.215.010. It is a person who regularly provides child care and early learning services for not more than twelve children. Children include both the provider's children, close relatives and other children irrespective of whether the provider gets paid to care for them. They provide their services in the family living quarters of the day care provider's home.

(16) "Financial commitment" means that sources of public or private funds or combinations thereof have been identified which will be sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.

(17) "Growth Management Act" - see definition of "act."

(18) "Historic preservation" or "preservation" is defined in the National Historic Preservation Act of 1966, as identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities or any combination of the foregoing activities.

(19) "Lands, sites, and structures, that have historical, archaeological, or traditional cultural significance" are the

tangible and material evidence of the human past, aged fifty years or older, and include archaeological sites, historic buildings and structures, districts, landscapes, and objects.

(20) "Level of service" means an established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need. Level of service standards are synonymous with locally established minimum standards.

(21) "May," as used in this chapter, indicates an option counties and cities can take at their discretion.

(22) "Must," as used in this chapter, indicates a requirement for compliance with the act. It has the same meaning within this chapter as "shall."

(23) "New fully contained community" is a development proposed for location outside of the existing designated urban growth areas which is characterized by urban densities, uses, and services, and meets the criteria of RCW 36.70A.350.

(24) "Planning period" means the twenty-year period following the adoption of a comprehensive plan or such longer period as may have been selected as the initial planning horizon.

(25) "Public service obligations" means obligations imposed by law on utilities to furnish facilities and supply service to all who may apply for and be reasonably entitled to service.

(26) "Regional transportation plan" means the transportation plan for the regionally designated transportation system which is produced by the regional transportation planning organization.

(27) "Regional transportation planning organization (RTPO)" means the voluntary organization conforming to RCW 47.80.020, consisting of counties and cities within a region containing one or more counties which have common transportation interests.

(28) "Rural lands" means all lands which are not within an urban growth area and are not designated as natural resource lands having long-term commercial significance for production of agricultural products, timber, or the extraction of minerals.

(29) "Sanitary sewer systems" means all facilities, including approved on-site disposal facilities, used in the collection, transmission, storage, treatment, or discharge of any waterborne waste, whether domestic in origin or a combination of domestic, commercial, or industrial waste. On-site disposal facilities are only considered sanitary sewer systems if they are designed to serve urban densities.

(30) "Shall," as used in this chapter, indicates a requirement for compliance with the act. It has the same meaning within this chapter as "must."

(31) "Should," as used in this chapter, indicates the advice of the department, but does not indicate a requirement for compliance with the act.

(32) "Solid waste handling facility" means any facility for the transfer or ultimate disposal of solid waste, including land fills and municipal incinerators.

(33) "Sufficient land capacity for development" means that the comprehensive plan and development regulations provide for the capacity necessary to accommodate all the growth in population and employment that is allocated to that jurisdiction through the process outlined in the county-wide planning policies.

(34) "Transportation facilities" includes capital facilities related to air, water, or land transportation.

(35) "Transportation level of service standards" means a measure which describes the operational condition of the travel stream and acceptable adequacy requirements. Such standards may be expressed in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety.

(36) "Transportation system management" means the use of low capital expenditures to increase the capacity of the transportation system. Transportation system management (TSM) strategies include but are not limited to signalization, channelization, ramp metering, incident response programs, and bus turn-outs.

(37) "Utilities" or "public utilities" means enterprises or facilities serving the public by means of an integrated system of collection, transmission, distribution, and processing facilities through more or less permanent physical connections between the plant of the serving entity and the premises of the customer. Included are systems for the delivery of natural gas, electricity, telecommunications services, and water, and for the disposal of sewage.

(38) "Visioning" means a process of citizen involvement to determine values and ideals for the future of a community and to transform those values and ideals into manageable and feasible community goals.

PART THREE
URBAN GROWTH AREAS AND COUNTY-WIDE PLANNING POLICIES

NEW SECTION

WAC 365-196-300 Urban density. (1) The role of urban areas in the act. The act requires counties and cities to direct new growth to urban areas to allow for more efficient and predictable provision of adequate public facilities, to promote an orderly transition of governance for urban areas, to reduce development pressure on rural and resource lands, and to encourage redevelopment of existing urban areas.

(2) How the urban density requirements in the act are interrelated. The act involves a consideration of density in three contexts:

(a) Allowed densities: The density, expressed in dwelling units per acre, allowed under a county's or city's development regulations when considering the combined effects of all applicable development regulations. Allowed densities are often expressed as a range between a maximum or minimum density. Allowed densities are also referred to in RCW 36.70A.110 as permitted densities.

(b) Assumed densities: The average density at which future development is expected to occur.

(c) Achieved density: The average density at which new development occurred in the period preceding the analysis required in either RCW 36.70A.130(3) or 36.70A.215.

(3) Determining the appropriate range of urban densities. Within urban growth areas, counties and cities must permit urban densities and provide sufficient land capacity for

development. The requirements of RCW 36.70A.110 and 36.70A.115 apply to the densities identified in the comprehensive plan and the densities allowed in the implementing development regulations.

(a) Comprehensive plans. Under RCW 36.70A.070(1) and in RCW 36.70A.110(2), the act requires that the land use element identify areas and densities sufficient to accommodate the twenty-year population allocation. The land use element should clearly identify the densities, or range of densities, assumed for each land use designation as shown on the future land use map. When reviewing the urban growth area, the assumed densities in the land capacity analysis must be urban densities.

(b) Development regulations. Counties and cities must provide sufficient capacity of land suitable for development.

(i) Development regulations must allow development at the densities assumed in the comprehensive plan.

(ii) Counties and cities need not force redevelopment in urban areas not currently developed at urban densities, but the development regulations must allow, and should not discourage redevelopment at urban densities. If development patterns are not occurring at urban densities, counties and cities should review development regulations for potential barriers or disincentives to development at urban densities. Counties and cities should revise regulations to remove any identified barriers and disincentives to urban densities, and may include incentives.

(4) Criteria for establishing urban densities. The act does not establish a uniform standard for minimum urban density. Counties and cities may establish a specified minimum density in county-wide or multicounty planning policies. Counties and cities should consider the following factors when determining an appropriate range of urban densities:

(a) An urban density is a density for which cost-effective urban services can be provided. Higher densities generally lower the per capita cost to provide urban services.

(b) Densities should be higher in areas with a high local transit level of service. Generally, a minimum of seven to eight dwelling units per acre is necessary to support local urban transit service. Higher densities are preferred around high capacity transit stations.

(c) The areas and densities within an urban growth area must be sufficient to accommodate the portion of the twenty-year population that is allocated to the urban area. Urban densities should allow accommodation of the population allocated within the area that can be provided with adequate public facilities during the planning period.

(d) Counties and cities should establish significantly higher densities within regional growth centers designated in RCW 47.80.030; in growth and transportation efficiency centers designated under RCW 70.94.528; and around high capacity transit stations in accordance with RCW 47.80.026. Cities may also designate new or existing downtown centers, neighborhood centers, or identified transit corridors as focus areas for infill and redevelopment at higher densities.

(e) Densities should allow counties and cities to accommodate new growth predominantly in existing urban areas and reduce reliance on either continued expansion of the urban growth area, or directing significant amounts of new growth to rural areas.

(f) The densities chosen should accommodate a variety of housing types and sizes to meet the needs of all economic segments of the community. The amount and type of housing accommodated at each density and in each land use designation should be consistent with the need for various housing types identified in the housing element of the comprehensive plan.

(g) Counties and cities may designate some urban areas at less than urban densities to protect a network of critical areas, to avoid further development in frequently flooded areas, or to prevent further development in geologically hazardous areas. Counties or cities should show that the critical areas are present in the area so designated and that area designated is limited to the area necessary to achieve these purposes.

(5) Addressing development patterns that occurred prior to the act.

(a) Prior to the passage of the act, many areas within the state developed at densities that are neither urban nor rural. Inside the urban growth area, local comprehensive plans should allow appropriate redevelopment of these areas. Newly developed areas inside the urban growth area should be developed at urban densities.

(b) Local capital facilities plans should include plans to provide existing urban areas with adequate public facilities during the planning period so that available infrastructure does not serve as a limiting factor to redevelopment at urban densities.

NEW SECTION

WAC 365-196-305 County-wide planning policies. (1) Purpose of county-wide planning policies. The act requires counties and cities to collaboratively develop county-wide planning policies to govern the development of comprehensive plans. The primary purpose of county-wide planning policies is to ensure consistency between the comprehensive plans of counties and cities sharing a common border or related regional issues. Another purpose of county-wide planning policies is to facilitate the transformation of local governance in the urban growth area, typically through annexation to or incorporation of a city, so that urban governmental services are primarily provided by cities and rural and regional services are provided by counties.

(2) Relationship to the act. County-wide planning policies must comply with the requirements of the act. County-wide planning policies may not compel counties and cities to take action that violates the act. County-wide planning policies may not permit actions that the act prohibits nor include exceptions to such prohibitions not contained in the act. If a county-wide planning policy can be implemented in a way that is consistent with the act, then it is consistent with the act, even if its subsequent implementation is found to be out of compliance. RCW 36.70A.210(4) requires state agencies to comply with county-wide planning policies.

(3) Relationship to comprehensive plans. The comprehensive plans of counties and cities must comply with both the county-wide planning policies and the act. Any requirements in a county-wide planning policy do not replace

requirements in the act or any other state or federal law or regulation.

(4) Required policies. Consistent with RCW 36.70A.210(3) and 36.70A.215, county-wide planning policies must cover the following subjects:

(a) Policies to implement RCW 36.70A.110, including:

(i) Designation of urban growth areas;

(ii) Selection and allocation of population between cities and counties as part of the review of an urban growth area;

(iii) Procedures governing amendments to urban growth areas, including the review required by RCW 36.70A.130(3);

(iv) Consultation between cities and counties regarding urban growth areas; and

(v) If desired, policies governing the establishment of urban service boundaries or potential annexation areas.

(b) Promoting contiguous and orderly development and provision of urban services to such development;

(c) Siting public facilities of a county-wide or statewide nature, including transportation facilities of statewide significance;

(d) County-wide transportation facilities and strategies;

(e) The need for affordable housing such as housing for all economic segments of the population and parameters for its distribution;

(f) Joint city/county planning in urban growth areas;

(g) County-wide economic development and employment;

(h) An analysis of fiscal impact; and

(i) Where applicable, policies governing the buildable lands review and evaluation program.

(5) Recommended policies. County-wide planning policies should also include policies addressing the following:

(a) Procedures by which the county-wide planning policies will be reviewed and amended; and

(b) A process for resolving disputes regarding interpretation of county-wide planning policies or disputes regarding implementation of the county-wide planning policies.

(6) Framework for adoption of county-wide planning policies. Prior to adopting county-wide planning policies, counties and cities must develop a framework. This framework should be in written form and agreed to by the county and the cities within those counties. The framework may be in a memorandum of understanding, an intergovernmental agreement, or as a section of the county-wide planning policies. This framework must include the following provisions:

(a) Desired policies;

(b) Deadlines;

(c) Ratification of final agreements and demonstration; and

(d) Financing, if any, of all activities associated with developing and adopting the county-wide planning policies.

(7) Forum for ongoing coordination. Counties and cities should establish a method for ongoing coordination of issues associated with implementation of the county-wide planning policies, which should include both a forum for county and city elected officials and a forum for county and city staff responsible for implementation. These forums may also include special purpose districts, transit districts, port districts, federal agencies, state agencies, and tribes.

(8) Multicounty planning policies.

(a) Multicounty planning policies must be adopted by two or more counties, each with a population of four hundred fifty thousand or more, with contiguous urban areas. They may also be adopted by other counties by a process agreed to among the counties and cities within the affected counties.

(b) Multicounty planning policies function as county-wide planning policies adopted by two or more counties and establish a common region-wide framework that ensures consistency among county and city comprehensive plans adopted pursuant to RCW 36.70A.070, and county-wide planning policies adopted pursuant to RCW 36.70A.210.

(c) Multicounty planning policies provide a framework for regional plans developed within a multicounty region, including regional transportation plans established under RCW 47.80.023, as well as plans of cities, counties, and others that have common borders or related regional issues as required under RCW 36.70A.100.

(d) Multicounty planning policies should address, at a minimum, the same topics identified for county-wide planning as identified in RCW 36.70A.210(3), except for those responsibilities assigned exclusively to counties. Other issues may also be addressed.

(e) Because of the regional nature of multicounty planning policies, counties or cities should use an existing regional agency with the same or similar geographic area, such as a regional transportation planning organization, pursuant to RCW 47.80.020, to develop, adopt, and administer multicounty planning policies.

(f) In order to provide an ongoing multicounty framework, a schedule for reviewing and revising the multicounty planning policies may be established. This schedule should relate to the review and revision deadlines for county and city comprehensive plans pursuant to RCW 36.70A.130.

NEW SECTION

WAC 365-196-310 Urban growth areas. (1) Requirements.

(a) Each county planning under the act must designate an urban growth area or areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. Each county must designate urban growth areas in its comprehensive plan.

(b) Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city.

(c) An urban growth area may include territory that is located outside a city if such territory already is characterized by urban growth or is adjacent to territory already characterized by urban growth.

(d) Based upon the growth management planning population projection for the county by the office of financial management, and based on a county-wide employment forecast developed by the county at its discretion, the urban growth areas shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period. Counties and cities may provide the office of financial management with information they deem relevant to prepare the population

projections, and the office shall consider and comment on such information and review projections with cities and counties before they are adopted. Counties and cities may petition the office to revise projections they believe will not reflect actual population growth.

(e) The urban growth area may not exceed the areas necessary to accommodate the growth management planning projections, plus a reasonable land market supply factor, or market factor. In determining this market factor, counties and cities may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.

(f) Counties and cities should facilitate urban growth as follows:

(i) Urban growth should be located first in areas already characterized by urban growth that have adequate, existing public facility and service capacities to serve such development.

(ii) Second, urban growth should be located in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources.

(iii) Third, urban growth should be located in the remaining portions of the urban growth area.

(g) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development. Recommendations governing the extension of urban services into rural areas are found in WAC 365-196-425.

(h) Each county that designates urban growth areas must review, at least every ten years, its designated urban growth areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. This review should be conducted jointly with the affected cities, at least for the incorporated portions of the urban growth area. The purpose of the ten-year urban growth area review is to assess the capacity of the urban land to accommodate population growth projected for the succeeding twenty-year planning period. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(2) General procedure for designating urban growth areas.

(a) The designation process shall include consultation by the county with each city located within its boundaries. The adoption, review and amendment of the urban growth area should reflect a cooperative effort among jurisdictions to accomplish the requirements of the act on a regional basis, consistent with the county-wide planning policies and, where applicable, multicounty planning policies.

(b) Each city shall propose the location of an urban growth area.

(c) The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located.

(d) If an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated an urban growth area.

(e) As growth occurs, most lands within the urban growth area should ultimately be provided with urban governmental services by cities, either directly or by contract. Other service providers are appropriate within urban growth areas for regional or county-wide services, or for isolated unincorporated pockets characterized by urban growth. Counties and cities should provide for development phasing within each urban growth area to ensure the orderly sequencing of development and that services are provided as growth occurs.

(f) Counties and cities should develop and evaluate urban growth area proposals with the purpose of accommodating projected urban growth through infill and redevelopment within existing municipal boundaries or urban areas. In some cases, expansion will be the logical response to projected urban growth.

(g) Counties, cities, and other municipalities, where appropriate, should negotiate interlocal agreements to coordinate land use management with the provision of adequate public facilities to the urban growth area. Such agreements should facilitate urban growth in a manner consistent with the cities' comprehensive plans and development regulations, and should facilitate a general transformation of governance over time, through annexation or incorporation, and transfer of nonregional public services to cities as the urban area develops.

(3) Recommendations for meeting requirements.

(a) Selecting and allocating county-wide growth forecasts. This process should involve at least the following:

(i) The total county-wide population is the sum of the population allocated to each city; the population allocated to any portion of the urban growth area associated with cities; the population allocated to any portion of the urban growth area not associated with a city; and the population growth that is expected outside of the urban growth area.

(ii) RCW 43.62.035 directs the office of financial management to provide a reasonable range of high, medium and low twenty-year population forecasts for each county in the state, with the medium forecast being most likely. Counties and cities must plan for a total county-wide population that falls within the office of financial management range.

(iii) Consideration of other population forecast data, trends, and implications. In selecting population forecasts, counties and cities may consider the following:

(A) Population forecasts from outside agencies, such as regional or metropolitan planning agencies, and service providers.

(B) Historical growth trends and factors which would cause those trends to change in the future.

(C) General implications, including:

(I) Public facilities and service implications. Counties and cities should carefully consider how to finance the necessary facilities and should establish a phasing plan to ensure that development occurs at urban densities; occurs in a contiguous and orderly manner; and is linked with provision of adequate public facilities. These considerations are particularly important when considering forecasts closer to the high end of the range. Jurisdictions considering a population forecast closer to the low end of the range should closely monitor development and population growth trends to ensure actual growth does not begin to exceed the planned capacity.

(II) Overall land supplies. Counties and cities facing immediate physical or other land supply limitations may consider these limitations in selecting a forecast. Counties and cities that identify potential longer term land supply limitations should consider the extent to which current forecast options would require increased densities or slower growth in the future.

(III) Implications of short term updates. The act requires that twenty-year growth forecasts and designated urban growth areas be updated at a minimum every ten years. Counties and cities should consider the likely timing of future updates, and the opportunities this provides for adjustments.

(D) Counties and cities are not required to adopt forecasts for annual growth rates within the twenty-year period, but may choose to for planning purposes. If used, annual growth projections may assume a consistent rate throughout the planning period, or may assume faster or slower than average growth in certain periods, as long as they result in total growth consistent with the twenty-year forecasts selected.

(iv) Selection of a county-wide employment forecast. Counties, in consultation with cities, should adopt a twenty-year county-wide employment forecast to be allocated among urban growth areas, cities, and the rural area. The following should be considered in this process:

(A) The county-wide population forecast, and the resulting ratio of forecast jobs to persons. This ratio should be compared to past levels locally and other regions, and to desired policy objectives; and

(B) Economic trends and forecasts produced by outside agencies or private sources.

(v) Projections for commercial and industrial land needs. When establishing an urban growth area, counties should designate sufficient commercial and industrial land. Although no office of financial management forecasts are available for industrial or commercial land needs, counties and cities should use a county-wide employment forecast, available data on the current and projected local and regional economies, and local demand for services driven by population growth. Counties and cities should consider establishing a county-wide estimate of commercial and industrial land needs to ensure consistency of local plans.

Counties and cities should consider the need for industrial lands in the economic development element of their comprehensive plan. Counties and cities should avoid conversion of areas set aside for industrial uses to other incompatible uses, to ensure the availability of suitable sites for industrial development.

(vi) Selection of community growth goals with respect to population, commercial and industrial development and residential development.

(vii) Selection of the densities the community seeks to achieve in relation to its growth goals. Inside the urban growth areas densities should be urban. Outside the urban growth areas, densities should be rural.

(b) General considerations for determining the need for urban growth areas expansions to accommodate projected population and employment growth.

(i) Estimation of the number of new persons and jobs to be accommodated based on the difference between the twenty-year forecast and current population and employment.

(ii) Estimation of the capacity of current cities and urban growth areas to accommodate additional population and employment over the twenty-year planning period. This should be based on a land capacity analysis, which may include the following:

(A) Identification of the amount of developable residential, commercial and industrial land, based on inventories of currently undeveloped or partially developed urban lands.

(B) Identification of the appropriate amount of greenbelt and open space to be preserved or created in connection with the overall growth pattern and consistent with any adopted levels of service. See WAC 365-196-335 for additional information.

(C) Identification of the amount of developable urban land needed for the public facilities, public services, and utilities necessary to support the likely level of development. See WAC 365-196-320 for additional information.

(D) Based on allowed land use development densities and intensities, a projection of the additional urban population and employment growth that may occur on the available residential, commercial and industrial land base. The projection should consider the portion of population and employment growth which may occur through redevelopment of previously developed urban areas during the twenty-year planning period.

(E) The land capacity analysis must be based on the assumption that growth will occur at urban densities inside the urban growth area. In formulating land capacity analyses, counties and cities should consider data on past development, as well as factors which may cause trends to change in the future. For counties and cities subject to RCW 36.70A.215, information from associated buildable lands reports should be considered. If past development patterns have not resulted in urban densities, or have not resulted in a pattern of desired development, counties and cites should use assumptions aligned with desired future development patterns. Counties and cities should then implement strategies to better align future development patterns with those desired.

(F) The land capacity analysis may also include a reasonable land market supply factor, also referred to as the "market factor." The purpose of the market factor is to account for the estimated percentage of developable acres contained within an urban growth area that, due to fluctuating market forces, is likely to remain undeveloped over the course of the twenty-year planning period. The market factor recognizes that not all developable land will be put to its maximum use because

of owner preference, cost, stability, quality, and location. If establishing a market factor, counties and cities should establish an explicit market factor for the purposes of establishing the amount of needed land capacity. Counties and cities may consider local circumstances in determining an appropriate market factor. Local data on the extent of development of previously established land supplies or similar studies should be conducted to determine appropriate market factor values. Counties and cities may also use a number derived from general information if local study data is not available.

(iii) An estimation of the additional growth capacity of rural and other lands outside of existing urban growth areas compared with future growth forecasted, and current urban and rural capacities.

(iv) If future growth forecasts exceed current capacities, counties and cities should first consider the potential of increasing capacity of existing urban areas through allowances for higher densities, or for additional provisions to encourage redevelopment. If counties and cities find that increasing the capacity of existing urban areas is not feasible or appropriate based on the evidence they examine, counties and cities may consider expansion of the urban growth area to meet the future growth forecast.

(c) Determining the appropriate locations of new or expanded urban growth area boundaries. This process should consider the following:

(i) Selection of appropriate densities. For all jurisdictions planning under the act, the urban growth area should represent the physical area where that jurisdiction's urban development vision can be realized over the next twenty years. The urban growth area should be based on densities selected to promote goals of the act - densities which accommodate urban growth served by adequate public facilities and discourage sprawl. RCW 36.70A.110 requires that densities specified for land inside the urban growth area must be urban densities. See WAC 365-196-300 for recommendations on determining appropriate urban densities.

(ii) The county should attempt to define urban growth areas so as to accommodate the growth plans of the cities, while recognizing that physical location or existing patterns of service make some unincorporated areas which are characterized by urban growth inappropriate for inclusion in any city's potential growth area.

(iii) Identifying the location of any new lands added to the urban growth area. Lands should be included in the urban growth area in the following priority order:

(A) Existing incorporated areas;

(B) Land that is already characterized by urban growth and has adequate public facilities and services;

(C) Land already characterized by urban growth, but requiring additional public facilities and urban services; and

(D) Lands adjacent to the above, but not meeting those criteria.

(iv) Designating industrial lands. Counties and cities should consult with local economic development organizations when identifying industrial lands. To identify sites that are particularly well suited for industry, considering factors such as:

(A) Rail access;

(B) Highway access;

(C) Large parcel size;

(D) Location along major electrical transmission lines;

(E) Location along pipelines;

(F) Location near or adjacent to ports and commercial navigation routes;

(G) Availability of needed infrastructure; or

(H) Absence of surrounding incompatible uses.

(v) Consideration of resource lands issues. Urban growth areas should not be expanded into designated agricultural or forest resource lands unless a city or county has enacted a program authorizing transfer or purchase of development rights. Although critical areas exist within urban areas, counties and cities should avoid expanding the urban growth areas into areas with known critical areas extending over a large area. See RCW 36.70A.110(8) for legislative direction on expansion of urban growth areas into the one hundred year floodplain of river segments that are located west of the crest of the Cascade mountains and have a mean annual flow of one thousand or more cubic feet per second.

(vi) If there is physically no land available into which a city might expand, it may need to revise its proposed urban densities or population levels in order to accommodate growth on its existing land base.

(d) Evaluating the feasibility of the overall growth plan. Counties and cities should perform a check on the feasibility of the overall plan to accommodate growth. If, as a result of this evaluation, the urban growth area appears to have been drawn too small or too large, the proposal should be adjusted accordingly. Counties and cities should evaluate:

(i) The anticipated ability to finance the public facilities, public services, and open space needed in the urban growth area over the planning period. When conducting a review of the urban growth areas, counties and cities should develop an analysis of the fiscal impact of alternative land use patterns that accommodate the growth anticipated over the succeeding twenty-year period. This provides the public and decision makers with an estimate of the fiscal consequences of various development patterns. This analysis could be done in conjunction with the analysis required under the State Environmental Policy Act.

(ii) The effect that confining urban growth within the areas defined is likely to have on the price of property and the impact thereof on the ability of residents of all economic strata to obtain housing they can afford.

(iii) Whether the level of population and economic growth contemplated can be achieved within the capacity of available land and water resources and without environmental degradation.

(iv) The extent to which the comprehensive plan of the county and of adjacent counties and cities will influence the area needed.

(e) County actions in adopting urban growth areas.

(i) A change to the urban growth area is an amendment to the comprehensive plan and requires, at a minimum, an amendment to the land use element. Counties and cities should also review and update the transportation, capital facilities, utilities, and housing elements to maintain consistency and show how any new areas added to the urban growth area will be provided with adequate public facilities. A modification of any portion of the urban growth area affects the

overall urban growth area size and has county-wide implications. Because of the significant amount of resources needed to conduct a review of the urban growth area, and because some policy objectives require time to achieve, frequent, piecemeal expansion of the urban growth area should be avoided.

(ii) Counties and cities that are required to participate in the buildable lands program must first have adopted and implemented reasonable measures as required by RCW 36.70A.215 before considering expansion of an urban growth area.

(iii) Consistent with county-wide planning policies, counties and cities consulting on the designation of urban growth areas should consider the following implementation steps:

(A) Establishment of agreements regarding land use regulations and the provision of services in that portion of the urban growth area outside of an existing city into which it is eventually expected to expand.

(B) Negotiation of agreements for appropriate allocation of financial burdens resulting from the transition of land from county to city jurisdiction.

(C) Provision for an ongoing collaborative process to assist in implementing county-wide planning policies, resolving regional issues, and adjusting growth boundaries.

NEW SECTION

WAC 365-196-315 Buildable lands review and evaluation. (1) Purpose. The review and evaluation program required by RCW 36.70A.215 is referred to as the "buildable lands program." The buildable lands program is intended to determine if urban densities are being achieved within urban growth areas by comparing local planning goals and assumptions with actual development. It also determines if there is sufficient commercial, industrial and housing capacity within the adopted urban growth area to accommodate the county's twenty-year planning targets. If, through this evaluation, it is determined that there is an inconsistency between planned and built-out densities or there is insufficient development capacity, counties and cites must adopt and implement measures, other than expanding urban growth areas, that are reasonably likely to increase consistency. These measures are referred to as "reasonable measures." Products derived through the program should be used as a technical resource to local policy makers for subsequent comprehensive plan updates.

(2) Required jurisdictions.

(a) The following counties, and the cities located within those counties, must establish and maintain a buildable lands program as required by RCW 36.70A.215:

(i) Clark;

(ii) King;

(iii) Kitsap;

(iv) Pierce;

(v) Snohomish; and

(vi) Thurston.

(b) If another county or city establishes a program containing features of the buildable lands program, they are not obligated to meet the requirements of RCW 36.70A.215.

(3) County-wide planning policies.

(a) Buildable lands programs must be established in county-wide planning policies.

(b) The buildable lands program must contain policies that establish a framework for implementation and continued administration.

(c) The buildable lands program's framework for implementation and administration may be adopted administratively. The program's framework must contain policies or procedures to:

(i) Provide guidance for the collection and analysis of data;

(ii) Provide for the evaluation of the data every five years, commonly referred to as the buildable lands report;

(iii) Provide for the establishment of methods to resolve disputes among jurisdictions regarding inconsistencies in collection and analysis of data; and

(iv) Provide for the amendment of the county-wide policies and county and city comprehensive plans as needed to remedy inconsistencies identified through the evaluation required by this section, or to bring these policies and plans into compliance with the requirements of the act.

(d) The program's framework for implementation and administration should, in addition to the above, address the following:

(i) Establishment of the lead agency responsible for the overall coordination of the program;

(ii) Establishment of criteria and timelines for each county or city to:

(A) Make a determination as to consistency or inconsistency between what was envisioned in adopted county-wide planning policies, comprehensive plans and development regulations and actual development that has occurred;

(B) Adopt and implement reasonable measures, if necessary;

(C) Report on the monitoring of the effectiveness of reasonable measures that have been adopted and implemented. Such reporting could be included in the subsequent five-year buildable lands report;

(D) Transmit copies of any actions taken under (d)(ii)(A), (B) and (C) of this subsection to the department.

(iii) Providing opportunities for the public to review and comment on the following:

(A) Refinement of data collection and analysis methods for the review and evaluation elements of the program;

(B) Determinations as to consistency or inconsistency between what was envisioned in adopted county-wide planning policies, comprehensive plans and development regulations and actual development that has occurred; and

(C) Adoption of reasonable measures, and reports on the monitoring of their effectiveness.

(iv) Public involvement may be accommodated during review and evaluation of a county or city comprehensive plan in consideration of the buildable land report information. This would generally include public review and comment opportunities before the planning commission or legislative body during the normal local government planning process.

(4) Buildable lands program reporting.

(a) Every five years the buildable lands program must compile and publish an evaluation, known as the buildable

lands report. The first report was due September 1, 2002, and subsequent reports every five years thereafter. Each buildable lands report must be submitted to the department upon publication.

(b) The buildable lands reports must compare growth and development assumptions, targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred during the preceding five years. The results of this analysis are intended to aid counties and cities in reviewing and adjusting planning strategies.

(c) The publication, "*Buildable Lands Program Guidelines*," available from the department, may be used as a source for suggested approaches for meeting the requirements of the program.

(5) Criteria for determining consistency or inconsistency.

(a) The determination of consistency or inconsistency for each county or city maintaining a buildable lands program must be made under RCW 36.70A.215(3):

(i) Evaluation under RCW 36.70A.215 (3)(a) should determine whether the comprehensive plan and development regulations sufficiently accommodate the population projection established for the county and allocated within the county and between the county and its cities, consistent with the requirements in RCW 36.70A.110.

(ii) Evaluation under RCW 36.70A.215 (3)(b) should compare the achieved densities, type and intensity for commercial, industrial and residential land uses with the assumed densities that were envisioned in the county-wide planning policies, comprehensive plan and allowed in the development regulations.

(iii) Evaluation under RCW 36.70A.215 (3)(c) should determine, based on actual development densities determined in the evaluation under RCW 36.70A.215 (3)(b), the amount of land needed for commercial, industrial and residential uses for the remaining portion of the twenty-year planning period. This evaluation should consider the type and densities of each type of land use as envisioned in the county-wide planning policies, comprehensive plan and development regulations.

(b) The evaluation used to determine whether there is a consistency or inconsistency should include any additional standards identified in the county-wide planning policies or in other policies that are specifically directed for use in the evaluation.

(6) Measures to address inconsistencies.

(a) The legislative bodies of counties and cities are responsible for the adoption of reasonable measures requiring legislative action to amend their individual comprehensive plans and development regulations. Counties, in consultation with cities, are responsible for amending the county-wide planning policies reasonably likely to increase consistency. Annual monitoring and reporting is the responsibility of the adopting jurisdiction, but may be carried out by either the adopting jurisdiction or other designated agency or person.

(b) If a county or city determines an inconsistency exists, the county or city should establish a timeline for adopting and implementing measures that are reasonably likely to increase consistency in the succeeding five years. The responsible county or city may utilize its annual review under RCW 36.70A.130 to make adjustments to its comprehensive plan and development regulations that are necessary to implement reasonable measures. Information regarding the adoption, implementation, and monitoring of reasonable measures should be made available to the public. Counties and cities may not rely on expansion of the urban growth area as a measure to address the inconsistency.

(i) Each county or city is responsible for implementing reasonable measures within its jurisdiction and must adopt measures that are designed to remedy the inconsistency within the remaining planning horizon of the adopted comprehensive plan;

(ii) Each county or city adopting reasonable measures is responsible for documenting its methodology and expectations for monitoring to provide a basis to evaluate whether the adopted measures have been effective in increasing consistency during the subsequent five-year period;

(iii) If the monitoring of reasonable measures fails to show increased consistency relative to adopted policies, plans and development regulations during the subsequent five-year period, the county or city should evaluate whether the measures in question should be revised, replaced, supplemented or rescinded;

(iv) If monitoring of reasonable measures demonstrates that such measures have remedied the inconsistency, the adopting county or city may discontinue monitoring;

(v) A copy of any action taken to adopt, amend, or rescind reasonable measures should be submitted to the department.

NEW SECTION

WAC 365-196-320 Providing urban services. (1) Urban governmental services.

(a) Urban services are defined by RCW 36.70A.030(20) as those public services and public facilities at an intensity historically and typically provided in cities. Urban services specifically include:

(i) Sanitary sewer systems;

(ii) Storm drainage systems;

(iii) Domestic water systems;

(iv) Street cleaning services;

(v) Fire and police protection services;

(vi) Public transit services; and

(vii) Other public utilities associated with urban areas and normally not associated with rural areas.

(b) RCW 36.70A.030 (12) and (13) define public facilities and public services, which in addition to those defined as urban services, also include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, parks and recreational facilities, and schools, public health and environmental protection, and other governmental services.

(c) Although some of these services may be provided in rural areas, urban areas are typically served by higher capacity systems capable of providing adequate services at urban densities. Storm drainage systems and sanitary sewer systems are the only services that are generally exclusively for urban growth areas. Outside of urban growth areas storm drainage systems and sanitary sewer systems are appropriate

in limited circumstances when necessary to protect basic public health and safety and the environment, and when such services are financially supportable at rural densities and do not permit urban development.

(d) At a minimum, adequate public facilities in urban areas should include sanitary sewer systems, and public water service from a Group A public water system under chapter 70.119 or 70.119A RCW because these services are usually necessary to support urban densities. The services provided must be adequate to allow development at urban densities and serve development at densities consistent with the land use element.

(e) The obligation to provide urban areas with adequate public facilities is not limited to new urban areas. Counties and cities must include in their capital facilities element a plan to provide adequate public facilities to all urban areas, including those existing areas that are developed, but do not currently have a full range of urban governmental services or services necessary to support urban densities.

(f) The use of on-site sewer systems within urban growth areas may be appropriate in limited circumstances where there are no negative health effects, and the use of on-site sewer systems does not preclude development at urban densities. Such circumstances may include:

(i) Use of on-site sewer systems as a transitional strategy where there is a phasing plan in place; or

(ii) To serve isolated pockets of urban land difficult to serve due to terrain, critical areas or where the benefit of providing an urban level of service is cost prohibitive; or

(iii) Where on-site systems are the best available technology for the circumstances and are designed to serve urban densities.

(2) Appropriate providers. RCW 36.70A.110(4) states that, in general, cities are the units of government most appropriate to provide urban governmental services. However, counties, special purpose districts and private providers also provide urban services, particularly services that are regional in nature. Counties and cities should plan for a transformation of governance as urban growth areas develop, whereby annexation or incorporation occurs, and nonregional urban services provided by counties are generally transferred to cities. See WAC 365-196-305.

(3) Coordination of planning in urban growth areas.

(a) The capital facilities element and transportation element of the county or city comprehensive plan must show how adequate public facilities will be provided and by whom. If the county or city with land use authority over an area is not the provider of urban services, a process for maintaining consistency between the land use element and plans for infrastructure provision should be developed consistent with the county-wide planning policies.

(b) If a city is the designated service provider outside of its municipal boundaries, the city capital facilities element must also show how urban services will be provided within their service area. This should include incorporated areas and any portion of the urban growth area that is assigned to a service area or potential annexation area designated under RCW 36.70A.110(7). See WAC 365-196-415 for information on the capital facilities element.

(4) Level of financial certainty required when establishing urban growth areas.

(a) Any amendment to an urban growth area must be accompanied by an analysis of what capital facilities investments are necessary to ensure the provision of adequate public facilities.

(b) If new or upgraded facilities are necessary, counties and cities must amend the capital facilities and transportation elements to maintain consistency with the land use element.

(c) The amended capital facilities and transportation elements must identify those new or expanded facilities and services necessary to support development in new urban growth areas. The elements must also include cost estimates to determine the amount of funding necessary to construct needed facilities.

(d) The capital facilities and transportation elements should identify what combination of new or existing funding will be necessary to develop the needed facilities. Funding goals should be based on what can be raised by using existing resources. Use of state and federal grants should be realistic based on past trends unless the capital facilities element identifies new programs or an increased amount of available funding from state or federal sources.

(e) If funding available from existing sources is not sufficient, counties and cities should use development phasing strategies to prevent the irreversible commitment of land to urban development before adequate funding is available. Development phasing strategies are described in WAC 365-196-330. Counties and cities should then implement measures needed to close the funding gap.

(f) When considering potential changes to the urban growth area, counties should require that any proposal to expand the urban growth area must include necessary information to demonstrate an ability to provide adequate public facilities to any potential new portions of the urban growth area.

NEW SECTION

WAC 365-196-325 Providing sufficient land capacity suitable for development. (1) Requirements.

(a) RCW 36.70A.115 requires counties and cities to ensure that, taken collectively, comprehensive plans and development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, as adopted in the applicable county-wide planning policies and consistent with the twenty-year population forecast for the office of financial management. To demonstrate this requirement is met, counties and cities must conduct an evaluation of land capacity sufficiency that is commonly referred to as a "land capacity analysis."

(b) Counties and cities must, at minimum, complete a land capacity analysis that demonstrates sufficient land for development and redevelopment to meet their adopted growth allocation targets during the ten-year review of urban growth areas required by RCW 36.70A.130 (3)(a). See WAC 365-196-310 for guidance in estimating and providing sufficient land capacity.

(c) Counties and cities subject to RCW 36.70A.215 must determine land capacity sufficiency as part of the buildable lands reporting required at least every five years, and adopt reasonable measures to increase the consistency between land capacity and growth allocations. See WAC 365-196-315 for guidance.

(d) Although it is not required, counties and cities may elect to conduct a land capacity analysis during the periodic review and update of comprehensive plans required under RCW 36.70A.130(1).

(e) A complete land capacity analysis is not required to be undertaken for every amendment to a comprehensive plan or development regulation outside of the act's required periodic reviews. However, when considering amendments to the comprehensive plan or development regulations which increase or decrease allowed densities, counties and cities should estimate the degree of increase or decrease in development capacity on lands subject to the amendments, and estimate if the capacity change may affect its ability to provide sufficient land suitable for development. If so, the county or city should complete a land capacity analysis.

(2) Recommendations for meeting requirement.

(a) Determining land capacity sufficiency. The land capacity analysis is a comparison between the collective effects of all development regulations operating on development and the densities established in the land use element. In order to achieve sufficiency, the development regulations must allow at least the low end of the range of assumed densities established in the land use element. This assures a city or county can meet its obligation to accommodate the growth allocated through the county-wide population allocation process.

(b) Appropriate area for analysis. The focus of the analysis is on the county or city's ability to meet its obligation to accommodate the growth allocated through the county-wide population or employment allocation process. Providing sufficient land capacity for development does not require a county or city to achieve or evaluate sufficiency for every parcel of a future land use designation provided the area as a whole ensures sufficient land capacity for development.

(c) The land capacity analysis should evaluate what the development regulations allow, rather than what development has actually occurred. Many factors beyond the control of counties and cities will control the amount and pace of actual development, what density it is built at and what types and densities of development are financially viable for any set of economic conditions. Counties and cities need not ensure that particular types of development are financially feasible in the context of short term market conditions. Counties and cities should, however, consider available information on trends in local markets to inform its evaluation of sufficient land capacity for the twenty-year planning period.

(d) Development phasing. RCW 36.70A.115 does not create an obligation to ensure that all land in the urban growth area is available for development at the same time. When counties or cities establish mechanisms for development phasing, zoned densities in the short term may be established that are substantially lower than called for in the future land use designations. In these cases, a county or city ensures a sufficient land capacity suitable for development by implementing its development phasing policies to allow development to occur within the twenty-year planning period. Development phasing is described in greater detail in WAC 365-196-330.

(e) The department recommends the following means of implementing the requirements of RCW 36.70A.115.

(i) Periodic evaluation. Counties and cities ensure sufficient land capacity for development by comparing the achieved density of development that has been permitted in each zoning category to the assumed densities established in the land use element using existing permitting data. If existing permitting data shows that the densities approved are lower than assumed densities established in the land use element, counties and cities should review their development regulations to determine if regulatory barriers are preventing development at the densities as envisioned. This could occur as part of the seven-year review and update required in RCW 36.70A.130 (1)(a). It must occur at a minimum as part of the ten-year urban growth area review required in RCW 36.70A.130 (3)(a) and as part of the buildable lands review and evaluation program conducted under RCW 36.70A.215.

(ii) Flexible development standards. Counties and cities could ensure sufficient land capacity for development by establishing development regulations to allow development proposals that transfer development capacity from unbuildable portions of a development parcel to other portions of the development parcel so the underlying zoned density is still allowed. This may provide for flexibility in some dimensional standards provided development is consistent with state law and all impacts are mitigated.

(iii) Evaluation of development capacity impacts of proposed development regulation amendments. Counties and cities may also consider evaluation of whether proposed amendments to development regulations will have a significant impact on the ability of a county or city to provide sufficient capacity of land for development.

NEW SECTION

WAC 365-196-330 Phasing development within the UGA. (1) Purpose of development phasing. Development phasing is the sequencing of development subareas within a city or urban growth area over the course of the twenty-year planning period. Development phasing should be considered a way to achieve one or more of the following:

(a) Orderly development pursuant to RCW 36.70A.-110(3), which states that urban growth should first be located in areas with existing urban development and existing service capacity; second in existing urban development areas where new services can be provided in conjunction with existing services; and third in the remainder of the urban growth area;

(b) Preventing the irreversible commitment of land to urban growth before the provision of adequate public facilities. Within the comprehensive plan, the capital facilities element, transportation element, and parks and recreation element each must contain a plan to provide urban areas with adequate public facilities. The comprehensive plan must identify those facilities needed to achieve and maintain adopted levels of service over the twenty-year planning

period, but only requires a six-year financing plan. Development phasing is a tool to address those areas for which capital facility needs have been identified in the twenty-year plan, but financing has not yet been identified. Because no irreversible commitment of land has been made in the zoning ordinance, if provision of urban governmental services ultimately proves infeasible, the area can be removed from the urban growth area when reassessing the land use element if probable funding falls short;

(c) Preventing a pattern of sprawling low density development from occurring or vesting in these areas prior to the ability to support urban densities. Once this pattern has occurred, it is more difficult to serve with urban services and less likely to ultimately achieve urban densities;

(d) Serving as a means of developing more detailed intergovernmental agreements or other plans to facilitate the orderly transition of governance and public services;

(2) Recommended provisions for development phasing. Comprehensive plan and development regulation provisions for development phasing should include the following:

(a) Identification of the areas to be sequenced;

(b) The criteria required to develop these areas at the ultimate urban densities envisioned. Criteria may be based on adequacy of services, existing urban development, and provisions for transition of governance. Timelines may also be used for sequencing;

(c) The densities and uses allowed in identified areas that have not yet met the criteria. Densities and intensities more typical of rural development should be considered to avoid hindering future development at urban densities. Such requirements are not inconsistent with the obligation to permit urban densities if provisions are made for conversion to urban densities over the course of the twenty-year planning period. Regulations should ensure that interim uses do not preclude future development at urban densities; and

(d) The review process for transitioning to ultimate urban densities. This should involve changes to development regulations, and not require amendments to the comprehensive plan.

(3) Additional considerations.

(a) Comprehensive plans may include other tools selected to facilitate phasing.

(b) Counties and cities should coordinate the phasing of development within portions of urban growth areas assigned to cities, and throughout urban growth areas in which cities are located. Development phasing polices may be addressed in county-wide planning policies.

(c) Counties and cities must still provide sufficient capacity of land suitable for development as required in RCW 36.70A.115, but lands subject to sequencing requirements should be included in this capacity as long as phasing is implemented during the planning period.

NEW SECTION

WAC 365-196-335 Identification of open space corridors. (1) Requirements.

(a) Each county or city planning under the act must identify open space corridors within and between urban growth areas. They must include lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030.

(b) The county or city may seek to acquire by purchase the fee simple or lesser interests in open space corridors using funds authorized by RCW 84.34.230 or other sources.

(2) Recommendations for meeting requirements.

(a) Counties and cities should consider identifying open space corridors when reviewing and updating urban growth areas, critical areas designations, and the land use element of comprehensive plans.

(b) Counties and cities should consider the various purposes and uses of identified corridors, and should state the preferred uses anticipated for each identified corridor, if known. In some cases, uses preferred for an identified corridor may preclude other incompatible uses.

(c) Counties and cities should consider how identified corridors exist in relationship to designated critical areas and natural resource lands, the extent and trends of public demands for recreational lands and access to public lands for recreation, and specific existing and planned recreational uses that may make use of identified corridors for specific uses, including nonmotorized transportation.

(d) When identifying open space corridors, counties and cities should plan an integrated system that uses identified corridors to link established large areas of parks and recreational lands, resource lands, greenbelts, streams, and wildlife corridors to help protect fish and wildlife habitat conservation areas.

(e) Counties and cities should also consider the potential to use vegetated green spaces as part of an integrated system to absorb and treat storm water.

NEW SECTION

WAC 365-196-340 Identification of lands useful for public purposes. (1) Requirements. Each county and city planning under the act must identify land useful for public purposes such as utility corridors, transportation corridors, landfills, sewage treatment facilities, storm water management facilities, recreation, schools, and other public uses. The county must work with the state and with the cities within the county's borders to identify areas of shared need for public facilities. The jurisdictions within the county must prepare a prioritized list of lands necessary for the identified public uses including an estimated date by which the acquisition will be needed. The respective capital acquisition budgets for each jurisdiction must reflect the jointly agreed upon priorities and time schedule. See WAC 365-196-405 (2)(g), Land use element.

(2) Recommendations for meeting requirements. Counties and cities should identify lands useful for public purposes when updating the urban growth area designations and the land use, utilities and transportation elements of comprehensive plans. The department recommends that the information derived in meeting this requirement be made generally available only to the extent necessary to meet the requirements of the public disclosure laws.

NEW SECTION

WAC 365-196-345 New fully contained communities. (1) Any county planning under the act may reserve a portion of its twenty-year population projection for new fully contained communities, located outside of the designated urban growth areas.

(2) Proposals to authorize fully contained communities must be processed according to the locally established policies implementing the criteria set forth in RCW 36.70A.350. Approval of a new fully contained community has the effect of amending the comprehensive plan, therefore it is a legislative action and should follow the procedures associated with comprehensive plan amendments.

PART FOUR
FEATURES OF THE COMPREHENSIVE PLAN

NEW SECTION

WAC 365-196-400 Mandatory elements. (1) Requirements.

(a) The comprehensive plan must include, at a minimum, a future land use map.

(b) The comprehensive plan must contain descriptive text covering objectives, principles, and standards used to develop the comprehensive plan.

(c) The comprehensive plan must be an internally consistent document and all elements shall be consistent with the future land use map.

(d) Each comprehensive plan must include each of the following:

(i) A land use element;

(ii) A housing element;

(iii) A capital facilities plan element;

(iv) A utilities element;

(v) A transportation element.

(e) Required elements enacted after January 1, 2002, must be included in each comprehensive plan that is updated under RCW 36.70A.130(1), but only if funds sufficient to cover local costs including these elements have been appropriated and distributed by the state at least two years before the applicable review and update deadline in RCW 36.70A.130(4). The department will notify counties and cities when funds have been appropriated for this purpose. Elements enacted after January 1, 2002, include:

(i) An economic development element; and

(ii) A parks and recreation element.

(f) County comprehensive plans must also include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources.

(g) Additionally, each county and city comprehensive plan must contain:

(i) A process for identifying and siting essential public facilities.

(ii) The goals and policies of the shoreline master program adopted by the county or city, either directly in the comprehensive plan, or through incorporation by reference as described in WAC 173-26-191.

(2) Recommendations for overall design of the comprehensive plan.

(a) The planning horizon for the comprehensive plan must be at least the twenty-year period following the adoption of the comprehensive plan.

(b) The comprehensive plan should include or reference the statutory goals and requirements of the act as guiding the development of the comprehensive plan and should also identify any supplementary goals adopted in the comprehensive plan.

(c) Each county and city comprehensive plan should include, or reference, the county-wide planning policies, along with an explanation of how the county-wide planning policies have been integrated into the comprehensive plan.

(d) Each comprehensive plan must contain a future land use map showing the proposed physical distribution and location of the various land uses during the planning period. This map should provide a graphic display of how and where development is expected to occur.

(e) The comprehensive plan should include a vision for the community at the end of the twenty-year planning period and identify community values derived from the visioning and other citizen participation processes. Goals may be further defined with policies and objectives in each element of the comprehensive plan.

(f) Each county and city should include at the beginning of its comprehensive plan a section which summarizes, with graphics and a minimum amount of text, how the various pieces of the comprehensive plan fit together. A comprehensive plan may include overlay maps and other graphic displays depicting known critical areas, open space corridors, development patterns, phasing of development, neighborhoods or subarea definitions, and other plan features.

(g) Detailed recommendations for preparing each element of the comprehensive plan are provided in WAC 365-196-405 through 365-196-485.

NEW SECTION

WAC 365-196-405 Land use element. (1) Requirements. The land use element must contain the following features:

(a) Designation of the proposed general distribution and general location and extent of the uses of land, where appropriate, for agricultural, timber, and mineral production, for housing, commerce, industry, recreation, open spaces, public utilities, public facilities, general aviation airports, military bases, rural use, and other land uses.

(b) Population densities, building intensities, and estimates of future population growth.

(c) Provisions for protection of the quality and quantity of ground water used for public water supplies.

(d) Wherever possible, consideration of urban planning approaches to promote physical activity.

(e) Where applicable, a review of drainage, flooding, and storm water runoff in the area covered by the plan and nearby jurisdictions, and guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) Recommendations for meeting requirements. The land use assumptions in the land use element form the basis for all growth-related planning functions in the comprehen-

sive plan, including transportation, housing, capital facilities, and, for counties, the rural element. Preparing the land use element is an iterative process. Linking all plan elements to the land use assumptions helps meet the act's requirement for internal consistency. The following steps are recommended in preparing the land use element:

(a) Counties and cities should integrate relevant county-wide planning policies and, where applicable, multicounty planning policies, into the local planning process, and ensure local goals and policies are consistent.

(b) Counties and cities should identify the existing general distribution and location of various land uses, the approximate acreage, and general range of density or intensity of existing uses.

(c) Counties and cities should identify special characteristics and uses of the land which may influence land use or regulation. These may include:

(i) The location of agriculture, forest and mineral resource lands.

(ii) The general location of any known critical areas that limit suitability of land for development.

(iii) Influences or threats to the quality and quantity of ground water used for public water supplies. These may be identified from information sources such as the following:

(A) Designated critical aquifer recharge areas that identify areas where potentially hazardous material use should be limited, or for direction on where managing development practices that influence aquifer would be important;

(B) Watershed plans approved under chapter 90.82 RCW; ground water management plans approved under RCW 90.44.400; coordinated water system plans adopted under chapter 70.116 RCW; and watershed plans adopted under chapter 90.54 RCW as outlined in RCW 90.03.386.

(C) Instream flow rules prepared by the department of ecology and limitations and recommendations therein that may inform land use decisions.

(iv) Locations of areas adjacent to general aviation airports where incompatible uses should be discouraged, as required by RCW 36.70.510 and 36.70.547, with guidance in WAC 365-196-455.

(v) Locations of areas adjacent to military bases where incompatible uses should be discouraged, as required by RCW 36.70A.530 with guidance in WAC 365-196-475.

(vi) Existing or potential open space corridors within and between urban growth areas as required by RCW 36.70A.160 for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Counties and cities may consult WAC 365-196-335 for additional information.

(vii) Where applicable, sites that are particularly well suited for industry. Counties and cities should consult WAC 365-196-310 (3)(c)(iv) for information on industrial land uses. For counties, the process described in WAC 365-196-465 and 365-196-470 may be relevant for industrial areas outside of urban growth areas.

(viii) Other features that may be relevant to this information gathering process may include view corridors, brownfield sites, national scenic areas, historic districts, or other opportunity sites, or other special characteristics which may be useful to inform future land use decisions.

(d) Counties and cites must obtain twenty-year population allocations for their planning area as part of a county-wide process described in WAC 365-196-305(4) and 365-196-310. Using information from the housing element forecast the number and type of residential units likely to be needed over the planning period. At a minimum, cities must plan for the population allocated to them, but may plan for additional population within incorporated areas.

(e) Counties and cities should estimate the level of commercial space, and industrial land needed using information from the economic development element, if available, or from other relevant economic development plans.

(f) Counties and cites should conduct an inventory of vacant, partially used and underutilized land to determine the extent to which existing buildings and housing, together with vacant, partially used and underutilized land, can support anticipated growth. This information should be provided through a land capacity analysis as part of a county-wide process described in WAC 365-196-305 and 365-196-310 or, as applicable, 365-196-315.

(g) Counties and cities should consider urban planning approaches that promote physical activity. Urban planning approaches that promote physical activity may include:

(i) Higher intensity or mixed-use land use designations to support walkable and diverse urban, town and neighborhood centers.

(ii) Transit-oriented districts around public transportation transfer facilities, rail stations, or higher intensity development along a corridor served by high quality transit service.

(iii) Policies for siting or colocating public facilities such as schools, parks, libraries, community centers and athletic centers to place them within walking or cycling distance of their users.

(iv) Policies supporting linear parks and shared-use paths, interconnected street networks or other urban forms supporting bicycle and pedestrian transportation.

(v) Policies supporting multimodal approaches to concurrency consistent with other elements of the plan.

(h) Counties and cities should identify the general location and estimated quantity of land needed for public purposes such as utility corridors, landfills or solid waste transfer stations, sewage treatment facilities, storm water management facilities, recreation, schools, and other public uses. Counties and cities should consider corridors needed for transportation including automobile, rail, and trail use in and between planning areas, consistent with the transportation element and coordinate with adjacent jurisdictions for connectivity.

(i) Counties and cities should select land use designations and implementing zoning. Select appropriate commercial, industrial, and residential densities and their distribution based on the total analysis of land features, population to be supported, implementation of regional planning strategies, and needed capital facilities. It is strongly recommended that a table be included showing the acreage in each land use designation, the acreage in each implementing zone, the approximate densities that will result, and how this meets the twenty-year population projection.

(j) Counties and cities should prepare a future land use map including land use designations, municipal and urban growth area boundaries, and any other relevant features consistent with other elements of the comprehensive plan.

(k) Counties and cites should reassess the land use element in light of:

(i) The projected capacity for financing the needed capital facilities over the planning period; and

(ii) An assessment of whether the planned densities and distribution of growth can be achieved within the capacity of available land and water resources and without environmental degradation.

(l) Counties and cities must review drainage, flooding, and storm water runoff in the area or nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound. Water quality information may be integrated from the following sources:

(i) Planning and regulatory requirements of municipal storm water general permits issued by the department of ecology that apply to the county or city.

(ii) Local waters listed under Washington state's water quality assessment and any water quality concerns associated with those waters.

(iii) Interjurisdictional plans, such as total maximum daily loads.

(m) Counties and cites may prepare an implementation strategy describing the steps needed to accomplish the vision and the densities and distributions identified in the land use element. Where greater intensity of development is proposed, the strategy may include a design scheme to encourage new development that is compatible with existing or desired community character.

(n) Counties and cities may prepare a schedule for the phasing of the planned development contemplated consistent with the availability of capital facilities as provided in the capital facilities element. WAC 365-196-330 provides additional information regarding development phasing.

NEW SECTION

WAC 365-196-410 Housing element. (1) Requirements. Counties and cities must develop a housing element ensuring vitality and character of established residential neighborhoods. The housing element must contain at least the following features:

(a) An inventory and analysis of existing and projected housing needs.

(b) A statement of the goals, policies, and objectives for the preservation, improvement, and development of housing, including single-family residences.

(c) Identification of sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, group homes and foster care facilities.

(d) Adequate provisions for existing and projected housing needs of all economic segments of the community.

(2) Recommendations for meeting requirements. The housing element shows how a county or city will accommodate anticipated growth, provide a variety of housing types at a variety of densities, provide affordable housing and ensure the vitality of established residential neighborhoods. The following components should appear in the housing element:

(a) Housing goals and policies.

(i) The goals and policies should serve as guide to the creation and adoption of development regulations and the exercise of discretion in the permitting process.

(ii) The housing goals and policies of cities should be consistent with county-wide planning policies and, where applicable, multicounty planning policies.

(iii) Housing goals and policies should address at least the following:

(A) Affordable housing;

(B) Preservation of neighborhood character; and

(C) Provision of a variety of housing types along with a variety of densities.

(iv) Housing goals and policies should be written to allow the evaluation of progress toward achieving the housing element's goals and policies.

(b) Housing inventory.

(i) The purpose of the required inventory is to gauge the availability of existing housing for all economic segments of the community.

(ii) The inventory should identify the amount of various types of housing that exist in a community. The act does not require that a housing inventory be in a specific form. Counties and cities should consider WAC 365-196-050 (3) and (4) when determining how to meet the housing inventory requirement and may rely on existing data.

(iii) The housing inventory may show the affordability of different types of housing. It may provide data about the median sales prices of homes and average rental prices.

(iv) The housing inventory may include information about other types of housing available within the jurisdiction such as:

(A) The number of beds available in group homes, nursing homes and/or assisted living facilities;

(B) The number of dwelling units available specifically for senior citizens;

(C) The number of government-assisted housing units for lower-income households.

(c) Housing needs analysis.

(i) The housing needs analysis should compare the number of housing units identified in the housing inventory to the projected growth or other locally identified housing needs.

(ii) The definition of housing needs should be addressed in a regional context and may use existing data.

(iii) The analysis should be based on the most recent twenty-year population allocation.

(iv) The analysis should analyze consistency with county-wide planning policies, and where applicable, multicounty planning policies, related to housing for all economic segments of the population.

(d) Housing targets or capacity.

(i) Once the housing needs analysis has identified the number and types of new housing units, the housing element should identify the amount of land suitable for development at a variety of densities consistent with the housing needs analysis. This should be used to designate sufficient land capacity suitable for development in the land use element.

(ii) Counties and cities may also use other considerations to identify housing needs, which may include:

(A) Workforce housing which is often defined as housing affordable to households earning between eighty to one hundred twenty percent of the median household income.

(B) Jobs-to-housing balance, which is the number of jobs in a city or county relative to the number of housing units.

(C) Reasonable measures to address inconsistencies found in buildable lands reports prepared under RCW 36.70A.215.

(D) Housing needed to address an observed pattern of a larger quantity of second homes in destination communities.

(iii) The targets established in the housing element will serve as benchmarks to evaluate progress and guide decisions regarding development regulations.

(e) Affordable housing. RCW 36.70A.070 requires counties and cities, in their housing element, to make adequate provisions for existing and projected needs for all economic segments of the community.

(i) Determining what housing units are affordable.

(A) In the case of dwelling units for sale, affordable housing has mortgages, amortization, taxes, insurance and condominium or association fees, if any, that consume no more than thirty percent of the owner's gross annual household income.

(B) In the case of dwelling units for rent, affordable housing has rent and utility costs, as defined by the county or city, that cost no more than thirty percent of the tenant's gross annual household income.

(C) Income ranges used when considering affordability. When planning for affordable housing, counties or cities should use income ranges consistent with the applicable county-wide or multicounty planning policies. If no such terms exist, counties or cities should consider using the United States Department of Housing and Urban Development (HUD) definitions found in 24 C.F.R. 91.5, which are used to draft consolidated planning documents required by HUD. The following definitions are from 24 C.F.R. 91.5:

(I) Median income refers to median household income.

(II) Extremely low-income refers to a household whose income is at or below thirty percent of the median income, adjusted for household size, for the county where the housing unit is located.

(III) Low-income refers to a household whose income is between thirty percent and less than fifty percent of the median income, adjusted for household size, for the county where the housing unit is located.

(IV) Moderate-income refers to a household whose income is between fifty percent and eighty percent of the median income where the housing unit is located.

(V) Middle-income refers to a household whose income is between eighty percent and ninety-five percent of the median income for the area where the housing unit is located.

(ii) Affordable housing requires planning from a regional perspective. County-wide planning policies must address affordable housing and its distribution among counties and cities. A county's or city's obligation to plan for affordable housing within a regional context is determined by the applicable county-wide planning policies. Counties and cities should review county-wide affordable housing policies when developing the housing element to maintain consistency.

(iii) Counties and cities should consider the ability of the market to address housing needs for all economic segments of the population. Counties and cities may help to address affordable housing by identifying and removing any regulatory barriers limiting the availability of housing to households that earn less than the region's median household income and households with people that have special needs.

(iv) A county or city affordable housing section should:

(A) Identify certain land use designations within a geographic area where increased residential development may help achieve affordable housing policies and targets;

(B) Identify policies and subsequent development regulations that may increase residential development capacity;

(C) Determine the number of additional housing units these policies and development regulations may generate; and

(D) Establish a target that represents the minimum amount of affordable housing units that it plans to generate.

(f) Implementation plan.

(i) The housing element should identify strategies designed to help meet the needs identified for all economic segments of the population within the planning area. It should include, but not be limited to, the following:

(A) Consideration of the range of housing choices to be encouraged including, but not limited to, multifamily housing, mixed uses, manufactured houses, accessory living units, and detached houses;

(B) Consideration of various lot sizes and densities, and of clustering and other design configurations;

(C) Identification of a sufficient amount of appropriately zoned land to accommodate the identified housing needs over the planning period; and

(D) Evaluation of the capacity of local public and private entities and the availability of financing to produce housing to meet the identified need.

(ii) The housing element should also address how the county or city will provide for group homes, foster care facilities, and facilities for other populations with special needs. The housing element should provide for an equitable distribution of these facilities among neighborhoods within the county or city

(iii) The housing element should identify strategies designed to ensure the vitality and character of existing neighborhoods. It should show how growth and change will preserve or improve existing residential qualities. The housing element may not focus on one requirement (e.g., preserving existing housing) to the exclusion of the other requirements (e.g., affordable housing) in RCW 36.70A.070(2). It should explain how various needs are reconciled.

(iv) The housing element should include provisions to monitor the performance of its housing strategy. A monitoring program may include the following:

(A) The collection and analysis of information about the housing market;

(B) Data about the supply of developable residential building lots at various land-use densities and the supply of rental and for-sale housing at various price levels;

(C) A comparison of actual housing development to the targets, policies and goals contained in the housing element;

(D) Identification of thresholds at which steps should be taken to adjust and revise goals and policies; and

(E) A description of the types of adjustments and revisions that the county or city may consider.

NEW SECTION

WAC 365-196-415 Capital facilities element. (1) Requirements. The capital facilities element of a comprehensive plan must contain at least the following features:

(a) An inventory of existing capital facilities owned by public entities, also referred to as "public facilities," showing the locations and capacities of the capital facilities;

(b) A forecast of the future needs for such capital facilities based on the land use element;

(c) The proposed locations and capacities of expanded or new capital facilities;

(d) At least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and

(e) A requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(2) Recommendations for meeting requirements.

(a) Inventory of existing facilities.

(i) Counties and cities should create an inventory of existing capital facilities showing locations and capacities, including the extent to which existing facilities possess unused capacity.

(ii) Capital facilities involved should include, at a minimum, water systems, sanitary sewer systems, storm water facilities, reclaimed water facilities, schools, parks and recreational facilities, police and fire protection facilities.

(iii) Capital facilities that are needed to support other comprehensive plan elements, such as transportation, the parks and recreation or the utilities elements, may be addressed in the capital facility element or in the specific element.

(iv) Counties and cities should periodically review and update the inventory. At a minimum this review must occur as part of the seven-year periodic update required by RCW 36.70A.130(1). Counties and cities may also maintain this inventory annually in response to changes in the annual capital budget.

(b) Forecast of future needs.

(i) Counties and cities should forecast needs for capital facilities during the planning period, based on the levels of service or planning assumptions selected and consistent with the growth, densities and distribution of growth anticipated in the land use element. The forecast should include reasonable assumptions about the effect of any identified system management or demand management approaches to preserve capacity or avoid the need for new facilities.

(ii) The capital facilities element should identify all capital facilities that are planned to be provided within the planning period.

(A) Counties and cities should identify those improvements that are necessary to address existing deficiencies or to preserve the ability to maintain existing capacity.

(B) Counties and cities should identify those improvements that are necessary for development.

(C) Counties and cities may identify any other improvements desired to raise levels of services above locally adopted minimum standards, to enhance the quality of life in the community or meet other community needs not related to growth such as administrative offices, courts or jail facilities. Counties and cities are not required to set level of service standards for facilities that are not necessary for development. Because these facilities are not necessary for development, the failure to fund these facilities as planned would not require a reassessment of the land use element if funding falls short as required by RCW 36.70A.070 (3)(e).

(c) Financing plan.

(i) The capital facilities element should include creation of at least a six-year capital facilities plan for financing capital facilities needed within that time frame. Counties and cities should forecast projected funding capacities based on revenues available under existing laws and ordinances, followed by the identification of sources of public or private funds for which there is reasonable assurance of availability. Where the services and capital facilities are provided by other entities, these other providers should provide financial information as well. If the funding strategy relies on new or previously untapped sources of revenue, the capital facilities element should include an estimate of new funding that will be supplied. Adoption of the development regulations or other actions to secure these funding sources should be included in the implementation strategy.

(ii) The six-year plan should be updated at least biennially so financial planning remains sufficiently ahead of the present for concurrency to be evaluated. Such an update of the capital facilities element may be integrated with the county's or city's annual budget process for capital facilities.

(d) Reassessment.

(i) Counties and cities must reassess the land use element and other elements of the comprehensive plan if the probable funding falls short of meeting the need for facilities that are determined by a county or city to be necessary for development. Counties and cities should identify a mechanism to periodically evaluate the adequacy of public facilities based on adopted levels of service or other objective standards. The evaluation should determine if a combination of existing and funded facilities are adequate to maintain or exceed adopted level of service standards.

(ii) This evaluation must occur, at a minimum, as part of the periodic review and update required in RCW 36.70A.130 (1), during the review of urban growth areas required by RCW 36.70A.130(3) and as major changes are made to the capital facilities element.

(iii) If public facilities are inadequate, local governments must address this inadequacy. If the reassessment identifies a lack of adequate public facilities, counties and cities may

use a variety of strategies including, but not limited to, the following:

(A) Reducing demand through demand management strategies;

(B) Reducing levels of service standards;

(C) Increasing revenue;

(D) Reducing the cost of the needed facilities;

(E) Reallocating or redirecting planned population and employment growth within the jurisdiction or among jurisdictions within the urban growth area to make better use of existing facilities;

(F) Phasing growth or adopting other measures to adjust the timing of development, if public facilities or services are lacking in the short term for a portion of the planning period;

(G) Revising county-wide population forecasts within the allowable range, or revising the county-wide employment forecast.

(3) Relationship between the capital facilities element and the land use element.

(a) Providing adequate public facilities is a component of the affirmative duty created by the act for counties and cities to accommodate the growth that is selected and allocated, to provide sufficient capacity of land suitable for development, and to permit urban densities.

(b) The needs for capital facilities should be dictated by the land use element. The future land use map designates sufficient land use densities and intensities to accommodate the population and employment that is selected and allocated. The land uses and densities identified in the land use element determine the location and timing of the need for new or expanded facilities.

(c) A capital facilities element includes the new and expanded facilities necessary for growth over the twenty-year life of the comprehensive plan. Facilities needed for new growth, combined with needs for maintenance and rehabilitation of the existing systems and the need to address existing deficiencies constitutes the capital facilities demand.

(4) Relationship to plans of other service providers or plans adopted by reference. A county or city should not meet their responsibility to prepare a capital facilities element by relying only on assurances of availability from other service providers. When system plans or master plans from other service providers are adopted by reference, counties and cities should do the following:

(a) Summarize this information within the capital facilities element;

(b) Synthesize the information from the various providers to show that the actions, taken together, provide adequate public facilities; and

(c) Conclude that the capital facilities element shows how the area will be provided with adequate public facilities.

(5) Relationship between growth and provision of adequate public facilities.

(a) Counties and cities should identify in the capital facility element which types of facilities it considers to be necessary for development.

(i) Counties and cities should identify facilities as necessary for development if the need for new facilities is reasonably related to the impacts of development.

(ii) Capital facilities must be identified as necessary for development if a county or city imposes an impact fee as a funding strategy for those facilities.

(iii) In urban areas, all facilities necessary to achieve urban densities must be identified as necessary for development.

(b) For those capital facilities deemed necessary for development, adequate public facilities may be maintained as follows:

(i) Transportation facilities are the only facilities required to have a concurrency mechanism, although a local government may adopt a concurrency mechanism for other facilities that are deemed necessary for development. See WAC 365-196-840.

(ii) Counties and cities should determine which capital facilities will be required as a condition of project approval, but not subject to concurrency. These may include, for example: Capital facilities required to ensure adequate water availability; capital facilities necessary to handle wastewater capital facilities necessary to manage storm water.

(iii) For capital facilities that are necessary for development, but not identified in subsection (2)(b)(ii)(A) or (B) of this section, counties and cities should set a minimum level of service standard, or provide some other objective basis for assessing the need for new facilities or capacity. This standard must be indicated as the baseline standard, below which the jurisdiction will not allow service to fall. Policies must require periodic analysis to determine if the adopted level of service is being met consistent with this section.

NEW SECTION

WAC 365-196-420 Utilities element. (1) Requirements. The utility element shall contain at least the following features: The general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(2) Recommendations for meeting requirements. Counties and cities should consider the following:

(a) The general location and capacity of existing and proposed utility facilities should be integrated with the land use element. Proposed utilities are those awaiting approval when the comprehensive plan is adopted.

(b) In consultation with serving utilities, counties and cities should prepare an analysis of the capacity needs for various utilities over the planning period, to serve the growth anticipated at the locations and densities proposed within the jurisdiction's planning area. The capacity needs analysis should include consideration of comprehensive utility plans, least-cost plans, load forecasts, and other planning efforts.

(c) The utility element should identify the general location of utility lines and facilities required to furnish anticipated capacity needs for the planning period. This should be developed in consultation with serving utilities as a part of the process of identifying lands useful for public purposes.

(d) Counties and cities should evaluate whether any utilities should be identified and classified as essential public facilities, subject in cases of siting difficulty to the separate

siting process established under the comprehensive plan for such facilities.

(e) Counties and cities should evaluate whether any utility facilities within their planning area are subject to county-wide planning policies for siting public facilities of a county-wide or statewide nature.

(f) Counties and cities should include local criteria for siting utilities over the planning period, including:

(i) Consideration of whether a siting proposal is consistent with the locations and densities for growth as designated in the land use element.

(ii) Consideration of any public service obligations of the utility involved.

(iii) Evaluation of whether the siting decision will adversely affect the ability of the utility to provide service throughout its service area.

(iv) Balancing of local design considerations against articulated needs for system-wide uniformity.

(g) Counties and cities should adopt policies that call for:

(i) Joint use of transportation rights of way and utility corridors, where possible.

(ii) Timely and effective notification of interested utilities about road construction, and of maintenance and upgrades of existing roads to facilitate coordination of public and private utility trenching activities.

(iii) Consideration of utility permit applications simultaneously with the project permit application for the project proposal requesting service and, when possible, approval of utility permits when the project permit application for the project to be served is approved.

(iv) Cooperation and collaboration between the county or city and the utility provider to develop vegetation management policies and plans for utility corridors.

(A) Coordination and cooperation between the county or city and the utility provider to educate the public on avoiding preventable utility conflicts through choosing proper vegetation (i.e., "Right Tree, Right Place").

(B) Coordination and cooperation between the county or city and the utility provider to reduce potential critical areas conflicts through the consideration of alternate utility routes, expedited vegetation management permitting, coordinated vegetation management activities, and/or long-term vegetation management plans.

(h) Adjacent counties and cities should coordinate to ensure the consistency of each jurisdiction's utilities element and regional utility plan, and to develop a coordinated process for siting regional utility facilities in a timely manner.

NEW SECTION

WAC 365-196-425 Rural element. Counties must include a rural element in their comprehensive plan. This element shall include lands that are not designated for urban growth, agriculture, forest, or mineral resources. The rural element shall permit land uses that are compatible with the rural character of such lands and provide for a variety of rural densities.

(1) Developing a written record. When developing the rural element, a county may consider local circumstances in establishing patterns of rural densities and uses, but must develop a written record explaining how the rural element harmonizes the planning goals in the act and meets the requirements of the act. This record should document local circumstances the county considered and the historic patterns of development in the rural areas.

(2) Establishing a definition of rural character.

(a) The rural element shall include measures that apply to rural development and protect rural character. Counties must define rural character to guide the development of the rural element and the implementing development regulations.

(b) The act identifies rural character as patterns of land use and development that:

(i) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(ii) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(iii) Provide visual landscapes that are traditionally found in rural areas and communities;

(iv) Are compatible with the use of land by wildlife and for fish and wildlife habitat;

(v) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(vi) Generally do not require the extension of urban governmental services; and

(vii) Are consistent with protection of natural surface water flows and ground water and surface water recharge and discharge areas.

(c) Counties should adopt a locally appropriate definition of rural character. Rural areas are diverse in visual character and in density, across the state and across a particular county. Rural development may consist of a variety of densities and uses. It may, for example, include clustered residential development at levels consistent with the preservation of rural character. Counties should define rural development both in terms of its visual character and in terms of the density and intensity of uses. Defining rural development in this way allows the county to use its definition of rural development both in its future land use designations and in its development regulations governing rural development.

(3) Rural densities.

(a) The rural element should provide for a variety of densities that are consistent with the pattern of development established in its definition of rural character. Rural densities are a range of densities that:

(i) Are compatible with the primary use of land for natural resource production;

(ii) Do not make intensive use of the land;

(iii) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(iv) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(v) Provide visual landscapes that are traditionally found in rural areas and communities;

(vi) Are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(vii) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(viii) Generally do not require the extension of urban governmental services;

(ix) Are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas; and

(x) Do not create urban densities in rural areas or abrogate the county's responsibility to encourage new development in urban areas.

(b) Counties should perform a periodic analysis of development occurring in rural areas, to determine if patterns of rural development are protecting rural character and encouraging development in urban areas. This analysis should occur at least every ten years, along with the ten-year urban growth area review required in RCW 36.70A.130 (3)(a). The analysis may include the following:

(i) Patterns of development occurring in rural areas.

(ii) The percentage of new growth occurring in rural versus urban areas.

(iii) Patterns of rural comprehensive plan or zoning amendments.

(iv) Numbers of permits issued in rural areas.

(v) Numbers of new approved wells and septic systems.

(vi) Growth in traffic levels on rural roads.

(vii) Growth in public facilities and public services costs in rural areas.

(viii) Changes in rural land values and rural employment.

(ix) Potential build-out at the allowed rural densities.

(x) The degree to which the growth that is occurring in the rural areas is consistent with patterns of rural land use and development established in the rural element.

(4) Rural governmental services.

(a) Rural governmental services are those public facilities and services historically and typically delivered at intensities usually found in rural areas, and may include the following:

(i) Domestic water system;

(ii) Fire and police protection;

(iii) Transportation and public transportation; and

(iv) Public utilities, such as electrical, telecommunications and natural gas lines.

(b) Rural services do not include storm or sanitary sewers. Urban governmental services that pass through rural areas when connecting urban areas do not constitute an extension of urban services into a rural area provided those public services are not provided in the rural area. Sanitary sewer service may be provided only if it:

(i) Is necessary to protect basic public health and safety and the environment;

(ii) Is financially supportable at rural densities; and

(iii) Does not permit urban development.

(c) When establishing levels of service in the capital facilities and transportation element, each county should establish rural levels of service, for those rural services that are necessary for development, to determine if it is providing adequate public facilities. Counties are not required to use a single level of service for the entire rural area and may establish varying levels of service for public services in different rural areas. Where private purveyors or other public entities provide rural services, counties should coordinate with them to establish and document appropriate levels of service.

(d) Rural areas typically rely on natural systems to adequately manage storm water and typically rely on on-site sewage systems to treat wastewater. Development in rural areas also typically relies on individual wells, exempt wells or small water systems for water. Counties should ensure the densities it establishes in rural areas do not overwhelm the ability of natural systems to provide these services without compromising either public health or the vitality of the surrounding ecosystem.

(e) Rural road systems are not typically designed to handle large traffic volumes. Local conditions may influence varying levels of service for rural road system, and level of service standards for rural arterials should be set accordingly. Generally, level of service standards should reflect the expectation that high levels of local traffic and the associated road improvements are not usually associated with rural areas.

(f) Levels of public services decrease, and corresponding costs increase when demand is spread over a large area. This is especially true for public safety services and both school and public transportation services. Counties should provide clear expectations to the public about the availability of rural public services. Counties should ensure the densities it establishes in rural areas do not overwhelm the capacity of rural public services.

(5) Innovative zoning techniques.

(a) Innovative zoning techniques allow greater flexibility in rural development regulations to create forms of development that are more consistent with rural character than forms of development generated by conventional large-lot zoning. Innovative zoning techniques may allow forms of rural development that:

(i) Result in rural development that is more visually compatible with the surrounding rural areas;

(ii) Maximize the availability of rural land for either resource use or wildlife habitat;

(iii) Increase the operational compatibility of the rural development with use of the land for resource production;

(iv) Decrease the impact of the rural development on the surrounding ecosystem;

(v) Does not allow urban growth; and

(vi) Does not require the extension of urban governmental services.

(b) Rural clusters. One common form of innovative zoning technique is the rural cluster. A rural cluster can create smaller individual lots than would normally be allowed in exchange for open space that preserves a significant portion of the original parcel.

(i) When calculating the density of development for zoning purposes, counties should calculate density based on the number of dwelling units over the entire development parcel, rather than the size of the individual lots created.

(ii) The open space portion of the original parcel should be held by an easement for open space or resource use. This should be held in perpetuity, without an expiration date.

(iii) If a county allows bonus densities in a rural cluster, the resulting density after applying the bonus must be a rural density.

(iv) Rural clusters may not create a pattern of development that relies on or requires urban governmental services. Counties should establish a limit on the size of the residential

cluster so that a cluster does not constitute urban growth in a rural area. A very large project may create multiple smaller clusters that are separated from each other and use a different access point to avoid creating a pattern of development that would constitute urban growth.

(v) Development regulations governing rural clusters should include design criteria that preserve rural visual character.

(6) Limited areas of more intense rural development. The act allows counties to plan for isolated pockets of more intense development in the rural area. These are referred to in the act as limited areas of more intense rural development or LAMIRDs.

(a) LAMIRDs serve the following purposes:

(i) To recognize existing areas of more intense rural development and to minimize and contain these areas to prevent low density sprawl;

(ii) To allow for small-scale commercial uses that rely on a rural location;

(iii) To allow for small-scale economic development and employment consistent with rural character; and

(iv) To allow for redevelopment of existing industrial areas within rural areas.

(b) Counties may allow for more intensive uses in a LAMIRD than would otherwise be allowed in rural areas and may allow public facilities and services that are appropriate and necessary to serve LAMIRDs subject to the following requirements:

(i) Type 1 LAMIRDs - Isolated areas of existing more intense development. Within these areas, rural development consists of infill, development, or redevelopment of existing areas. These areas may include a variety of uses including commercial, industrial, residential, or mixed-use areas. These may be also characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) Development or redevelopment in LAMIRDS may be both allowed and encouraged provided it is consistent with the character of the existing LAMIRD in terms of building size, scale, use, and intensity. Counties may allow new uses of property within a LAMIRD, including development of vacant land.

(B) When establishing a Type I LAMIRD, counties must establish a logical outer boundary. The purpose of the logical outer boundary is to minimize and contain the areas of more intensive rural development to the existing areas. Uses, densities or intensities not normally allowed in a rural area may be allowed inside the logical outer boundary consistent with the existing character of the LAMIRD. Appropriate and necessary levels of public facilities and services not otherwise provided in rural areas may be provided inside the logical outer boundary.

(C) The logical outer boundary must be delineated primarily by the built environment as it existed on the date the county became subject to the planning requirements of the act.

(I) Some vacant land may be included within the logical outer boundary provided it is limited and does not create significant amount of new development within the LAMIRD.

(II) Construction that defines the built environment may include above or below ground improvements. The built environment does not include patterns of vesting or preexisting zoning, nor does it include roads, clearing, grading or the inclusion within a sewer or water service area if no physical improvements are in place. Although vested lots and structures built after the county became subject to the act's requirements should not be considered when identifying the built environment, they may be included within the logical outer boundary as infill.

(III) The logical outer boundary is not required to strictly follow parcel boundaries. If a large parcel contains an existing structure, a county may include part of the parcel in the LAMIRD boundary without including the entire parcel, to avoid a significant increase in the amount of development allowed within the LAMIRD.

(D) The fundamental purpose of the logical outer boundary is to minimize and contain the LAMIRD. Counties should favor the configuration that best minimizes and contains the LAMIRD to the area of existing development as of the date the county became subject to the planning requirements of the act. When evaluating alternative configurations of the logical outer boundary, counties should determine how much new growth will occur at build out and determine if this level of new growth is consistent with rural character and can be accommodated with the appropriate level of public facilities and public services. Counties should use the following criteria to evaluate various configurations when establishing the logical outer boundary:

(I) The need to preserve the character of existing natural neighborhoods and communities;

(II) Physical boundaries such as bodies of water, streets and highways, and land forms and contours;

(III) The prevention of abnormally irregular boundaries; and

(IV) The ability to provide public facilities and public services in a manner that does not permit low-density sprawl.

(E) Once a logical outer boundary has been adopted, counties may consider changes to the boundary in subsequent amendments. When doing so, the county must use the same criteria used when originally designating the boundary. Counties should avoid adding new undeveloped parcels as infill, especially if doing so would add to the capacity of the LAMIRD.

(ii) Type 2 LAMIRDs - Small-scale recreational uses. Counties may allow small-scale tourist or recreational uses in rural areas. Small-scale recreational or tourist uses rely on a rural location and setting and need not be principally designed to serve the existing and projected rural population.

(A) Counties may allow small-scale tourist or recreational uses through redevelopment of an existing site, intensification of an existing site, or new development on a previously undeveloped site, but not new residential development. Counties may allow public services and facilities that are limited to those necessary to serve the recreation or tourist uses and that do not permit low-density sprawl. Small-scale recreational or tourist uses may be added as accessory uses for resource-based industry. For accessory uses on agricultural lands of long-term commercial significance, see WAC 365-196-815.

(B) Counties are not required to designate Type 2 LAMIRDs on the future land use map and may allow them as a conditional use. If using a conditional use process, counties should include in their development regulations conditions that address all the statutory criteria for the location of a Type 2 LAMIRD. Conditions must assure that Type 2 LAMIRDs:

(I) Are isolated, both from urban areas and from each other. Conditions should include spacing criteria to avoid creating a pattern of strip development;

(II) Are small in scale;

(III) Are consistent with rural character;

(IV) Rely on a rural location or a natural setting;

(V) Do not include new residential development;

(VI) Do not require services and facilities beyond what is available in the rural area; and

(VII) Are operationally compatible with surrounding resource-based industries.

(iii) Type 3 LAMIRDs - Small-scale businesses and cottage industries. Counties may allow isolated small-scale businesses and cottage industries that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents, through the intensification of development on existing lots or on undeveloped sites.

(A) Counties may allow the expansion of small-scale businesses in rural areas as long as those small-scale businesses are consistent with the rural character of the area as defined by the county in the rural element. Counties may also allow new small-scale businesses to use a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area. Any public services and public facilities provided to the cottage industry or small-scale business must be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl.

(B) Counties are not required to designate Type 3 LAMIRDs on the future land use map and may allow them as a conditional use. If using a conditional use process, counties should include in their development regulations conditions that address all the statutory criteria for the location of a Type 3 LAMIRD. Conditions must assure that Type 3 LAMIRDs:

(I) Are isolated, both from urban areas and from each other. Conditions should include spacing criteria to avoid creating a pattern of strip development;

(II) Are small in scale;

(III) Are consistent with rural character;

(IV) Do not include new residential development;

(V) Do not require public services and facilities beyond what is available in the rural area; and

(VI) Are operationally compatible with surrounding resource-based industries.

(c) Major industrial developments and master planned resorts governed by other requirements. Counties may not use the provisions of RCW 36.70A.070 (5)(d)(iii) to permit a major industrial development or a master planned resort. These types of development must comply with the requirements of RCW 36.70A.360 through 36.70A.368. For more information about major industrial developments, see WAC 365-196-465. For more information about master planned resorts, see WAC 365-196-460.

NEW SECTION

WAC 365-196-430 Transportation element. (1) Requirements. The transportation element shall contain at least the following subelements:

(a) Land use assumptions used in estimating travel;

(b) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(c) Facilities and services needs, including:

(i) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airports, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the county or city's jurisdictional boundaries;

(ii) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(iii) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's ten-year investment program. The concurrency requirements of RCW 36.70A.070 (6)(b) do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in RCW 36.70A.070 (6)(b);

(iv) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(v) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(vi) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(d) Finance, including:

(i) An analysis of funding capability to judge needs against probable funding resources;

(ii) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW

36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the ten-year improvement program developed by the department of transportation as required by RCW 47.05.030;

(iii) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(e) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(f) Demand-management strategies;

(g) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles;

(h) The transportation element, and the six-year plan required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, RCW 35.58.2795 for public transportation systems, and the ten-year plan required by RCW 47.05.030 for the state, must be consistent.

(2) Recommendations for meeting element requirements.

(a) Consistency with the land use element, regional and state planning.

(i) RCW 36.70A.070(6) requires that the transportation element implement and be consistent with the land use element. Counties and cities should use consistent land use assumptions, population forecasts, and planning periods for both elements.

(ii) Counties and cities should refer to the statewide multimodal transportation plan produced by the department of transportation under chapter 47.06 RCW to ensure consistency between the transportation element and the statewide multimodal transportation plan. Local transportation elements should also reference applicable department of transportation corridor planning studies, including scenic byway corridor management plans.

(iii) Counties and cities should refer to the regional transportation plan developed by their regional transportation planning organization under chapter 47.80 RCW to ensure the transportation element reflects regional guidelines and principles; is consistent with the regional transportation plan; and is consistent with adopted regional growth and transportation strategies. Considering consistency during the development and review of the transportation element will facilitate the certification of transportation elements by the regional transportation planning organization as required by RCW 47.80.023(3).

(iv) Counties and cities should develop their transportation elements using the framework established in countywide planning policies, and where applicable, multicounty planning policies. Using this framework ensures their transportation elements are coordinated and consistent with the comprehensive plans of other counties and cities sharing common borders or related regional issues as required by RCW 36.70A.100 and 36.70A.210.

(v) Counties and cities should refer to the six-year transit plans developed by municipalities or regional transit authorities pursuant to RCW 35.58.2795 to ensure their transportation element is consistent with transit development plans as required by RCW 36.70A.070 (6)(c).

(vi) Land use elements and transportation elements may incorporate commute trip reduction plans to ensure consistency between the commute trip reduction plans and the comprehensive plan as required by RCW 70.94.527(5). Counties and cities may also include transportation demand management programs for growth and transportation efficiency centers designated in accordance with RCW 70.94.528.

(b) The transportation element should contain goals and policies to guide the development and implementation of the transportation element. The goals and policies should be consistent with statewide and regional goals and policies. Goals and policies should address the following:

(i) Roadways and roadway design that provides safe access and travel for all users, including motorists, transit vehicles and riders, bicyclists, and pedestrians;

(ii) Public transportation, including public transit and passenger rail, intermodal transfers, and multimodal access;

(iii) Bicycle and pedestrian travel;

(iv) Transportation demand management, including education, encouragement and law enforcement strategies;

(v) Freight mobility including port facilities, truck, air, rail, and water-based freight;

(vi) Transportation finance including strategies for addressing impacts of development through concurrency, impact fees, and other mitigation; and

(vii) Policies to preserve the functionality of state highways within the local jurisdiction such as policies to provide an adequate local network of streets, paths, and transit service so that local short-range trips do not require single-occupant vehicle travel on the state highway system; and policies to mitigate traffic and storm water impacts on state-owned transportation facilities as development occurs.

(c) Inventory and analysis of transportation facilities. RCW 36.70A.070 (6)(a)(iii)(A) requires an inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities. The inventory defines existing capital facilities and travel levels as a basis for future planning. The inventory must include state-owned transportation facilities within the city's or county's jurisdictional boundaries. Counties and cities should inventory transportation facilities and services owned or operated by the county or city, and identify those which are owned or operated by others. For those facilities operated by others, counties and cities should refer to the responsible agencies for information concerning current and projected plans for transportation facilities and services. Counties and cities and agencies responsible for transportation facilities and services should cooperate in identifying and resolving land use and transportation compatibility issues. The inventory should include:

(i) Air transportation facilities.

(A) Where applicable, counties and cities should describe the location of facilities and services provided by any general aviation airport within or adjacent to the county

or city, and should reference any relevant airport planning documents.

(B) Counties and cities should identify supporting transportation infrastructure such as roads, rail, and routes for freight, employee, and passenger access, and assess the impact to the local transportation system.

(C) Counties and cities should assess the compatibility of land uses adjacent to the airport and discourage the siting of incompatible uses in the land use element as directed by RCW 36.70A.510 and WAC 365-196-455.

(ii) Water transportation facilities.

(A) Where applicable, counties and cities should describe or map any ferry facilities and services, including ownership, and should reference any relevant ferry planning documents. If the ferry route serves counties consisting entirely of islands whose only connection to the mainland are state highways or ferry routes, it is subject to concurrency requirements of RCW 36.70A.070 (6)(b).

(B) Counties and cities should identify supporting infrastructure such as parking and transfer facilities, bicycle, pedestrian, and vehicle access to ferry terminals and assess the impact on the local transportation system.

(C) Where applicable, counties and cities should describe marine and inland waterways, and related port facilities and services. Counties and cities should identify supporting transportation infrastructure, and assess the impact to the local transportation system.

(iii) Ground transportation facilities and services.

(A) Roadways. Counties and cities must include a map of roadways owned or operated by city, county, and state governments.

(I) Counties and cities may describe the general travel market (i.e., commuter, tourist, farm to market, etc.) served by the transportation network. The inventory may include information such as: Traffic volumes, truck volumes and classification, functional classification, strategic freight corridor designation, preferred freight routes, scenic and recreational highway designation, and ownership.

(II) For state highways, counties and cities should coordinate with the regional office of the department of transportation to identify designated high occupancy vehicle or high occupancy toll lanes, access classification, roadside classification, and whether the highway is a state-designated highway of statewide significance, or federally designated National Scenic Byway or All American Road. These designations may impact future development along state highway corridors. If these classifications impact future land use, this information should be included in the comprehensive plan along with reference to any relevant corridor planning documents.

(B) Public transportation and rail facilities and services.

(I) RCW 36.70A.070 (6)(a)(iii)(A) requires an inventory of transit alignments. Where applicable, counties and cities must inventory existing public transportation facilities and services. This section should reference transit development plans that provide local services. The inventory should contain a description of regional and intercity rail, and local, regional, and intercity bus service, paratransit, or other services. Counties and cities should include a map of local transit routes. The inventory should also identify locations of passenger rail stations and major public transit transfer stations for appropriate land use.

(II) Where applicable, such as where a major freight transfer facility is located, counties and cities should include a map of existing freight rail lines, and reference any relevant planning documents. Counties and cities should assess the adequacy of supporting transportation infrastructure such as roads, rail, and navigational routes for freight, employee, and passenger access, and the impact on the local transportation system.

(d) If the planning area is within a National Ambient Air Quality Standards nonattainment area, compliance with the Clean Air Act Amendments of l990 is required. Where applicable, the transportation element should include: A map of the area designated as the nonattainment area for ozone, carbon monoxide, and particulate matter (PM10 and PM2.5); a discussion of the severity of the violation(s) contributed by transportation-related sources; and a description of measures that will be implemented consistent with the state implementation plan for air quality. Counties and cities should refer to chapter 173-420 WAC, and to local air quality agencies and metropolitan planning organizations for assistance.

(e) Level of service standards. Level of service standards serve to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between city, county and state transportation investment programs.

(i) RCW 36.70A.070 (6)(a)(iii)(B) requires the transportation element to include level of service standards for all locally owned arterials. Counties and cities may adopt level of service standards for other locally owned roads or travel modes at their discretion.

(ii) RCW 36.70A.070 (6)(a)(iii)(C) requires level of service standards for highways, as reflected in chapters 47.06 and 47.80 RCW, to gauge the performance of the transportation system. The department of transportation, in consultation with counties and cities, establishes level of service standards for state highways and ferry routes of statewide significance. Counties and cities should refer to the state highway and ferry plans developed in accordance with chapter 47.06 RCW for the adopted level of service standards.

(iii) Regional transportation planning organizations and the department of transportation jointly develop level of service standards for all other state highways and ferry routes. Counties and cities should refer to the regional transportation plans developed in accordance with chapter 47.80 RCW for the adopted level of service standards.

(iv) To identify level of service standards for public transit services, counties and cities should include the established level of service or performance standard from the transit provider and should reference any relevant planning documents.

(v) Adopted level of service standards should reflect access, mobility, mode-split, or capacity goals for the transportation facility depending upon the surrounding development density and community goals, and should be developed in consultation with transit agencies serving the planning area.

(vi) The measurement methodology and standards should vary based on the urban or rural character of the surrounding area. The county or city should also balance the

desired community character, funding capacity, and traveler expectations when selecting level of service methodologies and standards. A county or city may select different ways to measure travel performance depending on how a county or city balances these factors and the characteristics of travel in their community. For example, counties and cities may measure performance at different times of day, week, or month (peak versus off-peak, weekday versus weekend, summer versus winter). Counties and cities may also measure performance at different geographic scales (intersections, road or route segments, travel corridors, or travel zones), or in terms of the supply of multimodal capacity available in a corridor.

(vii) In urban areas RCW 36.70A.108 encourages the use of methodologies analyzing the transportation system from a comprehensive, multimodal perspective. Multimodal levels of service methodologies and standards should consider the needs of travelers using the four major travel modes (auto, public transportation, bicycle, and pedestrian), their impacts on each other as they share the street, and their mode specific requirements for street design and operation. For example, bicycle and pedestrian level of service standards should emphasize the availability of facilities and safety levels for users.

(f) Travel forecasts. RCW 36.70A.070 (6)(a)(iii)(E) requires forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth. Counties and cities must include at least a ten-year travel forecast in the transportation element. The forecast time period and underlying assumptions must be consistent with the land use element. Counties and cities may forecast travel for the twenty-year planning period. Counties and cities may include bicycle, pedestrian, and/or planned transit service in a multimodal forecast. Travel forecasts should be based on adopted regional growth strategies, the regional transportation plan, and comprehensive plans within the region to ensure consistency.

(g) Identify transportation system needs.

(i) RCW 36.70A.070 (6)(a)(iii)(D) requires that the transportation element include specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standards.

(ii) System need are those improvements needed to meet and maintain adopted levels of service over at least the required ten-year forecasting period. If counties and cities use a twenty-year forecasting period, they may also choose to identify needs for the entire twenty-year period.

(iii) RCW 47.80.030(3) requires identified needs on regional facilities or services to be consistent with the regional transportation plan and the adopted regional growth and transportation strategies. RCW 36.70A.070 (6)(a)(iii)(F) requires identified needs on state-owned transportation facilities to be consistent with the statewide multimodal transportation plan.

(iv) Counties and cities should cooperate with public transit providers to analyze projected transit services and needs based on projected land use assumptions, and consistent with regional land use and transportation planning. Coordination may also include identification of mixed use centers, and consider opportunities for intermodal integration and appropriate multimodal access, particularly bicycle and pedestrian access.

(v) Counties and cities must include state transportation investments identified in the statewide multimodal transportation plan required under chapter 47.06 RCW and funded in the department of transportation's ten-year improvement program. Identified needs must be consistent with regional transportation improvements identified in regional transportation plans required under chapter 47.80 RCW. The transportation element should also include plans for new or expanded public transit and be coordinated with local transit providers.

(vi) The identified transportation system needs may include: Considerations for repair, replacement, enhancement, or expansion of vehicular, transit, bicycle, and pedestrian facilities; enhanced or expanded transit services; system management; or demand management approaches.

(vii) Transportation system needs may include transportation system management measures increasing the motor vehicle capacity of the existing street and road system. They may include, but are not limited to signal timing, traffic channelization, intersection reconfiguration, exclusive turn lanes or turn prohibitions, bus turn-out bays, grade separations, removal of on-street parking or improving street network connectivity.

(viii) When identifying system needs, counties and cities may identify a timeline for improvements. Identification of a timeline provides clarity as to when and where specific transportation investments are planned and provides the opportunity to coordinate and cooperate in transportation planning and permitting decisions.

(ix) Counties and cities should consider how the improvements relate to adjacent counties or cities.

(h) Local impacts to state transportation facilities. RCW 36.70A.070 (6)(a)(ii) requires counties and cities to estimate traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities. Traffic impacts should include the number of automobile, and, as information becomes available, bicycle, public transit, and pedestrian trips estimated to use the state highway and ferry systems throughout the planning period.

(i) Transportation demand management.

(i) RCW 36.70A.070 (6)(a)(vi) requires that the transportation element include transportation demand management strategies. These strategies are designed to encourage the use of alternatives to single occupancy travel and to reduce congestion, especially during peak times.

(ii) Where applicable, counties and cities may include the goals and relevant strategies of employer-based commute trip reduction programs developed under RCW 70.94.521 through 70.94.555. All other counties and cities should consider strategies which may include, but are not limited to ridesharing, vanpooling, promotion of bicycling, walking and use of public transportation, transportation-efficient parking and land use policies, and high occupancy vehicle subsidy programs.

(j) Pedestrian and bicycle component. RCW 36.70A.070 (6)(a)(vii) requires the transportation element to include a pedestrian and bicycle component that includes collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(i) Collaborative efforts may include referencing local and regional pedestrian and bicycle planning documents, if any. Designated shared use paths, which are part of bicycle and pedestrian networks, should be consistent with those in the parks, recreation and open space element.

(ii) To identify and designate planned improvements for bicycle facilities and corridors, the pedestrian and bicycle component should include a map of bicycle facilities, such as bicycle lanes, shared use paths, paved road shoulders. This map should identify state and local designated bicycle routes, and describe how the facilities link to those in adjacent jurisdictions.

(iii) To identify and designate planned improvements for pedestrian facilities and corridors, the pedestrian and bicycle component should include a map of pedestrian facilities such as sidewalks, pedestrian connectors, and other designated facilities, especially in areas of high pedestrian use such as designated centers, major transit routes, and route plans designated by school districts under WAC 392-151-025.

(iv) The pedestrian and bicycle component should plan a network that connects residential and employment areas with community and regional destinations, schools, and public transportation services.

(v) The pedestrian and bicycle component should also review existing pedestrian and bicycle accident data to plan pedestrian facilities that improve pedestrian and bicycle safety.

(k) Multiyear financing plan.

(i) RCW 36.70A.070 (6)(a)(iii)(B) requires that the transportation element include a multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which develop a financing plan that addresses all identified transportation facilities and strategies throughout the twenty-year planning period. The identified needs shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should reflect regional improvements identified in regional transportation plans required under chapter 47.80 RCW and be coordinated with the ten-year investment program developed by the department of transportation as required by RCW 47.05.030;

(ii) The horizon year for the multiyear plan should be the same as the time period for the travel forecast and identified needs. The financing plan should include cost estimates for new and enhanced locally owned roadway facilities including new or enhanced bicycle and pedestrian facilities to estimate the cost of future facilities and the ability of the local government to fund the improvements.

(iii) Sources of proposed funding may include:

(A) Federal or state funding.

(B) Local funding from taxes, bonds, or other sources.

(C) Developer contributions, which may include:

(I) Impact or mitigation fees assessed according to chapter 82.02 RCW, or the Local Transportation Act (chapter 39.92 RCW).

(II) Contributions or improvements required under SEPA (RCW 43.21C.060).

(III) Concurrency requirements implemented according to RCW 36.70A.070 (6)(b).

(D) Transportation benefit districts established under RCW 35.21.225 and chapter 36.73 RCW.

(iv) RCW 36.70A.070 (6)(a)(iv)(A) requires an analysis of funding capability to judge needs against probable funding resources. When considering the cost of new facilities, counties and cities should consider the cost of maintaining facilities in addition to the cost of their initial construction. Counties and cities should forecast projected funding capacities based on revenues that are reasonably expected to be available, under existing laws and ordinances, to carry out the plan. If the funding strategy relies on new or previously untapped sources of revenue, the financing plan should include a realistic estimate of new funding that will be supplied.

(l) Reassessment if probable funding falls short.

(i) RCW 36.70A.070 (6)(a)(iv)(C) requires reassessment if probable funding falls short of meeting identified needs. Counties and cities must discuss how additional funding will be raised or how land use assumptions will be reassessed to ensure that level of service standards will be met.

(ii) This review must take place, at a minimum, as part of the seven-year periodic review and update required in RCW 36.70A.130(1), during the review of urban growth areas required by RCW 36.70A.130(3) and as major changes are made to the transportation element.

(iii) If probable funding falls short of meeting identified needs, counties and cities have several choices. For example, they may choose to:

(A) Seek additional sources of funding for identified transportation improvements;

(B) Adjust level of service standards to reduce the number and cost of needed facilities;

(C) Revisit identified needs and use on system management or transportation demand strategies to reduce the need for new facilities; or

(D) Revise the land use element to shift future travel to areas with adequate capacity, to lower average trip length or to avoid the need for new facilities in undeveloped areas;

(E) If needed, adjustments should be made throughout the comprehensive plan to maintain consistency.

(m) Implementation measures counties and cities may include an implementation section that broadly defines regulatory and nonregulatory actions and programs designed to proactively implement the transportation element. Implementation measures are actions, products or activities may include:

(i) Public works guidelines to reflect multimodal transportation standards for pedestrians, bicycles and transit; or adoption of department of transportation standards or the American Association of State Highway and Transportation Officials standards for bicycle and pedestrian facilities;

(ii) Transportation concurrency ordinances affecting development review;

(iii) Parking standards, especially in urban centers, to reduce vehicle parking requirements and include bicycle parking;

(iv) Commute trip reduction ordinances and transportation demand management programs;

(v) Access management ordinances;

(vi) Nonmotorized transportation funding programs;

(vii) Maintenance procedures and pavement management systems to include bicycle, pedestrians and transit considerations;

(viii) Subdivision standards to reflect multimodal goals; and

(ix) Transit compatibility policies and rules to guide development review procedures to incorporate review of bicycle, pedestrian and transit access to sites.

NEW SECTION

WAC 365-196-435 Economic development element. (1) Requirements.

(a) The economic development element should establish local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. An economic development element should include:

(i) A summary of the local economy such as population, employment, payroll, sectors, businesses, sales, and other information as appropriate;

(ii) A summary of the strengths and weaknesses of the local economy defined as the commercial and industrial sectors and supporting factors such as land use, transportation, utilities, education, workforce, housing, and natural/cultural resources; and

(iii) An identification of policies, programs, and projects to foster economic growth and development and to address future needs. Identification of these policies, programs, and projects should include a summary of each.

(b) A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(c) The requirement to include an economic development element is null and void until sufficient funds to cover applicable local governments costs are appropriated and distributed at least two years before the due date for the periodic review and update required in RCW 36.70A.130(1).

(2) Recommendations for meeting the requirements. Counties and cities should consider using existing economic development plans developed at the county and regional level and may adopt them by reference as a means of including an economic development element within their comprehensive plan. Counties and cities should consider developing partnerships with organizations within the community and with state and federal agencies and the private sector. Because labor markets typically encompass at least one county and may encompass a multicounty region, counties and cities should coordinate economic development activities on a regional basis. The department recommends counties and cities consider the following in preparing an economic development element:

(a) A summary of the local economy.

(i) Economic development begins with information gathering. The purpose of information gathering is to provide a summary of the local economy. Much of this information is available from regional, state or federal agencies.

(ii) Counties and cities should use population information consistent with the information used in the land use element and the housing element.

(iii) Counties and cities are not required to generate original data, but can rely on available data from the agencies who report the information. Employment, payroll, and other economic information is available from state and federal agencies, such as the department of employment security, the Bureau of Labor Statistics and the Census Bureau. Some of this information may not be available at the city level, but may be available only at the county-wide level. Government agencies that report this data may be prohibited from releasing certain data to avoid disclosing proprietary information. Local governments should also consult with their associate development organization, economic development council and economic development districts. Counties and cities may also use data such as permit volume, local inventories of available land and other data generated from their activities that is useful for economic development planning.

(b) Summary of strengths and weaknesses of the local economy.

(i) Counties and cities should consult with their associated development organization, economic development council and/or economic development district to help with identifying appropriate commercial and industrial sectors.

(ii) Shift-share analysis is one method of identifying strengths and weaknesses of the local economy. This method identifies industrial sectors that have a relatively greater proportion of the local area's employment than exists in the national economy. It is one method of identifying sectors with a local competitive advantage. This is a method that can be employed using readily available existing data.

(iii) Identification of industry clusters is another method of identifying strengths and weaknesses of the local economy. State and local economic development organizations, including the associated development organization and the department, have identified a number of industrial clusters in the state. An industry cluster is a group of related firms that provide interdependent specialized goods or services. The presence of existing suppliers of specialized services and a specialized work force makes attracting additional economic activity in the cluster easier.

(iv) Identifying strong industry sectors or clusters can help determine strengths and weaknesses, help a city or county develop a realistic profile of land and infrastructure needs, and identify ways to focus economic development activities. It does not confer preferred status on any particular firm or industry. Counties and cities should still treat all individuals and firms as equal under the law.

(v) Counties and cities may also refer to information and public input collected during public participation to identify strengths and weaknesses based on community perception of their community. Counties and cities may conduct a separate visioning exercise to help identify strengths and weaknesses.

(vi) Counties and cities may employ asset mapping, which builds from the information gathered. Asset mapping is similar to traditional strengths, weaknesses, opportunities, and threats (SWOT) analysis with several significant distinctions. Under the SWOT analysis, strength and opportunity factors may not be linked together.

(c) Identification of policies, programs, and projects to foster economic growth and development and to address future needs.

(i) After identifying strengths and weaknesses, the economic development element may identify policies, programs and projects that foster economic growth and development and address future needs. The programs and policies should be targeted at addressing weaknesses or capitalizing on strengths identified in the community.

(ii) Counties and cities should consider using specific, quantified, and time-framed performance targets that provide a measurement of the success of an economic development element and serve as a reference point in the economic development process.

NEW SECTION

WAC 365-196-440 Parks and recreation element. (1) Requirements.

(a) The park and recreation element of the comprehensive plan must contain at least the following features:

(i) Consistency with the capital facilities element as it relates to park and recreation facilities;

(ii) Estimates of park and recreation demand for at least a ten-year period;

(iii) An evaluation of facilities and service needs; and

(iv) An evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(b) The requirement to include a parks and recreation element is null and void until sufficient funds to cover applicable local governments costs are appropriated and distributed at least two years before the due date for the periodic review and update required in RCW 36.70A.130(1).

(2) Recommendations for meeting requirements.

(a) Consistency and integration with other plan elements. Counties and cities should pay particular attention to consistency with the land use element, approaches to protecting critical areas and conserving natural resource lands, and identification of open space corridors and lands useful for public purposes. Planning policies and implementing regulations in each of these elements should complement each other to achieve adopted community goals.

(b) Visioning process. Counties and cities should start with a visioning process. This process should engage the public in the process of identifying needs, evaluating their satisfaction with existing recreational opportunities, and developing goals to guide the development of the parks and recreation element.

(c) Establishing level of service standards.

(i) The visioning process should be used when establishing levels of service for the parks and recreation element. Select levels of service or planning assumptions that reflect local priorities.

(ii) Methods used to establish levels of service should reflect community goals, and may be adapted from approaches recommended by the Washington state recreation and conservation office or the National Recreation and Parks Association; facilities and services. Level of service standards should reflect local priorities.

(iii) Level of service standards should focus on those aspects that relate most directly to factors influenced by growth and development, to allow for counties and cities to more clearly identify the impact on the demand for park facilities resulting from new development.

(d) Evaluation of facilities and service needs.

(i) Counties and cities should ensure consistency with the land use element when identifying existing and future public facilities and services.

(ii) Counties and cities should prepare an inventory of all existing park, recreation and open space lands, and related services. The inventory should describe the location, size and type of each facility or service, its current condition and capacity, and its intended service area. It should include a description of the park and recreation facilities and services of other private and public entities, including state park and recreation services.

(iii) Counties and cities should estimate demand for parks, open space and recreational services. Estimates must be for at least a planning period of ten years, and jurisdictions should consider a planning period that matches that used for other comprehensive plan elements (e.g., twenty years). In preparing estimates, factors that should be considered include, but are not limited to:

(A) Population forecasts and other demographic projections;

(B) Levels of service selected for each type of facility or service to be provided;

(C) User information and participation rates from current facilities and programs;

(D) Surveys or other means of assessing community priorities for park and recreational services;

(E) National and local trends in recreational demands and services;

(F) Facilities and services provided by other private or public entities; and

(G) Review of statewide recreation plans, assessments and recreation trends made available through the department, the department of fish and wildlife, the department of natural resources, the recreation and conservation office, and the state parks and recreation commission.

(e) The parks and recreation element should identify future facilities and services needed to meet the estimated demand for parks, open space and recreational programs, consistent with levels of service or planning assumptions and the projections for distribution of growth in the land use element. Consistency with the capital facilities and land use elements should be ensured when identifying existing and future public facilities and services to meet the estimated demand. The parks and recreation element should provide for an integrated parks, recreation and open space system. The system should consist of a complementary set of parks and open spaces that, considered together, meet the needs of a full range of community interests.

(f) Opportunities for intergovernmental coordination.

(i) When preparing the parks and recreation element, counties and cities should review other local, statewide, and regional recreation and land use plans to identify any future facilities that may help in meeting the future demand for parks and recreation facilities.

(ii) Counties and cities should evaluate opportunities for intergovernmental or public/private partnership approaches to meeting regional demand for park and recreation services including, but not limited to:

(A) Joint facility use agreements or contracts;

(B) Interlocal agreements for land acquisition or facility construction to serve region-wide needs;

(C) Contracts with private service providers;

(D) Formation of a single, large regional service provider such as a park and recreation district (chapter 36.69 RCW), park and recreation service area (RCW 36.68.400 through 36.68.620), or metropolitan park district (chapter 35.61 RCW); and

(E) Partnerships with nearby state parks and recreation facilities and services.

(g) Strategies for achieving adopted goals.

(i) Counties and cities should prepare strategies for achieving the adopted goals, policies and objectives, and for meeting the future facilities and service needs. Strategies may include:

(A) Developing needed facilities and programs;

(B) Coordinating intergovernmental efforts to provide needed facilities and programs; or

(C) Adopting development regulations that require provision of needed facilities as a condition of development.

(ii) When creating plans for new park facilities, counties and cities should develop site selection criteria to enable strategic prioritization of acquisition and development opportunities.

(iii) Strategies for financing must be consistent with the financing plan in the capital facilities element. If a local government intends to adopt impact fees as a strategy, it must identify those facilities as necessary for development and should identify them in:

(A) The parks and recreation element;

(B) A separate parks plan; or

(C) In the capital facilities element.

(iv) Counties and cities should evaluate if the identified strategies are sufficient to meet the adopted levels of service. If not, counties and cities should use the priorities set in the visioning process to realign the level of service standards with available resources.

(v) A county or city should also develop protocols to monitor and evaluate the parks and recreation element. These protocols should be consistent with the policies adopted in the capital facilities element regarding reassessment. See WAC 365-196-415. The protocol should include plans to monitor the community's changing recreation needs, evaluate progress toward implementation, and adapt to new information, such as changes to plans of other public or private park and recreation service providers.

NEW SECTION

WAC 365-196-445 Optional elements. (1) A comprehensive plan may include additional elements, items, or studies dealing with other subjects relating to the physical development within its jurisdiction, including, but not limited to:

(a) Conservation;

(b) Solar energy.

(2) A comprehensive plan may include, where appropriate, subarea plans. Subarea plans must be consistent with the comprehensive plan.

(3) The department recommends that counties and cities give strong consideration to including elements on the following within comprehensive plans:

(a) Environmental protection (including critical areas);

(b) Natural resource lands (where applicable);

(c) Design;

(d) Historic preservation;

(e) Natural hazard reduction.

NEW SECTION

WAC 365-196-450 Historic preservation. (1) RCW 36.70A.020(13) calls on counties and cities to identify and encourage the preservation of lands, sites, and structures that have historical or archaeological significance, herein referred to as "cultural resources." Although the act does not require a separate historic preservation element, counties and cities must be guided by the historic preservation goal in their comprehensive plan.

(2) Recommendations for meeting requirements. Cities and counties should address historic preservation in coordination with their other associated obligations.

(a) Identifying cultural resources.

(i) Counties and cities may use existing programs to identify cultural resources. Counties and cities may consult with the department of archaeology and historic preservation for information and technical assistance regarding identification and protection of cultural resources.

(ii) Examples of existing programs that identify cultural resources include:

(A) The National Register of Historic Places;

(B) The Washington Heritage Register;

(C) Properties that are identified by the department of archaeology and historic preservation (DAHP) to be eligible for listing in either one of these registers; and

(D) Properties which are listed in a local register of historic places.

(iii) Counties and cities should also identify areas designated as traditional cultural properties. A "traditional cultural property" is a property which has traditional cultural significance. It is associated with the cultural practices or beliefs of a living community that are rooted in that community's history, and are important in maintaining the continuing cultural identity of the community. Because the location of these sites is uncertain and not on a public register, counties and cities should cooperate with the cultural resource officers of any potentially affected tribal governments to establish a protocol to identify cultural resources and procedures to protect any cultural resources that are identified or discovered during development activity. Counties and cities may establish a

cultural resource data-sharing agreement with the department of archaeology and historic preservation to help identify sites with potential cultural historic or archaeological significance.

(iv) Counties and cities may, through existing data, attempt to identify sites with a high likelihood of containing cultural resources. If cultural resources are discovered during construction, irreversible damage to the resource may occur and significant and costly project delays are likely to occur. Establishing an early identification process can reduce the likelihood of these problems.

(b) Encouraging preservation of cultural resources.

(i) Counties and cities should include a process for encouraging the preservation of cultural resources. Counties and cities should start with an identification of existing state and federal requirements that encourage the preservation of cultural resources. These requirements include:

(A) Executive Order 05-05;

(B) Archaeological sites and resources (chapter 27.53 RCW);

(C) Archaeological excavation and removal permit (chapter 25-48 WAC);

(D) Indian graves and records (chapter 27.44 RCW);

(E) Human remains legislation (HB 2624);

(F) Abandoned and historic cemeteries and historic graves (chapter 68.60 RCW);

(G) Surcharge for preservation of historical documents (RCW 36.22.170);

(H) Shoreline Management Act (RCW 90.58.100);

(I) SEPA procedures (WAC 197-11-960).

(ii) Other potential strategies. Counties and cities should then assess if any additional steps are needed to implement the goals and policies established in the comprehensive plan regarding preservation of cultural resources. If a city or county determines any additional steps are needed, the following are other measures that are a means of encouraging the preservation of cultural resources:

(A) Establish a local preservation program and a historic preservation commission through adoption of a local preservation ordinance. The department of archaeology and historic preservation provides guidance on using the National Certified Local Government program as a local program.

(B) Establish zoning, financial, and procedural incentives for cultural and historic resource protection.

(C) Authorize a special valuation for historic properties tax incentive program.

(D) Establish incentives such as preservation covenants/easements and/or current use/open space taxation programs.

(E) Establish design guidelines, and authorize historic overlay/historic district zoning.

(F) Adopt the historic building code.

(G) Establish a program for transfer of development rights to encourage historic preservation.

NEW SECTION

WAC 365-196-455 Land use compatibility adjacent to general aviation airports. (1) Requirements:

(a) Each city or county in which there is located a general aviation airport operated for the benefit of the general public must, through its comprehensive plan and development regulations, discourage the siting of incompatible uses adjacent to such an airport.

(b) Comprehensive plans or development regulations that affect lands adjacent to a general aviation airport may only be adopted or amended after formal consultation with the following: Airport owners and managers, private airport operators, general aviation pilots, ports, and the aviation division of the state department of transportation.

(c) All proposed and adopted plans and regulations must be filed with the aviation division of the state department of transportation within a reasonable time after release for public consideration and comment, but no later than sixty days before the planned adoption date. See WAC 365-196-630 regarding notice to state agencies.

(2) Recommendations for requirements:

(a) Counties and cities should invite formal consultation for any proposed change to the comprehensive plan or development regulations that may affect airport operations. This should include: Any proposal affecting lands adjacent to the airport; any proposal may affect land uses within one mile of the airport in ways that may be incompatible with airport operations; and any proposal that may create an airspace hazard within the approach or departure areas.

(b) If the airport owner or manager notifies the county or city that the proposal may be incompatible with airport operations, the county or city should initiate the required formal consultation described in subsection (1)(b) of this section. At a minimum, formal consultation should include opportunity for the airport owner, manager, or operator to provide a written recommendation and supporting facts relating to the proposed comprehensive plan or development regulation amendment.

(c) Counties and cities should coordinate closely with the aviation division of the department of transportation, and consider technical assistance materials made available by the aviation division.

(d) Counties and cities may, in coordination with the airport owner, conduct a comprehensive study of compatible and incompatible land uses adjacent to the airport and develop comprehensive plan policies and development regulations to discourage incompatible development using best management practices. In most instances a comprehensive study would include the area at least one mile around the airport. This study and related planning processes may address the following:

(i) Incompatibly issues of residential encroachment;

(ii) High intensity uses such as K-12 schools, hospitals and major sporting events;

(iii) Airspace and height hazard obstructions;

(iv) Noise and safety issues; and

(v) Other issues unique to each airport.

(e) General aviation airports are essential public facilities. Counties and cities must also ensure that proposed changes to comprehensive plans and development regulations are consistent with policies governing siting essential public facilities adopted under RCW 36.70A.200. See WAC 365-196-550 regarding essential public facilities.

NEW SECTION

WAC 365-196-460 Master planned resorts. (1) The act allows for master planned resorts to provide counties with a means of capitalizing on areas of significant natural amenities to provide sustainable economic development for its rural areas. The requirements allow for master planned resorts without degrading the rural character of the county or imposing a public service burden on the county.

(2) A master planned resort is a self-contained, fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities, consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities. Residential uses are permitted only if they are integrated into and support the on-site recreational nature of the resort.

(3) Master planned resorts may include public facilities and services beyond those normally provided in rural areas. However, those provided on-site must be limited to those that meet the needs of the master planned resort. Services may be developed on-site or may be provided by other service providers, including special purpose districts or municipalities. All costs associated with service extensions and capacity increases directly attributable to the master planned resort must be borne by the resort, rather than the county. A master planned resort may enter into development agreements with service providers to share facilities, provided the services serve either an existing urban growth area or the master planned resort. Such agreements may not allow or facilitate extension of urban services outside of the urban growth area or the master planned resort. When approving the master planned resort, the county must conclude that on-site and off-site infrastructure and service impacts are fully considered and mitigated.

(4) A county must include policies in its rural element, to guide the development of master planned resorts before it can approve a master planned resort. These policies must preclude new urban or suburban land uses in the vicinity of the master planned resort unless those uses are otherwise within a designated urban growth area.

(5) When approving a master planned resort, a county must conclude, supported by the record before it, that the master planned resort is consistent with the development regulations protecting critical areas.

(6) If the area designated as a master planned resort includes resource lands of long-term commercial significance, a county must conclude, supported by the record before it, that the land is better suited, and has more long-term importance for the master planned resort than for the commercial harvesting of timber, minerals, or agricultural production. Because this conclusion effects a dedesignation of resource lands, it must be based on the criteria and the process contained in chapter 365-190 WAC. Even if lands are dedesignated, the master planned resort may not operationally interfere with the continued use of any adjacent resource lands of long-term commercial significance for natural resource production.

NEW SECTION

WAC 365-196-465 Major industrial developments. (1) General authority for major industrial developments. A county required or choosing to plan under the act may establish, in consultation with cities under the county-wide planning policies outlined in RCW 36.70A.210, a process for reviewing and approving proposals to authorize siting of specific major industrial developments outside urban growth areas.

(2) Establishment of a review process required. Before reviewing an application for a major industrial development, counties, in consultation with cities, must establish a process for reviewing and approving applications.

(3) Criteria for approving a major industrial development. A major industrial development may be approved outside an urban growth area if criteria including, but not limited to the following, are met:

(a) New infrastructure is provided for and/or applicable impact fees are paid;

(b) Transit-oriented site planning and traffic demand management programs are implemented;

(c) Buffers are provided between the major industrial development and adjacent nonurban areas;

(d) Environmental protection including air and water quality has been addressed and provided for;

(e) Development regulations are established to ensure that urban growth will not occur in adjacent nonurban areas;

(f) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands;

(g) The major industrial development plan is consistent with the county's development regulations for critical areas;

(h) An inventory of developable land has been conducted and the county has determined and entered findings that land suitable to site the major industrial development is unavailable within the urban growth area. Priority shall be given to applications for sites that are adjacent to or in close proximity to the urban growth area; and

(4) Amendment to the comprehensive plan.

(a) Final approval of an application for a major industrial development is an amendment to the comprehensive plan adopted pursuant to RCW 36.70A.070, designating the major industrial development site on the land use map as an urban growth area. The major industrial development is considered urban growth. Urban services may be provided at any scale and intensity. Major industrial developments are not required to be consistent with rural character or limited to the scale and intensity of an existing rural location.

(b) An application for a major industrial development may be considered at any time and is an exception to the general rule that amendments should be considered no more frequently than once per year.

(5) Public participation.

(a) Counties should address public participation procedures for major industrial developments when establishing the process for approval of major industrial developments. Counties should use existing public participation procedures for amending the comprehensive plan and amending the urban growth area as a starting point and modify these proce-

dures, if necessary, to address considerations and requirements particular to major industrial developments.

(b) The public participation process should identify how a project proposal meets the statutory criteria for siting a major industrial development. However, the act does not require these proposals to undergo a greater degree of public participation than any other action.

(6) RCW 36.70A.070 (5)(e) does not prohibit the location of a major industrial development within or adjacent to an existing limited area of more intense rural development (LAMIRD) provided it is approved consistent with RCW 36.70A.365.

NEW SECTION

WAC 365-196-470 Industrial land banks. (1) In addition to the major industrial development allowed under RCW 36.70A.365, a county planning under RCW 36.70A.040 that meets the criteria in subsection (2) of this section may establish a process for designating an industrial land bank consisting of no more than two master planned locations for major industrial activity outside urban growth areas. The process of designating industrial land banks must occur in consultation with cities consistent with the county-wide planning policies and, where applicable multicounty planning policies. A master planned location for major industrial developments may be approved through a two-step process: Designation of an industrial land bank area in the comprehensive plan; and subsequent approval of specific major industrial developments through a local master plan process described under subsection (3)(f) of this section.

(2) Counties eligible to create an industrial land bank. Only counties that meet one of the following criteria may designate an industrial land bank:

(a) Has a population greater than two hundred fifty thousand and is part of a metropolitan area that includes a city in another state with a population greater than two hundred fifty thousand;

(b) Has a population greater than one hundred forty thousand and is adjacent to another country;

(c) Has a population greater than forty thousand but less than seventy-five thousand and has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent and is:

(i) Bordered by the Pacific Ocean;

(ii) Located in the Interstate 5 or Interstate 90 corridor; or

(iii) Bordered by Hood Canal.

(d) Is east of the Cascade divide; and

(i) Borders another state to the south; or

(ii) Is located wholly south of Interstate 90 and borders the Columbia River to the east;

(e) Has an average population density of less than one hundred persons per square mile as determined by the office of financial management, and is bordered by the Pacific Ocean and by Hood Canal; or

(f) Meets all of the following criteria:

(i) Has a population greater than forty thousand but fewer than eighty thousand;

(ii) Has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent; and

(iii) Is located in the Interstate 5 or Interstate 90 corridor.

(g) A county's authority to create an industrial land bank expires on the due date for the next periodic update found in RCW 36.70A.130(4) occurring prior to December 31, 2014. Once a land bank area has been identified in the county's comprehensive plan, the authority of the county to process a master plan or site projects within an approved master plan does not expire.

(3) How to create an industrial land bank.

(a) Creation of an industrial land bank requires an amendment to a county's comprehensive plan and the adoption of development regulations.

(b) The comprehensive plan amendment that designates an industrial land bank must be accompanied by or contain an analysis that:

(i) Identifies locations suited to major industrial development due to proximity to transportation or resource assets. This should be based on an inventory of developable land as provided in RCW 36.70A.365. See WAC 365-196-465 for recommendations on major industrial developments.

(ii) Identifies the maximum size of the industrial land bank area and any limitations on major industrial developments based on local limiting factors, but does not need to specify a particular parcel or parcels of property or identify any specific use or user except as limited by this section.

(iii) Gives priority to locations that are adjacent to, or in close proximity to, an urban growth area. This should include an analysis of the availability of alternative sites within urban growth areas and the long-term annexation feasibility of sites outside of urban growth areas.

(c) The environmental review for amendment of the comprehensive plan should be at the programmatic level.

(d) A comprehensive plan amendment creating an industrial land bank may be considered at any time and is an exception to the requirement in RCW 36.70A.130(1) that the comprehensive plan may be amended no more often than once per year.

(e) Once the industrial land bank is created through the comprehensive plan amendment, approval of a specific major industrial development within the industrial land bank area requires no further amendment of the comprehensive plan.

(f) Development regulations. A county must also adopt development regulations for review and approval of specific major industrial developments through a master plan process. The development regulations governing the master plan process shall ensure, at a minimum, that:

(i) Urban growth will not occur in adjacent nonurban areas;

(ii) Development is consistent with the county's development regulations adopted for protection of critical areas;

(iii) Required infrastructure is identified and provided concurrent with development. Such infrastructure, however, may be phased in with development;

(iv) Transit-oriented site planning and demand management programs are specifically addressed as part of the master plan approval;

(v) Provision is made for addressing environmental protection, including air and water quality, as part of the master plan approval;

(vi) The master plan approval includes a requirement that interlocal agreements between the county and service providers, including cities and special purpose districts providing facilities or services to the approved master plan, be in place at the time of master plan approval;

(vii) A major industrial development is used primarily by industrial and manufacturing businesses, and that the gross floor area of all commercial and service buildings or facilities locating within the major industrial development do not exceed ten percent of the total gross floor area of buildings or facilities in the development. The intent of this provision for commercial or service use is to meet the needs of employees, clients, customers, vendors, and others having business at the industrial site, to attract and retain a quality workforce, and to further other public objectives, such as trip reduction. These uses may not be promoted to attract additional clientele from the surrounding area. Commercial and service businesses must be established concurrently with or subsequent to the industrial or manufacturing businesses;

(viii) New infrastructure is provided for and/or applicable impact fees are paid to assure that adequate facilities are provided concurrently with the development. Infrastructure may be achieved in phases as development proceeds;

(ix) Buffers are provided between the major industrial development and adjacent rural areas;

(x) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands; and

(xi) An open record public hearing is held before either the planning commission or hearing examiner with notice published at least thirty days before the hearing date and mailed to all property owners within one mile of the site.

(g) Required procedures. In addition to other procedural requirements that may apply, a county seeking to designate an industrial land bank under this section must:

(i) Provide county-wide notice, in conformance with RCW 36.70A.035, of the intent to designate an industrial land bank. Notice must be published in a newspaper or newspapers of general circulation reasonably likely to reach subscribers in all geographic areas of the county. Notice must be provided not less than thirty days prior to commencement of consideration by the county legislative body; and

(ii) Make a written determination of the criteria and rationale used by the legislative body as the basis for siting an industrial land bank under this chapter.

NEW SECTION

WAC 365-196-475 Land use compatibility with military installations. (1) Military installations are of particular importance to the economic health of the state of Washington. It is a priority of the state to protect the land surrounding military installations from incompatible development.

(2) A comprehensive plan, amendment to a comprehensive plan, a development regulation, or amendment to a development regulation, should not allow development in the vicinity of a military installation that is incompatible with the installation's ability to carry out its mission requirements. A county or city may find that an existing comprehensive plan or development regulations are compatible with the installation's ability to carry out its mission requirements.

(3) As part of the requirements of RCW 36.70A.070(1), each county or city planning under the act that has a federal military installation, other than a reserve center, that employs one hundred or more personnel and is operated by the United States Department of Defense within or adjacent to its border, must notify the commander of the military installation of the county's or city's intent to amend its comprehensive plan or development regulations to address lands adjacent to the military installation to ensure those lands are protected from incompatible development.

(4) The notice must request from the commander of the military installation a written recommendation and supporting facts relating to the use of land being considered in the adoption of a comprehensive plan or an amendment to a plan. The notice must provide sixty days for a response from the commander. If the commander does not submit a response to such request within sixty days, the county or city may presume that implementation of the proposed plan or amendment will not have any adverse effect on the operation of the military installation.

(5) When a county or city intends to amend its development regulations to be consistent with the comprehensive plan elements addressed in subsection (4) of this section, notice shall be provided to the commander of the military installation consistent with subsection (3) of this section. The notice shall request from the commander of the military installation a written recommendation and supporting facts relating to the use of land being considered in the amendment to the development regulations. The notice shall provide sixty days for a response from the commander to the requesting government. If the commander does not submit a response to such request within sixty days, the local government may presume that implementation of the proposed development regulation or amendment will not have any adverse effect on the operation of the installation.

NEW SECTION

WAC 365-196-480 Natural resource lands. (1) Requirements.

(a) In the initial period following adoption of the act, and prior to the development of comprehensive plans, counties and cities planning under the act were required to designate natural resource lands of long-term commercial significance and adopt development regulations to assure their conservation. Natural resource lands include agricultural, forest, and mineral resource lands. The previous designations and development regulations shall be reviewed in connection with the comprehensive plan adoption process and, where necessary, altered to ensure consistency.

(b) Counties and cities planning under the act must review their natural resource lands designations, comprehensive plans, policies, and development regulations as part of the required periodic update under RCW 36.70A.130 and 36.70A.131.

(c) Counties and cities not planning under RCW 36.70A.040 must review their natural resource lands designations, and if necessary revise those designations as part of the required periodic update under RCW 36.70A.130 and 36.70A.131.

(d) Forest land and agricultural land located within urban growth areas shall not be designated as forest resource land or agricultural resource land unless the county or city has enacted a program authorizing transfer or purchase of development rights.

(e) Mineral lands may be designated as mineral resource lands within urban growth areas. There may be subsequent reuse of mineral resource lands when the minerals have been mined out. In cases where designated mineral resource lands are likely to be mined out and closed to further mining within the planning period, the surface mine reclamation plan and permit from the department of natural resources division of geology should be reviewed to ensure it is consistent with the adopted comprehensive land use plan.

(f) In adopting development regulations to conserve natural resource lands, counties and cities shall address the need to buffer land uses adjacent to the natural resource lands. Where buffering is used it should be on land within the adjacent development unless an alternative is mutually agreed on by adjacent landowners.

(2) Recommendations for meeting requirements.

(a) In the initial period following adoption of the act, much of the analysis which was the basis for the comprehensive plan came later than the initial identification and regulation of natural resource lands. In all cases, counties and cities must address inconsistencies between plan policies, development regulations and previously adopted natural resource land provisions.

(b) The department issued guidelines for the classification and designation of natural resource lands which are contained in chapter 365-190 WAC. In general, natural resource lands should be located beyond the boundaries of urban growth areas; and urban growth areas should avoid including designated natural resource lands. In most cases, the designated purposes of natural resource lands are incompatible with urban densities. For inclusion in the urban growth area, counties and cities must first review the natural resource lands designation and conclude the lands no longer meet the designation criteria for resource lands of long-term commercial significance.

(c) As noted in subsection (1)(f) of this section, mineral resource lands are a possible exception to the requirement that natural resource lands be designated outside the urban growth area. This guidance is based on the significant cost savings from using minerals close to their source, and the potential for reusing the mined out lands for other purposes after mining is complete. Counties and cities should consider the potential loss of access to mineral resource lands if they are not designated and conserved, and should also consider the consumptive use of mineral resources when designating specific mineral resource lands.

(d) Counties and cities may also consider retaining local agricultural lands in or near urban growth areas as part of a local strategy promoting food security, agricultural education, or in support of local food banks, schools, or other large institutions.

(e) The review of existing designations should be done on an area-wide basis, and in most cases, be limited to the question of consistency with the comprehensive plan, rather than revisiting the entire prior designation and regulation process. However, to the extent that new information is available or errors have been discovered, the review process should take this information into account. Review for consistency in this context should include whether the planned use of lands adjacent to agricultural, forest, or mineral resource lands will interfere with the continued use, in an accustomed manner and in accordance with the best management practices, of the designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(f) Development regulations must assure that the planned use of lands adjacent to natural resource lands will not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands.

(g) Counties and cities are encouraged to use a coordinated program that includes nonregulatory programs and incentives to supplement development regulations to conserve natural resource lands. Guidance for addressing the designation of natural resource lands is located under WAC 365-190-040 through 365-190-070.

NEW SECTION

WAC 365-196-485 Critical areas. (1) Relationship to the comprehensive plan.

(a) The act requires that the planning goals in RCW 36.70A.020 guide the development and adoption of comprehensive plans and development regulations. These goals include retaining open space; enhancing recreation opportunities; conserving fish and wildlife habitat; protecting the environment and enhancing the state's high quality of life, including air and water quality, and the availability of water.

(b) Jurisdictions are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas.

(c) Counties and cities are required to identify open space corridors within and between urban growth areas for multiple purposes, including those areas needed as critical habitat by wildlife.

(d) RCW 36.70A.070(1) requires counties and cities to provide for protection of the quality and quantity of ground water used for public water supplies in the land use element. Where applicable, the land use element must review drainage, flooding, and storm water runoff in the area and in nearby jurisdictions, and provide guidance to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(e) Because the critical areas regulations must be consistent with the comprehensive plan, each comprehensive plan should set forth the underlying policies for the jurisdiction's critical areas program.

(f) In pursuing the environmental protection and open space goals of the act, such policies should identify nonregulatory measures for protecting critical areas as well as regula-

tory approaches. Nonregulatory measures include but are not limited to: Incentives, public education, and public recognition, and could include innovative programs such as the purchase or transfer of development rights. When such policies are incorporated into the plan (either in a separate element or as a part of the land use element), the consistency of the regulations can be readily assessed.

(2) Requirements. Prior to the original development of comprehensive plans under the act, counties and cities were required to designate critical areas and adopt development regulations protecting them. Any previous designations and regulations must be reviewed in the comprehensive plan process to ensure consistency between previous designations and the comprehensive plan. Critical areas include:

(a) Wetlands;

(b) Areas of critical recharging effect on aquifers used for potable water;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(3) Recommendations for meeting requirements.

(a) In the initial period following adoption of the act, much of the analysis which was the basis for the comprehensive plan came later than the initial identification and regulation of critical areas. Upon the adoption of the initial comprehensive plans, such designations and regulations were to be reviewed and, where necessary, altered to achieve consistency with the comprehensive plan. Subsequently, jurisdictions updating local critical areas ordinances are required to include the best available science.

(b) The department has issued guidelines for the classification and designation of critical areas which are contained in chapter 365-190 WAC.

(c) Critical areas should be designated and protected wherever the applicable environmental conditions exist, whether within or outside of urban growth areas. Critical areas may overlap each other, and should be treated as an overlay that applies to underlying zoning categories of land.

(d) The review of existing designations during the comprehensive plan adoption process should, in most cases, be limited to the question of consistency with the comprehensive plan, rather than a revisiting of the entire prior designation and regulation process. However, counties and cities must address the requirements to include the best available science in developing policies and development regulations to protect the functions and values of critical areas, and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. To the extent that new information is available or errors have been discovered, the review process should take this information into account.

(e) The department recommends that planning jurisdictions identify the policies by which decisions are made on when and how policy powers will be used (regulation) and when and how other means will be employed (purchases, development rights, etc.). See WAC 365-196-855.

(4) Avoiding impacts through appropriate land use designations.

(a) Many existing data sources can identify, in advance of the development review process, the likely presence of critical areas. When developing and reviewing the comprehensive plan and future land use designations, counties and cities should use available information to avoid directing new growth to areas with a high probability of conflicts between new development and protecting critical areas. Identifying areas with a high probability of critical areas conflicts can help identify lands that are likely to be unsuitable for development and help a county or city better provide sufficient capacity of land that is suitable for development as required by RCW 36.70A.115. Impacts to these areas could be minimized through measures such as green infrastructure planning, open space acquisition, open space zoning, and the purchase or transfer of development rights.

(b) When considering expanding the urban growth area, counties and cities should avoid including lands that contain large amounts of mapped critical areas. Counties and cities should not include new lands within the one hundred year flood plain unless no other alternatives exist, and if included, impacts on the flood plain must be mitigated, including the provisions in RCW 36.70A.110(8).

(c) If critical areas are included in urban growth areas, they still must be designated and protected. See WAC 365-196-310.

PART FIVE
CONSISTENCY AND COORDINATION

NEW SECTION

WAC 365-196-500 Internal consistency. (1) Comprehensive plans must be internally consistent. This requirement means that the comprehensive plan and its implementing development regulations must fit together so that no one feature precludes the achievement of any other. For example, if the residential densities selected and the protection of existing wetlands can both be achieved on the available land base, those provisions are internally consistent.

(2) Use of compatible assumptions. A county or city must use compatible assumptions in different aspects of the plan. For example, growth assumptions used in the transportation element of the comprehensive plan must be compatible with assumptions developed in the land use element.

If a county or city relies on forecasts, inventories, or functional plans developed by other entities, these plans might have been developed using different time horizons or different boundaries. If these differences create inconsistent assumptions, a county or city should include an analysis in its comprehensive plan of the differences and reconcile them to create a plan that uses compatible assumptions.

(3) The development regulations must be internally consistent and be consistent with the comprehensive plan they implement.

(4) Consistency review. Each comprehensive plan should provide mechanisms for ongoing review of its implementation and adjustment of its terms whenever internal conflicts become apparent. At a minimum, any amendment to the comprehensive plan or development regulations must be reviewed for consistency. The review and update processes required in RCW 36.70A.130 (1) and (3) should include a

review of the comprehensive plan and development regulations for consistency.

NEW SECTION

WAC 365-196-510 Interjurisdictional consistency. (1) Each county or city comprehensive plan must be coordinated with, and consistent with, the comprehensive plans of other counties and cities that share common borders or related regional issues with that county or city. Determining consistency in this interjurisdictional context is complicated by the differences in timing of comprehensive plan adoption and subsequent amendments.

(2) Initially, interjurisdictional consistency should be met by the adoption of comprehensive plans, and subsequent amendments, which are consistent with and carry out the relevant county-wide planning policies and, where required, the relevant multicounty planning policies. Adopted county-wide planning policies are designed to ensure that county and city comprehensive plans are consistent. More detailed recommendations about county-wide planning policies are contained in WAC 365-196-305.

(3) To better ensure consistency of comprehensive plans, counties and cities should consider using similar policies and assumptions that apply to common areas or issues.

NEW SECTION

WAC 365-196-520 Coordination with other county and city comprehensive plans. (1) Each county and city planning under the act should circulate its proposed comprehensive plan to other counties and cities with which it shares a common border or has related regional issues. The proposed comprehensive plan should be accompanied by the relevant environmental documents.

(2) Reviewing counties and cities are presumed to have concurred with the provisions of the comprehensive plan, unless within a reasonable period of time, they provide written comment identifying comprehensive plan features that will preclude or interfere with the achievement of their own comprehensive plans.

(3) All counties and cities should attempt to resolve conflicts over interjurisdictional consistency through consultation and negotiation. Additional guidance for interjurisdictional consistency is located in WAC 365-196-510.

NEW SECTION

WAC 365-196-530 State agency compliance. (1) RCW 36.70A.103 requires that state agencies comply with the local comprehensive plans and development regulations, and subsequent amendments, adopted pursuant to the act. An exception to this requirement exists for the state's authority to site and operate a special commitment center and a secure community transition facility to house persons conditionally released to a less restrictive alternative on McNeil Island under RCW 36.70A.200.

(2) The department construes RCW 36.70A.103 to require each state agency to meet local siting and building requirements when it occupies the position of an applicant proposing development, except where specific legislation explicitly dictates otherwise. This means that development of state facilities is subject to local approval procedures and substantive provisions, including zoning, density, setbacks, bulk and height restrictions.

(3) Under RCW 36.70A.210(4), state agencies must follow adopted county-wide planning policies. Consistent with other statutory mandates, state programs should be administered in a manner which does not interfere with implementation of the county framework for interjurisdictional consistency, or the exercise by any local government of its responsibilities and authorities under the act.

(4) Overall, the broad sweep of policy contained in the act implies a requirement that all programs at the state level accommodate the outcomes of the growth management process wherever possible. The exercise of statutory powers, whether in permit functions, grant funding, property acquisition or otherwise, routinely involves such agencies in discretionary decision making. The discretion they exercise should take into account legislatively mandated local growth management programs. State agencies that approve plans of special purpose districts that are required to be consistent with local comprehensive plans should provide guidance or technical assistance to those entities to explain the need to coordinate their planning with the local government comprehensive plans within which they provide service.

(5) After local adoption of comprehensive plans and development regulations under the act, state agencies should review their existing programs in light of the local plans and regulations. Within relevant legal constraints, this review should lead to redirecting the state's actions in the interests of consistency with the growth management effort.

NEW SECTION

WAC 365-196-540 Compliance by regional agencies and special purpose districts. (1) Regional and special purpose government districts possess statutorily defined powers which include planning, development, regulatory, facility management and taxing functions. Such entities include regional air pollution control authorities, metropolitan municipal corporations, fire protection districts, port districts, public utility districts, school districts, sewer districts, water districts, irrigation districts, flood control districts, diking and drainage districts, park and recreation districts.

(2) Except as otherwise provided by the legislature, the act requires that regional agencies and special purpose government districts comply with the comprehensive plans and development regulations adopted under the act. WAC 365-196-745 lists statutes that provide direction to maintain consistency between special district plans and comprehensive plans.

(3) The plans of regional agencies and special purpose government districts should be developed using local comprehensive plans as a basis for determining future development patterns. Regional agencies and special purpose districts should consult the land use, housing, and other relevant elements of the plans for information on future growth and development patterns, and should contact the local governments to ensure that special purpose government districts can

provide adequate public facilities to the area over the twenty-year life of the plan.

NEW SECTION

WAC 365-196-550 Essential public facilities. (1) Determining what facilities are essential public facilities.

(a) The term "essential public facilities" refers to public facilities that are typically difficult to site. Consistent with county-wide planning policies, counties and cities should create their own lists of "essential public facilities," to include at a minimum those set forth in RCW 36.70A.200.

(b) For the purposes of identifying facilities subject to the "essential public facilities" siting process, it is not necessary that the facilities be publicly owned.

(c) Essential public facilities include both new and existing facilities. It may include the expansion of existing essential public facilities or support activities and facilities necessary for an essential public facility.

(d) The following facilities and types of facilities are identified in RCW 36.70A.200 as essential public facilities:

(i) Airports;

(ii) State education facilities;

(iii) State or regional transportation facilities;

(iv) Transportation facilities of statewide significance as defined in RCW 47.06.140. These include:

(A) The interstate highway system;

(B) Interregional state principal arterials including ferry connections that serve statewide travel;

(C) Intercity passenger rail services;

(D) Intercity high-speed ground transportation;

(E) Major passenger intermodal terminals excluding all airport facilities and services;

(F) The freight railroad system;

(G) The Columbia/Snake navigable river system;

(H) Marine port facilities and services that are related solely to marine activities affecting international and interstate trade;

(I) High capacity transportation systems.

(v) State and local correctional facilities;

(vi) Solid waste handling facilities;

(vii) In-patient facilities, including substance abuse facilities;

(viii) Mental health facilities;

(ix) Group homes;

(x) Secure community transition facilities;

(xi) Any facility on the state ten-year capital plan maintained by the office of financial management;

(xii) Public or private utility facilities.

(e) Essential public facility criteria apply to the facilities and not the operator. Cities and counties may not require applicants who operate essential public facilities to use an essential public facility siting process for projects that would otherwise be allowed by the development regulations. Applicants who operate essential public facilities may not use an essential public facility siting process to obtain approval for projects that are not essential public facilities.

(f) Regardless of whether it is a new, existing or an expansion or modification of an existing public facility, the major component in the identification of an essential public facility is whether it provides or is necessary to provide a public service and whether it is difficult to site.

(2) Criteria to determine if the facility is difficult to site. Any one or more of the following conditions is sufficient to make a facility difficult to site.

(a) The public facility needs a specific type of site of such as size, location, available public services, which there are few choices.

(b) The public facility needs to be located near another public facility or is an expansion of an essential public facility at an existing location.

(c) The public facility has, or is generally perceived by the public to have, significant adverse impacts that make it difficult to site.

(d) Use of the normal development review process would effectively preclude the siting of an essential public facility.

(e) Development regulations require the proposed facility to use an essential public facility siting process.

(3) Preclusion of essential public facilities.

(a) Cities and counties may not use their comprehensive plan or development regulations to preclude the siting of essential public facilities. Comprehensive plan provisions or development regulations preclude the siting of an essential public facility if their combined effects would make the siting of an essential public facility impossible or impracticable.

(i) Siting of an essential public facility is "impracticable" if it is incapable of being performed or accomplished by the means employed or at command.

(ii) Impracticability may also include restrictive zoning; comprehensive plan policies directing opposition to a regional decision; or the imposition of unreasonable conditions or requirements.

(iii) Limitations on essential public facilities such as capacity limits; internal staffing requirements; resident eligibility restrictions; internal security plan requirements; and provisions to demonstrate need may be considered preclusive in some circumstances.

(b) A local jurisdiction may not include criteria in its land use approval process which would allow the essential public facility to be denied, but may impose reasonable permitting requirements and require mitigation of the essential public facility's adverse effects.

(c) An essential public facility is not precluded simply because the comprehensive plan provisions would be too costly or time consuming to comply with.

(d) If the essential public facility and its location have been evaluated through a state or regional siting process, the county or city may not require the facility to go through the local siting process.

(e) Essential public facilities that are sited through a regional or state agency are distinct from those that are "sited by" a city or county or a private organization or individual. When a city or county is siting its own essential public facility, public or private, it is free to establish a nonpreclusive siting process with reasonable criteria.

(4) Comprehensive plan.

(a) Requirements:

(i) Each comprehensive plan shall include a process for identifying and siting essential public facilities. This process

must be consistent with and implement applicable county-wide planning policies.

(ii) No local comprehensive plan may preclude the siting of essential public facilities.

(b) Recommendations for meeting requirements:

(i) Identification of essential public facilities. When identifying essential public facilities, counties and cities should take a broad view of what constitutes a public facility, involving the full range of services to the public provided by the government, substantially funded by the government, contracted for by the government, or provided by private entities subject to public service obligations.

(ii) Essential public facility criteria apply to the facilities and not the operator. Counties and cities may not require applicants who operate essential public facilities to use an essential public facility siting process for projects that would otherwise be allowed by the development regulations. The essential public facility siting process may not be used to obtain approval for projects that are not essential public facilities.

(iii) Agreements among jurisdictions should be sought to mitigate any disproportionate financial burden which may fall on the county or city which becomes the site of a facility of a statewide, regional, or county-wide nature.

(iv) Where essential public facilities may be provided by special districts, the plans under which those districts operate must be consistent with the comprehensive plan of the city or county. Counties and cities should adopt provisions for consultation to ensure that such districts exercise their powers in a way that does not conflict with the relevant comprehensive plan.

(c) The siting process should take into consideration the need for county-wide, regional, or statewide uniformity in connection with the kind of facility under review.

(5) Development regulations governing essential public facilities.

(a) Development regulations governing the siting of essential public facilities must be consistent with and implement the process set forth in the comprehensive plan.

(b) Except where county-wide planning policies have otherwise dictated siting choices, provision should be made for the possibility of siting each of the listed essential public facilities somewhere within each county's or city's planning area.

(c) Counties and cities should consider the criteria established in their comprehensive plan, in consultation with this section to determine if a project is an essential public facility. Cities and counties may also adopt criteria for identifying an essential public facility. Counties and cities should then determine if a project proposal for an essential public facility presents siting difficulties applying the guidelines under this section.

(d) If an essential public facility does not present siting difficulties and can be permitted through the normal development review process, project review should be through the normal development review process otherwise applicable to facilities of its type.

(e) If an essential public facility presents siting difficulties, the application should be reviewed using the essential public facility siting process.

(6) The essential public facility siting process.

(a) The siting process may not be used to deny the approval of the essential public facility. The purpose of the essential public facility siting process is to allow a county or city to impose reasonable conditions on an essential public facility necessary to mitigate the impacts of the project while ensuring that its development regulations do not preclude the siting of an essential public facility.

(b) The review process for siting essential public facilities should include a requirement for notice and an opportunity to comment to other interested counties and cities and the public.

(c) The permit process may include reasonable requirements such as a conditional use permit, but the process used must ensure a decision on the essential public facility is completed without unreasonable delay.

(d) The essential public facility siting process should then require an applicant to show how application of the existing development review process would preclude the siting of the essential public facility.

(e) The essential public facility siting process should identify what conditions are necessary to mitigate the impacts associated with the essential public facility. The combination of any existing development regulations and any new conditions may not render impossible or impracticable, the siting, development or operation of the essential public facility.

(f) Counties and cities should consider the extent to which design conditions can be used to make a facility compatible with its surroundings. Counties and cities may also consider provisions for amenities or incentives for neighborhoods in which facilities are sited. Any conditions imposed must be necessary to mitigate an identified impact of the essential public facility.

NEW SECTION

WAC 365-196-560 Special siting statutes. (1) Comprehensive plans and development regulations adopted under the act should accommodate situations where the state has explicitly preempted all local land use regulations, as for example, in the siting of major energy facilities under RCW 80.50.110.

(2) Where special statutes relate specifically to the setting aside of designated areas for particular purposes and under particular management programs, local land use regulations adopted under the act should be consistent with those purposes and programs. Examples in this category are the statutes relating to:

(a) Natural resource conservation areas;

(b) Natural area preserves;

(c) Seashore conservation area;

(d) Scenic rivers.

NEW SECTION

WAC 365-196-570 Secure community transition facilities. Requirements.

(1) Secure community transition facilities are essential public facilities.

(2) Counties and cities must either establish an essential public facility siting process, or amend their existing process

to allow for the siting of secure community transition facilities, or be subject to preemption by the department of social and health services consistent with RCW 71.09.342.

(3) A failure to act before the September 1, 2002, deadline does not constitute noncompliance for the purposes of grants and loans, and does not subject a county or city to a failure to act challenge to a growth management hearings board.

(4) If a county or city does not adopt an essential public facility siting process or does not amend its existing process to allow for the siting of a secure community transition facility, then department of social and health services may preempt local development regulations as necessary to site and operate a secure community transition facility under RCW 71.09.285 through 71.09.342. If the department of social and health services preempts local development regulations, the county or city may still participate in the siting process as provided in RCW 71.09.342.

(5) A local secure community transition facility siting process established by a city or county must be consistent with, and no more restrictive than, the siting process established in RCW 71.09.285 through 71.09.342. The department of social and health services has final authority to determine if a locally adopted siting process allows for the siting of secure community transition facilities in compliance with RCW 71.09.285.

PART SIX
REVIEWING, AMENDING, AND UPDATING COMPREHENSIVE PLANS AND DEVELOPMENT REGULATIONS

NEW SECTION

WAC 365-196-600 Public participation. (l) Requirements.

(a) Each county and city planning under the act must establish procedures for early and continuous public participation in the development and amendment of comprehensive plans and development regulations. The procedures are not required to be reestablished for each set of amendments.

(b) The procedures must provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.

(c) Errors in exact compliance with the established procedures do not render the comprehensive plan or development regulations invalid if the spirit of the procedures is observed.

(2) Record of process.

(a) Whenever a provision of the comprehensive plan or development regulation is based on factual data, a clear reference to its source should be made part of the adoption record.

(b) The record should show how the public participation requirement was met.

(c) All public hearings should be recorded.

(3) Recommendations for meeting public participation requirements. These recommendations are a list of suggestions for meeting the public participation requirement.

(a) Designing the public participation program.

(i) Implementation of the act requires a series of interrelated steps, including: Development of the initial comprehensive plan, evaluating annual amendments as part of the annual docket cycle, conducting the seven-year periodic update and reviewing the urban growth boundaries, amending development regulations and conducting subarea planning. Each of these has different levels of significance and different procedural requirements.

(ii) Counties and cities are not required to establish individual public participation programs for each individual amendment. Counties and cities may wish to consider establishing a public program for annual amendments, and establishing separate or updated programs for major periodic updates. When developing a public participation plan for a project not covered by the existing public participation plan, a county or city should develop a public participation plan tailored to the type of action under consideration. This public participation plan should be focused on the type of public involvement appropriate for that type of action.

(iii) The public participation plan should identify which procedural requirements apply and how the county or city intends to meet those requirements.

(iv) To avoid duplication of effort, counties and cities should integrate public involvement required by the State Environmental Policy Act, chapter 43.21C RCW, and rules adopted thereunder, into the overall public participation plan.

(v) Where a proposed amendment involves shorelines of the state, a county or city should integrate the public participation requirements of the Shoreline Management Act, chapter 90.58 RCW, into its public participation plan, as appropriate.

(vi) Once established, the public participation plan must be broadly disseminated.

(b) Visioning. When developing a new comprehensive plan or a significant update to an existing comprehensive plan, counties and cities should consider using a visioning process. The public should be involved, because the purpose of a visioning process is to gain public input on the desired features of the community. The comprehensive plan can then be designed to achieve these features.

(c) Planning commission. The public participation program should clearly describe the role of the planning commission, ensuring consistency with requirements of chapter 36.70, 35.63, or 35A.63 RCW.

(4) Each county or city should try to involve a broad cross-section of the community, so groups not previously involved in planning become involved.

(5) Counties and cities should take a broad view of public participation. The act contains no requirements or qualifications that an individual must meet in order to participate in the public process. If an individual or organization chooses to participate, it is an interested party for purposes of public participation.

(6) Providing adequate notice.

(a) Counties and cities are encouraged to consider a variety of opportunities to adequately communicate with the public. These methods of notification may include, but are not limited to, traditional forms of mailed notices, published announcements, electronic mail, and internet web sites to dis-

tribute informational brochures, meeting times, project timelines, and design and map proposals to provide an opportunity for the public to participate.

(b) Counties and cities must provide effective notice. In order to be effective, notice must be designed to accomplish the following:

(i) Notice must be timely, reasonably available and reasonably likely to reach interested persons. Notice of all events where public input is sought should be broadly disseminated at least one week in advance of any public hearing, but newspaper or on-line articles do not substitute for the requirement that jurisdictions publish the action taken. When appropriate, notices should announce the availability of relevant draft documents and how they may be obtained.

(ii) Broad dissemination means that a county or city has made the documents widely available and provided information on how to access the available documents and how to provide comments. Examples of methods of broad dissemination may include:

(A) Posting electronic copies of draft documents on the county and city official web site;

(B) Providing copies to local libraries;

(C) Providing copies as appropriate to other affected counties and cities, state and federal agencies;

(D) Providing notice to local newspapers; and

(E) Maintaining a list of individuals who have expressed an interest and providing them with notice when new materials are available.

(iii) Certain proposals may also require particularized notice to specific individuals if required by statute or adopted local policy.

(iv) The public notice must clearly specify the nature of the proposal under consideration and how the public may participate. Whenever public input is sought on proposals and alternatives, the relevant drafts should be available. The county or city must make available copies of the proposal that will be available prior to the public hearing so participants can comment appropriately. The notice should specify the range of alternatives considered or scope of alternatives available for public comment in accordance with RCW 36.70A.035 (2)(b)(i) and (ii).

(7) Receiving public comment.

(a) Public meetings on draft comprehensive plans. Once a comprehensive plan amendment or other proposal is completed in draft form, or as parts of it are drafted, the county or city may consider holding a series of public meetings or workshops at various locations throughout the jurisdiction to obtain public comments and suggestions.

(b) Public hearings. When the final draft of the comprehensive plan is completed, at least one public hearing should be held prior to the presentation of the final draft to the county or city legislative authority adopting it.

(c) Written comment. At each stage of the process when public input is sought, opportunity should be provided to make written comment.

(d) Attendance for all meetings and hearings to which the public is invited should be free and open. At hearings all persons desiring to speak should be allowed to do so, consistent with time constraints. A reasonable time limitation on spoken comments does not violate the act if written submissions are allowed.

(8) Continuous public involvement.

(a) Consideration of and response to public comments. All public comments should be reviewed. Adequate time should be provided between the public hearing and the date of adoption for all or any part of the comprehensive plan to evaluate and respond to public comments. The county or city should provide a written summary of all public comments with a specific response and explanation for any subsequent action taken based on the public comments. This written summary should be included in the record of adoption for the plan.

(b) Ending the opportunity for comment prior to deliberation. After the end of public comment, the local government legislative body may hold additional meetings to deliberate on the information obtained in the public hearing.

(c) Additional meetings may be necessary if the public hearings provided the county or city with new evidence or information they wish to consider. If during deliberation, the county or city legislative body identifies new information for consideration after the record of adoption has been closed, then it must provide further opportunity for public comment so this information can be included in the record.

(9) Considering amendments to a proposal after the opportunity for public review has closed.

(a) If the county or city legislative body wishes to amend a proposal after the opportunity for public review has closed, then the county or city must provide an opportunity for public review and comment on the proposed amendment to the proposal before the legislative body takes action.

(b) The county or city may limit the opportunity for public comment to only the proposed amendment.

(c) Although counties and cities are required to provide an opportunity for public comment, alternatives to a scheduled public hearing may suffice. Adequate notice must be provided indicating how the public may obtain information and offer comments.

(d) When amending a proposal, a county or city is not required to provide an additional opportunity for public comment if:

(i) An environmental impact statement has been prepared under chapter 43.21C RCW, and the proposal falls within the range of alternatives considered in the environmental impact statement;

(ii) The proposed change is within the range of alternatives available for public comment. When initiating the public participation process, a county or city should consider defining the range of alternatives under consideration;

(iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;

(iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or

(v) The proposed change is to an ordinance or resolution enacting a moratorium or interim control adopted in compliance with RCW 36.70A.390.

(e) If a county or city adopts an amendment without providing an additional opportunity for public comment, the findings of the adopted ordinance or resolution should identify which exception under RCW 36.70A.035 (2)(b) applies.

(10) Any amendment to the comprehensive plan or development regulation must follow the applicable procedural requirements and the county or city public participation plan. A county or city should not enter into an agreement, including a development agreement that is a de facto amendment to the comprehensive plan accomplished without complying with the statutory public participation requirements. An agreement amends the comprehensive plan if:

(a) It obligates the county or city, or authorizes another party, to act in a manner that is inconsistent with the comprehensive plan;

(b) It authorizes an action the comprehensive plan prohibits; or

(c) It obligates the county or city to adopt a subsequent amendment to the comprehensive plan.

NEW SECTION

WAC 365-196-610 Periodic review and update of comprehensive plans and development regulations. (1) Requirements.

(a) Counties and cities must periodically take legislative action to review and, if necessary, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of the act. This review and revision, required under RCW 36.70A.130(1), is referred to in this section as the periodic update.

(b) Deadlines for periodic update. Comprehensive plans and development regulations are subject to periodic update every seven years on a schedule established in RCW 36.70A.130(4). Deadlines for completion of periodic review are as follows:

Table WAC 365-196-610.1
Deadlines for Completion of Periodic Review 2010 - 2021

Update must be complete by December 1 of:	Affected counties and the cities within:
2011/2018	Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, Whatcom
2012/2019	Cowlitz, Island, Lewis, Mason, San Juan, Skagit, Skamania
2013/2020	Benton, Chelan, Douglas, Grant, Kittitas, Spokane, Yakima
2014/2021	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Orielle, Stevens, Wahkiakum, Walla Walla, Whitman

Certain counties and cities may take up to an additional three years to complete the update.

(i) The eligibility of a county for the three-year extension does not affect the eligibility of the cities within the county.

(ii) A county is eligible if it has a population of less than fifty thousand and a growth rate of less than seventeen percent.

(iii) A city is eligible if it has a population of less than five thousand, and either a growth rate of less than seventeen percent or a total population growth of less than one hundred persons.

(iv) Growth rates are measured using the ten-year period preceding the due date listed in RCW 36.70A.130(4).

(v) If a city or county qualifies for the extension on the statutory due date, they remain eligible for the entire three-year extension period, even if they no longer meet the criteria due to population growth.

(c) Taking legislative action.

(i) The periodic update must be accomplished through legislative action. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing including, at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore.

(ii) Legislative action includes two components. It includes a review of the comprehensive plan and development regulations and it includes the adoption of any amendments necessary to bring the comprehensive plan and development regulations into compliance with the requirements of the act.

(d) What must be reviewed.

(i) Counties and cities that plan under RCW 36.70A.040 must review and, if needed, revise their comprehensive plans and development regulations for compliance with the act. This includes the critical areas ordinance.

(ii) Counties and cities that do not plan under RCW 36.70A.040 must review and, if needed, revise their resource lands designations and their development regulations designating and protecting critical areas.

(e) The required scope of review. The purpose of the review is to determine if revisions are needed to bring the comprehensive plan and development regulation into compliance with the requirements of the act. The update process provides the method for bringing plans into compliance with the requirements of the act that have been added or changed since the last update and for responding to changes in land use and in population growth. This review is necessary so that comprehensive plans are not allowed to fall out of compliance with the act over time through inaction. This review must include at least the following:

(i) A review of the critical areas ordinance;

(ii) A review of the population allocated to a city or county from the most recent ten-year population forecast;

(iii) A review of mineral resource lands designations; and

(iv) Changes to the act or other applicable laws since the last review that have not been addressed in the comprehensive plan and development regulations.

(2) Recommendations for meeting requirements.

(a) Public participation program.

(i) Counties and cities should establish a public participation program that includes a schedule for the periodic

update and identifies when legislative action on the review and update component are proposed to occur. The public participation program should also inform the public of when to comment on proposed changes to the comprehensive plan and clearly identify the scope of the review. Notice of the update process should be broadly disseminated as required by RCW 36.70A.035.

(ii) Counties and cities may adjust the public participation program to best meet the intent of the requirement. RCW 36.70A.140 notes that errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed. For example, if an established public participation program included one public hearing on all actions having to do with the seven-year update process, the public participation program could be adjusted later to provide additional public hearings to accommodate strong public interest.

(b) Review of relevant statutes and local information and analysis of whether there is a need for revisions.

(i) Amendments to the act. Counties and cities should first review amendments to the act that have occurred since the initial adoption or previous periodic update, and determine if local amendments are needed to maintain compliance with the act. The department will maintain a comprehensive list of legislative amendments and a checklist to assist counties and cities with this review.

(ii) Review and analysis of relevant plans, regulations and information. Although existing comprehensive plans and development regulations are considered compliant, counties and cities should consider reviewing development and other activities that have occurred since adoption to determine if the comprehensive plans and development regulations remain consistent with, and implement, the act. This should include a review of at least the following:

(A) The population allocated to a city or county from the most recent ten-year population forecasts available from the office of financial management;

(B) Critical areas and resource lands ordinances;

(C) A review of mineral resource lands designations;

(D) Capital facilities plans. Changes in anticipated circumstances and needs should be addressed by updating the ten-year transportation plan and six-year capital facilities elements. This includes a reassessment of the land use element if funding falls short;

(E) Land use element;

(F) Changes to comprehensive plans and development regulations in adjacent jurisdictions, special purpose districts, or state plans that create an inconsistency with the county or city's comprehensive plan or development regulations;

(G) Basic assumptions underlying key calculations and conclusions in the existing comprehensive plan. If recent data demonstrates that key existing assumptions are no longer appropriate for the remainder of the twenty-year plan, counties and cities should consider updating them as part of the seven-year periodic update, or the ten-year urban growth area update (see WAC 365-196-310). Counties and cities required to establish a review and evaluation program under RCW 36.70A.215, should use that information in this review (see WAC 365-196-315); and

(H) Inventories. Counties and cities should review required inventories and analyze new inventory data. Table 2 contains summary of the inventories required in the act.

Table WAC 365-196-610.2
Inventories Required by the Act

Requirement	RCW Location	WAC Location
Housing Inventory	36.70A.070(2)	365-196-430
Inventory and analyze existing and projected housing needs, identifying the number of housing units necessary to manage project growth.		
Capital Facilities	36.70A.070(3)	365-196-445
Inventory existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities, and forecast future needs and proposed locations and capacities of expanded or new facilities.		
Transportation	36.70A.070(6)	365-196-455
An inventory of air, water and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels and a basis for future planning. This inventory must include state-owned transportation facilities within the city's or county's jurisdictional boundaries.		

(c) Take legislative action.

(i) Any legislative action that completes a portion of the review and update process, either in whole or in part, must state in its findings that it is part of the update process.

(ii) Any public hearings on legislative actions that are, either in whole or in part, legislative actions completing the update must state in the notice of hearing that the actions considered are part of the update process.

(iii) At the end of the review and update process, counties and cities should take legislative action declaring the update process complete, either as a separate legislative action, or as a part of the final legislative action that occurs as part of the update process. This action should reference all prior legislative actions occurring as part of the update process.

(d) Submit notice of completion to the department. When adopted, counties and cities should transmit the notice of adoption to the department, consistent with RCW 36.70A.-106. RCW 36.70A.130 requires compliance with the review and update requirement as a condition of eligibility for state grant and loan programs. The department tracks compliance with this requirement for agencies managing these grant and loan programs. Providing notice of completion to the department will help maintain access to these grant and loan programs.

(3) Relationship to other review and amendment requirements in the act.

(a) Relationship to the comprehensive plan amendment process. Cities and counties may amend the comprehensive plan no more often than once per year, as required in RCW 36.70A.130(2), and referred to as the docket. If a city or county conducts a comprehensive plan docket cycle in the year in which the review of the comprehensive plan is com-

pleted, it must be combined with the seven-year periodic review process. Cities and counties may not conduct the seven-year periodic review and a docket of amendments as separate processes in the same year.

(b) Relationship to the ten-year urban growth area (UGA) review.

(i) At least every ten years, cities and counties must review the areas and densities contained in the urban growth area and, if necessary, revise their comprehensive plan to accommodate the growth projected to occur in the county for the succeeding twenty-year period, as required in RCW 36.70A.130(3). This is referred to in this section as the ten-year urban growth area review.

(ii) The ten-year urban growth area review and the seven-year periodic update may be combined or may occur separately. The seven-year periodic update requires an assessment of the most recent twenty-year population forecast by the office of financial management, but does not require that land use plans or urban growth areas be updated to accommodate existing or future growth forecasts, which must be undertaken as part of the ten-year UGA review. Counties and cities may consider the most recent forecast from the office of financial management, and the adequacy of existing land supplies to meet their existing growth forecast allocations, in determining when to initiate the ten-year urban growth area review.

NEW SECTION

WAC 365-196-620 Integration of State Environmental Policy Act process with creation and adoption of comprehensive plans and development regulations. (1) Adoption of comprehensive plans and development regulations are "actions" as defined under State Environmental Policy Act (SEPA). Counties and cities must comply with SEPA when adopting new or amended comprehensive plans and development regulations.

(2) Integration of SEPA review with other analysis required by the act.

(a) The SEPA process is supplementary to other governmental decision-making processes, including the processes involved in creating and adopting comprehensive plans and development regulations under the act. The thoughtful integration of SEPA compliance with the overall effort to implement the act will provide understanding and insight of significant value to the choices growth management requires.

(b) SEPA analysis and documentation can serve, in significant part, to fulfill the need to compile a record showing the considerations which went into the plan and why one alternative was chosen over another.

(c) When conducting a SEPA analysis, counties and cities should coordinate the development and evaluation of SEPA alternatives with other evaluations required by the act such as:

(i) Evaluation of fiscal impact required by RCW 36.70A.210;

(ii) Review of drainage, flooding and storm water runoff required by RCW 36.70A.070;

(iii) The forecast of future capital facilities needs required by RCW 36.70A.070(3); and

(iv) The traffic forecast, identification of system needs and analysis of funding capability required in RCW 36.70A.070 (6)(a)(iii)(D), (E) and (F).

(d) Coordination should assure that these evaluations occur against a uniform set of alternatives and provide a complete picture of both the environmental and financial impacts of various alternatives.

(3) Phased environmental review.

(a) The growth management process is designed to proceed in phases, moving, by and large, from general policy-making to more specific implementation measures. Phased review available under SEPA can be integrated with the growth management process through a strategy that identifies the points in that process where the requirements of the two statutes are connected and seeks to accomplish the requirements of both at those points.

(b) In an integrated approach major emphasis should be placed on the quality of SEPA analysis at the front end of the growth management process - the local legislative phases of plan adoption and regulation adoption. The objective should be to create nonproject impact statements, and progressively more narrowly focused supplementary documents, that are sufficiently informative. These impact statements should reduce the need for extensive and time consuming analysis during subsequent environmental analysis at the individual project stage.

(c) The SEPA rules authorize joint documents that incorporate requirements of the act and SEPA (WAC 197-11-210 through 197-11-235). In general, using joint documents can provide time and cost savings related to review and adoption of comprehensive plan amendments.

(d) When evaluating comprehensive plan amendments, these amendments should generally be considered together as one action under SEPA so that the cumulative effect of various proposals can be evaluated together, consistent with RCW 36.70A.130 (2)(b).

(e) In conducting SEPA review and making a threshold determination, the county or city should review existing environmental documents. These documents may already address some or all of the potential adverse environmental impacts posed by the items on the docket. As an example, if an environmental impact statement (EIS) was done on the comprehensive plan, the county or city may only need to update or supplement the information in this existing EIS. The county or city may be able to accomplish this by incorporating a document by reference, adopting a document, or preparing a supplemental EIS or an addendum, as authorized by the SEPA rules (chapter 197-11 WAC).

(f) When creating SEPA documents, counties and cities should consider identifying and incorporating previous environmental analysis statements prepared by other lead agencies in connection with other related plans or projects.

(g) When conducting the SEPA analysis of a comprehensive plan amendment, counties and cities should analyze the impacts of fundamental land use planning choices. Because these choices cannot be revisited during project review, the impacts of these decisions must be evaluated when adopting comprehensive plan amendments. This analysis can serve as the foundation for project review. RCW 36.70B.030 identifies the following as fundamental land use planning choices:

(i) The types of land use;

(ii) The level of development, such as units per acre or other measures of density;

(iii) Infrastructure, including public facilities and services needed to serve the development; and

(iv) The characteristics of the development, such as development standards.

(h) SEPA compliance for development regulations should concentrate on the difference among alternative means of successfully implementing the goals and policies of the comprehensive plan. This approach can serve the goal that project applications be processed in a timely manner, while not compromising SEPA's basic aim of ensuring consideration of environmental impacts in advance of development.

(4) Interjurisdictional impacts. It is recognized that the growth of each county and city will have ripple effects which will reach across jurisdictional boundaries. Each county or city planning under the act should analyze what effects are likely to occur from the anticipated development. This analysis should be made as a part of the process of complying with SEPA in connection with comprehensive plan adoption. Affected jurisdictions should be given an opportunity to comment on this analysis.

(5) Other guidance found in SEPA rules. The SEPA rules (WAC 197-11-230) contain other guidance for preparing and issuing SEPA documents related to comprehensive plan amendments.

(6) Planned actions. One of the opportunities presented by the application of the act, SEPA, and the Regulatory Reform Act of 1995 (chapter 36.70B RCW and WAC 365-197-030) is the creation of a "planned action." A planned action is a nonproject action whose impacts are analyzed in an EIS associated with a comprehensive plan or subarea plan. The impacts and necessary mitigation are identified in a planned action ordinance. Development projects which are consistent with a planned action ordinance may not require additional environmental review. Planned actions are also addressed in WAC 197-11-168 and 197-11-172.

NEW SECTION

WAC 365-196-630 Submitting notice of intent to adopt to the state. (1) State notification and comment.

(a) The act requires each county or city proposing adoption of an original comprehensive plan or development regulation, or amendment under the act, must notify the department of its intent at least sixty days prior to final adoption, or request expedited review for changes to the development regulations pursuant to RCW 36.70A.106 (3)(b).

(b) State agencies, including the department, may provide comments on comprehensive plans, development regulations, and related amendments during the public review process.

(2) Notice to the department must include:

(a) A cover letter or cover page that includes an explanation of the proposed amendment, notification that the submittal is intended to begin the sixty-day review process, the planned date of adoption, and the sender's contact information; and

(b) A copy of the proposed amendment language. The drafted amendment text should be in a complete form, and it should clearly identify how the existing language will be modified. An example of acceptable form includes struck through and underlined text that indicates proposed deleted text and new text, respectively.

(3) The department prefers that notices be submitted electronically. Expedited review requests should be submitted by e-mail as outlined in subsection (6) of this section. Counties and cities may contact the department by telephone at 360-725-3000 or by e-mail at reviewteam@commerce.wa.gov to obtain electronic contact information and procedures for electronic submittals.

Copies submitted by U.S. mail should be sent to:

Department of Commerce,
Growth Management Services
Attn: Review Team
P.O. Box 42525
Olympia, WA 98504-2525

(4) Submitting adopted amendments.

(a) Each county or city planning under the act must transmit to the department, within ten days after adoption, one complete and accurate copy of its adopted comprehensive plan or development regulation, or adopted amendment to a comprehensive plan or development regulation. Additional copies should be sent to those state agencies which provided comment on the proposed amendment.

(b) The submittal must include a copy of the final signed and dated ordinance or resolution identifying the legislative action.

(c) Submittal of adopted amendments should follow the same format option and method outlined for submission of the sixty-day notice for review.

(5) The sixty-day period for determining when a comprehensive plan, development regulation, or amendment can be adopted begins as follows:

(a) When the notice is automatically date-stamped upon receipt by e-mail attachment if the submittal is transmitted electronically; or

(b) When the material is stamped upon the date of receipt at the department's planning unit reception desk during regular business hours if the submittal is transmitted by U.S. mail.

(6) Expedited review.

(a) Counties and cities may request expedited review when they are providing to the department notice of intent to adopt development regulations under RCW 36.70A.106 (3)(b).

(b) Expedited review is intended for amendments to development regulations for which, without expedited review, the sixty-day state agency review process would needlessly delay the jurisdictions adoption schedule.

(c) Counties and cities may not request expedited review of comprehensive plan amendments.

(d) Certain types of development regulations are very likely to require review by state agencies, and are therefore not appropriate for expedited review. Proposed changes to critical areas ordinances, concurrency ordinances, or ordinances regulating essential public facilities are examples of

development regulation amendments that should not be submitted for expedited review.

(e) Department responsibilities:

(i) Requests should be forwarded to other state agencies within two working days of receipt of request for expedited review.

(ii) State agencies have ten working days to determine if the proposal is of interest and requires more time for review.

(iii) If the department is notified by any state agency within ten working days that it has an interest in more time for review, the department will not grant expedited review until all agencies have had an opportunity to comment.

(iv) If after ten working days, a state agency does not respond to the department, then the department may grant the request for expedited review.

(v) The department may determine that it has an interest in a proposal that requires more time for review, and it may deny a request for expedited review on that basis.

(vi) The estimated time frame for processing an expedited review request is fourteen days, to coincide with the State Environmental Policy Act comment period.

(vii) The expedited review request must include the information required to determine if an item is of state interest, similar to the methods outlined for submission of amendments for sixty-day review.

(f) State agency responsibilities:

(i) If a state agency intends to comment, the agency must respond to requests for expedited review within ten working days.

(ii) State agencies should determine how to coordinate an agency response internally to maintain proper notification and information management between its headquarters office and regional offices. The department will work with state agencies if it can be of assistance in this process.

(iii) If a state agency has an interest in a proposed amendment for expedited review, and it has requested the department not grant expedited review, the state agency requesting denial of the expedited review should contact and provide comment directly to the requesting jurisdiction within the sixty-day period specified in RCW 36.70A.106. The state agency should notify the department when it has completed review and provided comments.

(g) County and city responsibilities:

(i) Requests for expedited review should be the exception and not the rule. Expedited review is designed for use with development regulations amendments that are unlikely to require state agency comment.

(ii) Expedited review should not be used as a substitute for timely notification. Counties and cities should plan for the full sixty-day review period when practicable.

(iii) Counties and cities must request expedited review on a case-by-case basis.

(iv) Requests should be in the form of an electronic submittal, following the department's requirements for e-mail submittal for sixty-day review in subsection (3) of this section.

(v) The request must be accompanied with enough information, as defined by the department, in consultation with other state agencies and counties and cities, to determine whether it is of state interest.

(vi) Expedited review should not be requested if the normal sixty-day period will not delay adoption.

NEW SECTION

WAC 365-196-640 Comprehensive plan amendment procedures. (1) Each comprehensive plan should provide for an ongoing process to ensure:

(a) The comprehensive plan is internally consistent and consistent with the comprehensive plans of adjacent counties and cities. See WAC 365-196-500 and 365-196-510;

(b) The development regulations are consistent with the comprehensive plan; and

(c) Amendments to the comprehensive plan and development regulations are consistent with the comprehensive plan. This evaluation should be a fundamental part of the amendment process.

(2) Each comprehensive plan must contain provisions governing its amendment.

(3) Amendments.

(a) Amendments to the plan must not be considered more frequently than once every year, except under the following circumstances:

(i) The initial adoption of a subarea plan that does not modify the comprehensive plan policies and designations applicable to the subarea;

(ii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW;

(iii) The amendment of the capital facilities element of a comprehensive plan that is part of the adoption or amendment of a county or city budget;

(iv) The adoption of comprehensive plan amendments necessary to enact a planned action under RCW 43.21C.031 (2), provided that amendments are considered in agreement with the public participation program established by the county or city under RCW 36.70A.140, and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment;

(v) To resolve an appeal of the comprehensive plan filed with the growth management hearings board; or

(vi) In the case of an emergency.

(b) If a county or city has a docketing process for receiving and evaluating citizen-based proposals, then it may complete its final legislative action in the next consecutive calendar year, if the process as a whole occurs as a single, continuous process.

(4) Emergency amendments. Public notice and an opportunity for public comment must precede the adoption of emergency amendments to the comprehensive plan. Provisions in RCW 36.70A.390 apply only to moratoria or interim development regulations. They do not apply to comprehensive plans amendments. If a comprehensive plan amendment is necessary, counties and cities should adopt a moratoria or interim zoning control. The county or city should then consider the comprehensive plan amendment concurrently with the consideration of permanent amendments and only after public notice and an opportunity for public comment.

(5) Evaluating cumulative effects. RCW 36.70A.130 (2)(b) requires that all proposed amendments in any year be considered concurrently so the cumulative effect of the proposals can be ascertained. The amendment process should include an analysis of all proposed amendments evaluating their cumulative effect. This analysis should be prepared in conjunction with analyses required to comply with the State Environmental Policy Act under chapter 43.21C RCW.

(6) Docketing of proposed amendments.

(a) RCW 36.70A.470(2) requires that comprehensive plan amendment procedures allow interested persons, including applicants, citizens, hearing examiners, and staff of other agencies, to suggest amendments of comprehensive plans or development regulations. This process should include a means of docketing deficiencies in the comprehensive plan that arise during local project review. These suggestions must be docketed and considered at least annually.

(b) A consideration of proposed amendments does not require a full analysis of every proposal within twelve months if resources are unavailable.

(c) As part of this process, counties and cities should specify what information must be submitted and the submittal deadlines so that proposals can be evaluated concurrently.

(d) Once a proposed amendment is received, the county or city may determine if a proposal should receive further consideration as part of the comprehensive plan amendment process.

(e) Some types of proposed amendments require a significant investment of time and expense on the part of both applicants and the county or city. A county or city may specify in its policies certain types of amendments that will not be carried forward into the amendment process on an annual basis. This provides potential applicants with advance notice of whether a proposed amendment will be carried forward and can help applicants avoid the expense of preparing an application.

NEW SECTION

WAC 365-196-650 Implementation strategy. Each county or city planning under the act should develop a strategy for implementing its comprehensive plan. The strategy should describe the regulatory and nonregulatory measures (including actions for acquiring and spending money) to be used to implement the comprehensive plan. The strategy should identify each of the development regulations needed.

(1) Selection. In determining the specific regulations to be adopted, counties and cities may select from a wide variety of types of controls. The strategy should include consideration of:

(a) The choice of substantive requirements, such as the delineation of use zones; general development limitations concerning lot size, setbacks, bulk, height, density; provisions for environmental protection; urban design guidelines and design review criteria; specific requirements for affordable housing, landscaping, parking; levels of service, concurrency regulations and other measures relating to public facilities.

(b) The means of applying the substantive requirements, such as methods of prior approval through permits, licenses, franchises, or contracts.

(c) The processes to be used in applying the substantive requirements, such as permit application procedures, hearing procedures, approval deadlines, and appeals.

(d) The methods of enforcement, such as inspections, reporting requirements, bonds, permit revocation, civil penalties, and abatement.

(2) Identification. The strategy should include a list of all regulations identified as development regulations for implementing the comprehensive plan. Some of these regulations may already be in existence and consistent with the plan. Others may be in existence, but require amendment. Others will need to be written.

(3) Adoption schedule. The strategy should include a schedule for the adoption or amendment of the development regulations identified. Individual regulations or amendments may be adopted at different times. However, all of the regulations identified should be adopted by the applicable final deadline for adoption of development regulations.

(4) The implementation strategy for each jurisdiction should be in writing and available to the public. A copy should be provided to the department. Completion of adoption of all regulations identified in the strategy will be construed by the department as completion of the task of adopting development regulations for the purposes of deadlines under the statute.

NEW SECTION

WAC 365-196-660 Supplementing, amending, and monitoring. (1) New development regulations may be adopted as the need for supplementing the initial implementation strategy becomes apparent.

(2) Counties and cities should institute an annual review of growth management implementation on a systematic basis. To aid in this process, counties and cities planning under the act should consider establishing a growth management monitoring program designed to measure and evaluate the progress being made toward accomplishing the act's goals and the provisions of the comprehensive plan.

(a) This process should also include a review of comprehensive plan or regulatory deficiencies encountered during project review.

(b) This process should be integrated with provisions for continuous public involvement. See WAC 365-196-600.

PART SEVEN
RELATIONSHIP OF GROWTH MANAGEMENT PLANNING TO OTHER LAWS

NEW SECTION

WAC 365-196-700 Background. (1) For counties and cities subject to its terms, the act mandates the development of comprehensive plans and development regulations that meet statutory goals and requirements. These comprehensive plans and development regulations will take their place among existing laws relating to resource management, envi-

ronmental protection, regulation of land use, utilities and public facilities. Many of these existing laws were neither repealed nor amended by the act.

(2) The circumstances outlined in subsection (1) of this section place responsibility both on local growth management planners and on administrators of preexisting programs to work toward producing a single harmonious body of law.

(3) The need to consider and recognize other laws should profoundly influence, limit, and shape planning and decision making under the act. At the same time, in recognition of the broad and fundamental changes intended by creation of the growth management scheme, prior programs should be interpreted and directed, to the maximum extent possible, in a manner consistent with the products of the comprehensive growth management system, as described in WAC 365-196-305, 365-196-500, and 365-196-510.

(4) The far-reaching nature of the act and the wide variety of possible outcomes under its authority dictate that identification of all the points of contact between its products and other laws will have to be elaborated over time. The entire process of determining how the act fits into the overall legal framework will, of necessity, be an incremental one.

(5) A conscious effort to address the requirements of other existing law is an essential step in adopting and amending local plans and regulations. This need poses an unprecedented challenge to all governmental entities - municipalities, counties, regional authorities, special purpose districts and state agencies - to communicate and collaborate. The act is a mandate to government at all levels to engage in coordinated planning and cooperative implementation.

NEW SECTION

WAC 365-196-705 Basic assumptions. (1) Where the legislature has spoken expressly on the relationship of the act to other statutory provisions, the explicit legislative directions shall be carried out. Examples of such express provisions are set forth in WAC 365-196-745.

(2) Absent a clear statement of legislative intent or judicial interpretation to the contrary, it should be presumed that neither the act nor other statutes are intended to be preemptive. Rather they should be read together and, wherever possible, construed as mutually consistent. However, the legislature has identified the act as a fundamental building block of regulatory reform, and it should serve as the integrating framework for all other local land-use regulations.

NEW SECTION

WAC 365-196-710 Identification of other laws. (1) In developing and amending comprehensive plans and implementing regulations, counties and cities planning under the act should identify other statutes and legal authorities affecting subjects addressed in their comprehensive plans and development regulations.

(2) To aid in this identification, state agencies, regional authorities, special districts and utilities should implement programs to inform counties and cities of programs and provisions within their jurisdiction or expertise that are relevant to growth management planning actions.

(3) Agencies that review and comment on draft comprehensive plans, or on related State Environmental Policy Act documents, should take advantage of these opportunities to advise planning jurisdictions of preexisting programs and related legal authorities.

NEW SECTION

WAC 365-196-715 Integrating external considerations. (1) County and city planners should take advantage of data and analyses prepared by other governmental agencies and use it to shape the form and content of comprehensive plans and development regulations under the act where relevant.

(2) Other governmental agencies should also use the data and analyses prepared by counties and cities in the formation of their comprehensive plans, especially when making assumptions about future land use patterns in areas covered by a local comprehensive plan.

(3) Governmental entities with expertise in subjects affecting or affected by the act and private companies that provide public services should, as practicable, offer technical assistance to counties and cities planning under the act.

(4) When drafting or amending comprehensive plans and development regulations, counties and cities should identify other related laws, evaluate any potential areas of conflict and make efforts to avoid such conflicts. Where the text of outside sources can appropriately serve local needs, consideration should be given to adoption of that text in local comprehensive plans or development regulations.

NEW SECTION

WAC 365-196-720 Sources of law. (1) In seeking to identify other relevant legal authorities, planners should refer to sources at all levels of government, including federal and state constitutions, federal and state statutes, federal and state administrative regulations, and judicial interpretations thereof.

(2) The sources of law set forth in WAC 365-196-725 through 365-196-745 are intended to assist planners by highlighting various kinds of external legal provisions that should be considered during the planning process. Some of the sources of law overlap in WAC 365-196-725 through 365-196-745. The listing is not exhaustive. It is intended to supplement, not substitute for, the informational efforts of state agencies, regional authorities, special districts and utilities.

NEW SECTION

WAC 365-196-725 Constitutional provisions. (1) Comprehensive plans and development regulations adopted under the act are subject to the supremacy principle of Article VI, United States Constitution and of Article XI, Section 11, Washington state Constitution.

(2) Counties and cities planning under the act are required to use a process established by the state attorney general to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights. As set forth in RCW 36.70A.370, the state attorney general has developed a publication entitled "*Advisory*

Memorandum: Avoiding Unconstitutional Takings of Private Property," which is updated frequently to maintain consistency with changes in case law. Counties and cities should contact the department or state attorney general for the latest edition of this advisory memorandum.

NEW SECTION

WAC 365-196-730 Federal authorities. (1) Counties and cities drafting or amending comprehensive plans and development regulations under the act should consider the effects of federal authority over land or resource use within the planning area, including:

(a) Treaties with Native Americans;

(b) Jurisdiction on land owned or held in trust by the federal government;

(c) Federal statutes or regulations imposing national standards;

(d) Federal permit programs and plans;

(e) Metropolitan planning organizations, which are also designated as regional transportation planning organizations established in chapter 47.80 RCW; and

(f) The Central Puget Sound economic development district.

(2) Examples of such federal standards, permit programs and plans are:

(a) National ambient air quality standards, adopted under the Federal Clean Air Act;

(b) Drinking water standards, adopted under the Federal Safe Drinking Water Act;

(c) Effluent limitations, adopted under the Federal Clean Water Act;

(d) Dredge and fill permits issued by the Army Corps of Engineers under the Federal Clean Water Act;

(e) Licenses for hydroelectric projects issued by the Federal Energy Regulatory Commission;

(f) Plans created under the Pacific Northwest Electric Power Planning and Conservation Act;

(g) Recovery plans and the prohibition on taking listed species under the Endangered Species Act;

(h) State and local consolidated plans required by the Department of Housing and Urban Development under the Code of Federal Regulations (24 C.F.R. 91 and 24 C.F.R. 570);

(i) Historic preservation requirements and standards of the National Historic Preservation Act;

(j) Regulatory requirements of section 4(f) of the Department of Transportation Act; and

(k) Plans adopted by metropolitan planning organizations to meet federal transportation planning responsibilities established by the U.S. Federal Highway Administration (FHWA) and the U.S. Federal Transit Administration (FTA).

NEW SECTION

WAC 365-196-735 State and regional authorities. (1) When developing and amending comprehensive plans and development regulations under the act, counties and cities should consider existing state and regional regulatory and planning provisions affecting land use, resource management, environmental protection, utilities, or public facilities including:

(a) State statutes and regulations imposing statewide standards;

(b) Programs involving state-issued permits or certifications;

(c) State statutes and regulations regarding rates, services, facilities and practices of utilities, and tariffs of utilities in effect pursuant to such statutes and regulations;

(d) State and regional plans;

(e) Regulations and permits issued by regional entities;

(f) Locally developed plans subject to review or approval by state or regional entities.

(2) Examples of statewide standards are:

(a) Water quality standards and sediment standards, adopted by the department of ecology under the state Water Pollution Control Act;

(b) Drinking water standards adopted by the department of health pursuant to the Federal Safe Drinking Water Act;

(c) Minimum functional standards for solid waste handling, adopted by the department of ecology under the state Solid Waste Management Act;

(d) Minimum cleanup standards under the Model Toxics Control Act adopted by the department of ecology;

(e) Statutory requirements under the Shoreline Management Act and implementing guidelines and regulations adopted by the department of ecology;

(f) Standards for forest practices, adopted by the forest practices board under the state Forest Practices Act;

(g) Minimum requirements for flood plain management, adopted by the department of ecology under the Flood Plain Management Act;

(h) Minimum performance standards for construction pursuant to the state or International Building Code;

(i) Safety codes, such as the electrical construction code, adopted by the department of labor and industries;

(j) Archaeological investigation and reporting standards adopted by the department of archaeology and historic preservation under the Archaeological Sites and Resources Act and the Indian Graves and Records Act.

(3) Examples of programs involving state issued permits or certifications are:

(a) Permits relating to forest practices, issued by the department of natural resources;

(b) Permits relating to surface mining reclamation, issued by the department of natural resources;

(c) National pollutant discharge elimination permits and waste discharge permits, issued by the department of ecology;

(d) Water rights permits, issued by department of ecology under state surface and ground water codes;

(e) Hydraulic project approvals, issued by departments of fisheries and wildlife under the state fisheries code;

(f) Water quality certifications, issued by the department of ecology;

(g) Operating permits for public water supply systems, issued by the state health department;

(h) Site certifications developed by the energy facility site evaluation council;

(i) Permits relating to the generation, transportation, storage or disposal of dangerous wastes, issued by the department of ecology;

(j) Permits for disturbing or impacting archaeological sites and for the discovery of human remains, issued by the department of archaeology and historic preservation.

(4) Examples of state and regional plans are:

(a) State implementation plan for ambient air quality standards under the Federal Clean Air Act;

(b) Statewide multimodal transportation plan;

(c) Instream resource protection regulations for water resource inventory areas adopted under the Water Resources Act of 1971;

(d) Ground water management area programs, adopted pursuant to the ground water code;

(e) Plan or action agendas adopted by the Puget Sound partnership;

(f) State outdoor recreation and open space plan;

(g) State trails plan;

(h) Regional transportation planning organization plans and plans that meet the requirements for multicounty planning policies under RCW 36.70A.210(7).

(5) Examples of regulations and permits issued by regional entities are:

(a) Solid waste disposal facility permits issued by health departments under the Solid Waste Management Act;

(b) Regulations adopted by regional air pollution control authorities;

(c) Operating permits for air contaminant sources issued by regional air pollution control authorities.

(6) Examples of locally developed plans subject to review or approval by state or regional agencies are:

(a) Shoreline master programs, approved by the department of ecology;

(b) The consistency requirement for lands adjacent to shorelines of the state set forth in RCW 90.58.340;

(c) Coordinated water system plans for critical water supply service areas, approved by the department of health;

(d) Plans for individual public water systems, approved by the department of health;

(e) Comprehensive sewage drainage basin plans, approved by the department of ecology;

(f) Local moderate risk waste plans, approved by the department of ecology;

(g) Integrated resource plans required to be filed with the utilities and transportation commission in accordance with WAC 480-100-238;

(h) Reclaimed water plans, approved by the department of ecology and/or department of health.

NEW SECTION

WAC 365-196-740 Regional perspective. Some of the authorities in WAC 365-196-730 and 365-196-735 require planning for particular purposes for areas related by physical features, such as watersheds, rather than by political boundaries. Moreover, the environmental and ecological systems addressed in resource management, service by utilities, fish and wildlife management and pollution control are generally not circumscribed by county and city lines. Planning entities should attempt to identify these geographic areas which require a regional planning approach and, if needed, work toward creating collaborative processes involving all agencies with jurisdiction in the relevant geographical area. This approach should assist in achieving interjurisdictional consistency, consistency with the county-wide planning policies and, where applicable, multicounty planning policies. See WAC 365-196-305 regarding county-wide planning policies.

NEW SECTION

WAC 365-196-745 Explicit statutory directions. (1) The legislature expressly amended numerous statutes outside of chapter 36.70A RCW that relate to the act. These amendments define the relationship of such existing statutes to comprehensive plans and development regulations under the act. Examples include:

(a) RCW 19.27.097 (state building code - evidence of adequate supply of potable water);

(b) RCW 35.13.005 (annexation of unincorporated areas - prohibited beyond urban growth areas);

(c) RCW 35.58.2795 (municipal corporations - six-year transit plan consistent with comprehensive plans);

(d) RCW 35.77.010 (city streets - six-year comprehensive street program consistent with comprehensive plans);

(e) RCW 35A.14.005 (annexation by code cities - prohibited beyond urban growth areas);

(f) RCW 36.81.121 (county roads - six-year comprehensive road program consistent with act comprehensive plans);

(g) RCW 36.94.040 (sewerage, water, drainage systems - incorporation of relevant comprehensive plan provisions into sewer or water general plan);

(h) RCW 43.20.260 (water system plans consistent with comprehensive plans and development regulations);

(i) RCW 43.21C.240 (project review under the act);

(j) RCW 57.16.010 (water districts - district comprehensive water plan consistent with urban growth area restrictions);

(k) RCW 58.17.060 (short plats - written findings about appropriate provisions for infrastructure);

(l) RCW 58.17.110 (subdivisions - written findings about appropriate provisions for infrastructure);

(m) RCW 59.18.440 (land development - authority of entities planning under the act to require relocation assistance);

(n) RCW 70.118B.040(3) (requirements for large on-site sewage systems to be consistent with the requirements of any comprehensive plans or development regulations adopted under the act);

(o) RCW 86.12.200 (comprehensive flood control management plans - may be incorporated into comprehensive plans under the act); and

(p) RCW 90.46.120 (use of water from wastewater treatment facility - consideration in regional water supply plan or potable water supply service planning).

(2) As enacted, the act included the creation of a new chapter (chapter 47.80 RCW) authorizing and assigning duties to regional transportation planning organizations. These organizations were expressly given responsibilities for ensuring the consistency of transportation planning through-

out a region containing multiple local governmental jurisdictions.

(3) As enacted, the act included the addition of new sections (RCW 82.02.050 through 82.02.090) concerning impact fees on development in counties or cities that plan under the act. These sections explicitly authorize and condition the use of such fees as part of the financing of public facility system improvements needed to serve new development.

PART EIGHT
DEVELOPMENT REGULATIONS

NEW SECTION

WAC 365-196-800 Relationship between development regulations and comprehensive plans. (1) Development regulations under the act are specific controls placed on development or land use activities by a county or city. Development regulations must be consistent with and implement comprehensive plans adopted pursuant to the act.

"Implement" in this context has a more affirmative meaning than merely "consistent." See WAC 365-196-210. "Implement" connotes not only a lack of conflict but also a sufficient scope to fully carry out the goals, policies, standards and directions contained in the comprehensive plan.

(2) When a county first becomes subject to the full planning requirements of RCW 36.70A.040, it must adopt development regulations designating interim urban growth areas as outlined under RCW 36.70A.110(5). The legislature specifically provided that the designation of interim urban growth areas shall be in the form of development regulations. Such interim designations shall generally precede the adoption of comprehensive plans.

NEW SECTION

WAC 365-196-805 Timing of initial adoption. (1) Except for interim regulations, required development regulations must be enacted either by the deadline for adoption of the comprehensive plan or within six months thereafter, if an extension is obtained. The possibility of a time gap between the adoption of a comprehensive plan and the adoption of development regulations pertains to the time frame after the initial adoption of the comprehensive plan. Subsequent amendments to the plan should not face any delay before being implemented by regulations. After adoption of the initial plan and development regulations, such regulations should at all times be consistent with the comprehensive plan. Whenever amendments to comprehensive plans are adopted, consistent implementing regulations or amendments to existing regulations should be enacted and put into effect concurrently. See WAC 365-196-660.

(2) To obtain an extension of the deadline for adopting development regulations, a county or city must notify the department of its need by letter prior to the initial deadline. Six-month extensions will be obtained whenever such letters are timely received, but no extensions will result from requests received after the initial deadline.

NEW SECTION

WAC 365-196-810 Review for consistency when adopting development regulations. (1) When adopting any development regulation intended to carry out a comprehensive plan, the proposing county or city should review its terms to ensure it is consistent with and implements the comprehensive plan and make a finding in the adopting ordinance to that effect.

(2) If a county or city develops an implementation strategy, it should ensure the strategies are consistent with the comprehensive plans of adjacent counties or cities. See WAC 365-196-650 for implementation strategy recommendations.

NEW SECTION

WAC 365-196-815 Conservation of natural resource lands. (1) Requirements.

(a) Counties and cities planning under RCW 36.70A.040 must adopt development regulations that assure the conservation of designated agricultural, forest, and mineral lands of long-term commercial significance. If counties and cities designate agricultural or forest resource lands within any urban growth area, they must also establish a program for the purchase or transfer of development rights.

(b) "Conservation" means measures designed to assure that the natural resource lands will remain available to be used for commercial production of the natural resources designated. Counties and cities should address two components to conservation:

(i) Development regulations must prevent conversion to a use that removes land from agricultural production. Development regulations must not allow a primary use of agricultural resource lands that would convert those lands to nonagricultural purposes. Accessory uses may be allowed, consistent with subsection (3)(b) of this section.

(ii) Development regulations must assure that the use of lands adjacent to designated natural resource lands does not interfere with the continued use, in the accustomed manner and in accordance with the best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(c) Classification, designation and designation amendment. The department adopted minimum guidelines in chapter 365-190 WAC, detailing the process involved in establishing a natural resource lands conservation program. Included are criteria to be considered before any designation change should be approved.

(d) Prior uses. Regulations for the conservation of natural resource lands may not prohibit uses legally existing on any parcel prior to their adoption.

(e) Plats and permits. Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within three hundred feet, of designated natural resource lands contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration.

(2) Relationship to other programs. In designing development regulations and nonregulatory programs to conserve designated natural resource lands, counties and cities should endeavor to make development regulations and programs fit together with regional, state and federal resource management programs applicable to the same lands. Comprehensive plans and policies may in some respects be adequately implemented by adopting the provisions of such other programs as part of the local regulations.

(3) Innovative zoning techniques.

(a) When adopting development regulations to assure the conservation of natural resource lands, counties should consider use of innovative zoning techniques. These techniques should be designed to conserve agricultural lands and encourage the agricultural economy. Any nonagricultural uses allowed should be limited to lands with poor soils or lands otherwise not suitable for agricultural purposes.

(b) Examples of innovative zoning techniques include:

(i) Agricultural zoning, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land and may allow accessory uses, including nonagricultural accessory uses and activities, that support, promote, or sustain agricultural operations and production, as provided in this subsection;

(ii) Cluster zoning, which allows new development on one portion of the land, leaving the remainder in agricultural or open space uses;

(iii) Large lot zoning, which establishes as a minimum lot size the amount of land necessary to achieve a successful farming practice;

(iv) Quarter/quarter zoning, which permits one residential dwelling on a one-acre minimum lot for each one-sixteenth of a section of land;

(v) Sliding scale zoning, which allows the number of lots for single-family residential purposes, with a minimum lot size of one acre, to increase inversely as the size of the total acreage increases; and

(vi) The transfer or purchase of development rights from agricultural lands, which can be used through cooperative agreements with cities, or counties with nonmunicipal urban growth areas, as receiving areas for the use of these development rights.

(c) Accessory uses on agricultural lands of long-term commercial significance:

(i) Counties may allow certain accessory uses on agricultural lands of long-term commercial significance. Accessory uses can promote the continued use of agricultural lands by allowing accessory uses that add value to agricultural products. Accessory uses can also promote the continued use of agricultural lands by allowing farming operations to generate supplemental income through unrelated uses, provided they are compatible with the continued use of agricultural land of resource production;

(ii) Development regulations must require accessory uses to be located, designed, and operated so as to not interfere with, and to support the continuation of, the overall agricultural use of the property and neighboring properties, and must comply with the requirements of the act;

(iii) Accessory uses may include:

(A) Agricultural accessory uses and activities, including but not limited to the storage, distribution, and marketing of regional agricultural products from one or more producers, agriculturally related experiences, or the production, marketing, and distribution of value-added agricultural products, including support services that facilitate these activities; and

(B) Nonagricultural accessory uses and activities as long as they are consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site. Nonagricultural accessory uses and activities, including new buildings, parking, or supportive uses, shall not be located outside the general area already developed for buildings and residential uses and shall not otherwise convert more than one acre of agricultural land to nonagricultural uses; and

(C) Counties and cities have the authority to limit or exclude accessory uses otherwise authorized in this subsection in areas designated as agricultural lands of long-term commercial significance.

(iv) Any innovative zoning techniques must not limit agricultural production on designated agricultural resource lands.

NEW SECTION

WAC 365-196-820 Subdivisions. (1) Regulations for subdivision approvals, including approvals of short subdivisions, must require that the county or city make written findings that "appropriate provisions" have been made for the public health, safety, and general welfare, including open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds.

(2) Regulations for subdivision approvals may require that the county or city make additional findings related to the public health, safety and general welfare to the specific listing above, such as protection of critical areas, conservation of natural resource lands, and affordable housing for all economic segments of the population.

(3) In drafting development regulations, "appropriate provisions" should be defined in a manner consistent with the requirements of other applicable laws and with any level of service standards or planning objectives established by the city or county for the facilities involved. The definition of "appropriate provisions" could also cover the timing within which the facilities involved should be available for use, requiring, for example, that such timing be consistent with the definition of "concurrency" in this chapter. See WAC 365-196-210.

NEW SECTION

WAC 365-196-825 Potable water. (1) Each applicant for a building permit of a building needing potable water shall provide evidence of an adequate water supply for the intended use of the building. RCW 19.27.097 provides that such evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water

purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply.

(2) Receipt of one of the statutory forms of evidence may not provide enough information for building departments to determine whether the proposed water supply is, in fact, adequate. Local regulations should be designed to produce enough data to make such a determination, addressing both water quality and water quantity issues.

(3) Counties and cities should give consideration to guidelines promulgated by the departments of ecology and health on what constitutes an adequate water supply. In addition, Attorney General's Opinion, AGO 1992 No. 17, should be consulted for assistance in determining what substantive standards should be applied.

(4) If the department of ecology has adopted rules on this subject, or any part of it, local regulations should be consistent with those rules. Such rules may include instream flow rules, which may limit the availability of additional ground or surface water within a specific geographic area.

(5) Counties and cities may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency. Counties and cites may limit the number, location, and allowed uses of permit-exempt wells, especially within critical aquifer recharge areas, by working with the department of ecology to appropriately limit wells, based on land use and public health laws.

NEW SECTION

WAC 365-196-830 Protection of critical areas. (1) The act requires the designation of critical areas and the adoption of regulations for the protection of such areas by all counties and cities, including those that do not plan under RCW 36.70A.040. The department has adopted minimum guidelines in chapter 365-190 WAC detailing the process involved in establishing a program to protect critical areas.

(2) Critical areas that must be protected include the following areas and ecosystems: Wetlands, areas of critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas.

(3) "Protection" in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety.

(4) Although counties and cities may protect critical areas in different ways or may allow some localized impacts to critical areas, or even the potential loss of some critical areas, development regulations must preserve the functions and values of critical areas. If development regulations allow harm to critical areas, they must require compensatory mitigation of the harm. Development regulations may not allow a net loss of the functions and values of the ecosystem that includes the impacted or lost critical areas.

(5) Counties and cities must include the best available science to ensure their development regulations protect functions and values of the ecosystems containing those critical areas. See chapter 365-195 WAC.

(6) Functions and values must be evaluated at a scale appropriate to the function being evaluated. Functions are the conditions and processes that support the ecosystem. Conditions and processes operate on varying geographic scales ranging from site-specific to watershed and even regional scales. Some critical areas, such as wetlands and fish and wildlife habitat conservation areas, may constitute ecosystems or parts of ecosystems that transcend the boundaries of individual parcels and jurisdictions, so that protection of their function, and values should be considered on a larger scale.

(7) Protecting some critical areas may require using both regulatory and nonregulatory measures. When impacts to critical areas are from areas beyond jurisdictional control, counties and cities are encouraged to use regional approaches to protect functions and values. It is especially important to use a regional approach when giving special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Conservation and protection measures may address land uses on any lands within a jurisdiction, and not only lands with designated critical areas.

(8) Local government may develop and implement alternative means of protecting critical areas from some activities using best management practices or a combination of regulatory and nonregulatory programs. When developing alternative means of protection, counties and cities must assure no net loss of functions and values and must include the best available science.

(9) In designing development regulations and nonregulatory programs to protect designated critical areas, counties and cities should endeavor to make such regulations and programs fit together with regional, state and federal programs directed to the same environmental, health, safety and welfare ends. Local plans and policies may in some respects be adequately implemented by adopting the provisions of such other programs as part of the local regulations.

NEW SECTION

WAC 365-196-835 Relocation assistance for low-income tenants. (1) Any county or city required to plan under the act is authorized to require property owners to provide their portion of reasonable relocation assistance to low-income tenants displaced by certain changes to residential property. The changes include demolition, substantial rehabilitation (whether due to code enforcement or any other reason), change of use and removal of use restrictions in an assisted-housing development.

(2) The regulations implementing the relocation assistance program shall be governed by the provisions of RCW 59.18.440.

(3) "Low-income tenants" means tenants whose combined total income per dwelling unit is at or below fifty percent of the median income, adjusted for family size, in the county where the tenants reside.

(4) For purposes of determining eligibility, the department must annually inform counties and cities of the appropriate dollar limits to use for median income, adjusted for family size, in different areas within the state. In deciding on these limits, the department will refer to the county-by-

county family income figures published annually by the federal department of Housing and Urban Development. As soon as the federal figures become available each year, the department will review them and advise counties and cities promptly of the appropriate dollar limits and their effective dates.

NEW SECTION

WAC 365-196-840 Concurrency. (1) Purpose.

(a) The purpose of concurrency is to assure that those public facilities and services necessary to support development are adequate to serve that development at the time it is available for occupancy and use, without decreasing service levels below locally established minimum standards.

(b) Concurrency describes the situation in which adequate facilities are available when the impacts of development occur, or within a specified time thereafter. Concurrency ensures consistency in land use approval and the development of adequate public facilities as plans are implemented, and it prevents development that is inconsistent with the public facilities necessary to support the development.

(c) With respect to facilities other than transportation facilities counties and cities may fashion their own regulatory responses and are not limited to imposing moratoria on development during periods when concurrency is not maintained.

(2) Determining the public facilities subject to concurrency. Concurrency is required for transportation facilities. Counties and cities should determine if any other public facilities, in addition to transportation facilities, require concurrency.

(3) Establishing an appropriate level of service. The concept of concurrency is based on the maintenance of specified levels of service with respect to each of the public facilities to which concurrency applies. For all such facilities, planning jurisdictions should designate appropriate levels of service. Level of service is typically set in the capital facilities element or the transportation element of the comprehensive plan. The level of service is used as a basis for developing the transportation and capital facilities plans. Counties and cities should set level of service to reflect realistic expectations consistent with the achievement of growth aims. Setting levels of service too high could, under some regulatory strategies, result in no growth. As a deliberate policy, this would be contrary to the act.

The level of service standards adopted by the county or city should vary based on the urban or rural character of the surrounding area and should be consistent with the land use plan and policies. The county or city should also balance the desired community character, funding capacity, and traveler expectations when adopting levels of service for transportation facilities. For example a plan that calls for a safe pedestrian environment that promotes walking or one that promotes development of a bike system so that biking trips can be substituted for auto trips may suggest using a level of service that includes measures of the pedestrian environment.

For transportation facilities, level of service should be regionally coordinated. In some cases, this may mean less emphasis on peak-hour automobile capacity, for example, and more emphasis on other transportation priorities. Levels of service for highways of statewide significance are set by the Washington state department of transportation. For other state highways, levels of service are set in the regional transportation plan developed under RCW 47.80.030. Local levels of service should conform to the regional plan. Other transportation facilities, however, may reflect local priorities.

(4) Measurement methodologies.

(a) Depending on how a county or city balances these factors and the characteristics of travel in their community, a county or city may select different ways to measure travel performance. For example, counties and cities may measure performance at different times of day, week, or month (peak versus off-peak, weekday versus weekend, summer versus winter). A city or county may choose to focus on the total multimodal supply of infrastructure available for use during a peak or off-peak period. Counties and cities may also measure performance at different geographic scales (intersections, road or route segments, travel corridors, or travel zones or measure multimodal mobility within a district).

(b) In urban areas, the department recommends counties and cities adopt methodologies that analyze the transportation system from a comprehensive, multimodal perspective, as authorized by RCW 36.70A.108. Multimodal level of service methodologies and standards should consider the needs of travelers using the four major modes of travel (auto, public transportation, bicycle, and pedestrian), their impacts on each other as they share the street or intersection, and their mode specific requirements for street and intersection design and operation.

(c) Although level of service standards and measurement methodologies are interrelated, changes in methodology, even if they have an incidental effect on the resulting level of service for a particular facility, are not necessarily a change in the level of service standard.

(5) Concurrency regulations.

(a) Each planning jurisdiction should produce a regulation or series of regulations which govern the operation of that jurisdiction's concurrency management system. This regulatory scheme will set forth the procedures and processes to be used to determine whether relevant public facilities have adequate capacity to accommodate a proposed development. In addition, the scheme should identify the responses to be taken when it is determined that capacity is not adequate to accommodate a proposal. Relevant public facilities for these purposes are those to which concurrency applies under the comprehensive plan. Adequate capacity refers to the maintenance of concurrency.

(b) Compliance with applicable environmental requirements, such as ambient air quality standards or water quality standards, should have been built into the determination of the facility capacities needed to accommodate anticipated growth.

(c) The variations possible in designing a concurrency management system are many. However, such a system could include the following features:

(i) Capacity monitoring - a process for collecting and maintaining real world data on use for comparison with evolving public facility capacities in order to show at any

moment how much of the capacity of public facilities is being used;

(ii) Capacity allocation procedures - a process for determining whether proposed new development can be accommodated within the existing or programmed capacity of public facilities. This can include preassigning amounts of capacity to specific zones, corridors or areas on the basis of planned growth. For any individual development this may involve:

(A) A determination of anticipated total capacity at the time the impacts of development occur.

(B) Calculation of how much of the total capacity will be used by existing developments and other planned developments at the time the impacts of development occur. If a local government does not require a concurrency certification or exempts small projects from the normal concurrency process, it should still calculate the capacity used and subtract that from the capacity available.

(C) Calculation of the amount of capacity available for the proposed development.

(D) Calculation of the impact on capacity of the proposed development, minus the effects of any mitigation provided by the applicant. (Standardized smaller developments can be analyzed based on predetermined capacity impact values.)

(E) Comparison of available capacity with project impact. For any project that places demands on public facilities, cities and counties must determine if levels of service will fall below locally established minimum standards.

(iii) Provisions for reserving capacity - a process of prioritizing the allocation of capacity to proposed developments. This process might include one of the following alternatives:

(A) Setting aside a block or blocks of available or anticipated capacity for specified types of development fulfilling an identified public interest;

(B) Adopting a first-come, first-served system of allocation, dedicating capacity to applications in the order received; or

(C) Adopting a preference system giving certain categories or specified types of development preference over others in the allocation of available capacity.

(6) Regulatory response to the absence of concurrency. The comprehensive plan should provide a strategy for responding when approval of any particular development would cause levels of service for concurrency to fall below the locally adopted standards. To the extent that any jurisdiction uses denial of development as its regulatory response to the absence of concurrency, consideration should be given to defining this as an emergency for the purposes of the ability to amend or revise the comprehensive plan.

(a) In the case of transportation, an ordinance must prohibit development approval if the development causes the level of service of a transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan unless improvements or strategies to accommodate the impacts of development are made concurrent with development.

(b) If the proposed development is consistent with the land use element, relevant levels of service should be reevaluated.

(c) Other responses could include:

(i) Development of a system of deferrals, approving proposed developments in advance but deferring authority to construct until adequate public facilities become available at the location in question. Such a system should conform to and help to implement the growth phasing schedule contemplated in the land use and capital facilities elements of the plan.

(ii) Conditional approval through which the developer agrees to mitigate the impacts.

(iii) Denial of the development, subject to resubmission when adequate public facilities are made available.

(iv) Redesign of the project or implementation of demand management strategies to reduce trip generation to a level that is within the available capacity of the system.

(v) Transportation system management measures to increase the capacity of the transportation system.

(7) Form, timing and duration of concurrency approvals. The system should include provisions for how to show that a project has met the concurrency requirement, whether as part of another approval document (e.g., permit, platting decisions, planned unit development) or as a separate certificate of concurrency, possibly a transferable document. This choice, of necessity, involves determining when in the approval process the concurrency issue is evaluated and decided. Approvals, however made, should specify the length of time that a concurrency determination will remain effective, including requirements for development progress necessary to maintain approval.

(8) Provisions for interjurisdictional coordination - SEPA consistency. Counties and cities should consider integrating SEPA compliance on the project-specific level with the case-by-case process for concurrency management.

NEW SECTION

WAC 365-196-845 Local project review and development agreements. (1) The local Project Review Act (chapter 36.70B RCW) requires counties and cities planning under the act to adopt procedures for fair and timely review of project permits under RCW 36.70B.020(4), such as building permits, subdivisions, binding site plans, planned unit developments, conditional uses, and other permits or other land use actions. The project permitting procedures ensure that when counties and cities implement goal 7 of the act, under RCW 36.70A.020(7), applications for both state and local government permits should be processed in a timely and fair manner.

(2) Consolidated permit review process.

(a) Counties and cities must adopt a permit review process that provides for consolidated review of all permits necessary for a proposed project action. The permit review process must provide for the following:

(i) A consolidated project coordinator for a consolidated project permit application;

(ii) A consolidated determination of completeness;

(iii) A consolidated notice of application;

(iv) A consolidated set of hearings; and

(v) A consolidated notice of final decision that includes all project permits being reviewed through the consolidated permit review process.

(b) Counties and cities administer many different types of permits, which can generally be grouped into categories. The following are examples of project permit categories:

(i) Permits that do not require environmental review or public notice, and may be administratively approved;

(ii) Permits that require environmental review, but do not require a public hearing; and

(iii) Permits that require environmental review and/or a public hearing, and may provide for a closed record appeal.

(c) Local project review procedures should address, at a minimum, the following for each category of permit:

(i) What is required for a complete application;

(ii) How the county or city will provide notice of application;

(iii) Who makes the final decision;

(iv) How long local project review is likely to take;

(v) What fees and charges will apply, and when an applicant must pay fees and charges;

(vi) How to appeal the decision;

(vii) Whether a preapplication conference is required;

(viii) A determination of consistency; and

(ix) Requirements for provision of notice of decision.

(d) A project permit applicant may apply for individual permits separately.

(3) Project permits that may be excluded from consolidated permit review procedures. A local government may, by ordinance or resolution, exclude some permit types from these procedures. Excluded permit types may include:

(a) Actions relating to the use of public areas or facilities such as landmark designations or street vacations;

(b) Actions categorically exempt from environmental review, or for which environmental review has already been completed such as lot line or boundary adjustments, and building and other construction permits, or similar administrative approvals; or

(c) Other project permits that the local government has determined present special circumstances.

(4) Comprehensive plan amendments may not be consolidated with project permit applications. RCW 36.70A.470 prohibits using project review conducted under chapter 36.70B RCW from being used as a comprehensive planning process. Except when considering an application for a major industrial development under RCW 36.70A.365, counties and cities may not consolidate project permit review with review of proposals, to amend the comprehensive plan, even if the comprehensive plan amendment is site-specific. Counties and cities may not combine a project permit application with an area-wide rezone or a text amendment to the development regulations, even if proposed along with a project permit application.

(5) Consolidated project coordinator.

(a) Counties and cities should appoint a single project coordinator for each consolidated project permit application.

(b) Counties and cities should require the applicant for a project permit to designate a single person or entity to receive determinations and notices about a project permit application as authorized by RCW 36.70A.100.

(6) Determination of complete application.

(a) A project permit application is complete for the purposes of this section when it meets the procedural submission requirements for counties and cities and is sufficient for continued processing, even if additional information is required, or the applicant modifies the project.

(b) The development regulations must specify, for each type of permit application, what information a permit application must contain to be considered complete. This may vary based on the type of permit.

(c) For more complex projects, counties and cities are encouraged to use preapplication meetings to clarify the project action and local government permitting requirements and review procedures. Counties and cities may require a preapplication conference.

(d) Within twenty-eight days of receiving a project permit application, counties and cities must provide to the applicant a written determination of completeness or request for more information stating either:

(i) The application is complete; or

(ii) The application is incomplete and what is necessary to make the application complete.

(e) A determination of completeness or request for more information is required within fourteen days of the applicant providing additional requested information.

(f) The application is deemed complete if the county and city does not provide the applicant with a determination of completeness or request for more information within the twenty-eight days of receiving the application.

(g) The determination of completeness may include a preliminary determination of consistency and a preliminary determination of development regulations that will be used for project mitigation.

(h) Counties and cities may require project applicants to provide additional information or studies, either at the time of the notice of completeness or if the county or city requires new information during the course of continued review, at the request of reviewing agencies, or if the proposed action substantially changes.

(7) Identification of permits from other agencies. To the extent known, the county or city must identify other agencies of local, state, or federal governments that may have jurisdiction over some aspect of the application. However, the applicant is solely responsible for knowing of, and obtaining any permits necessary for, a project action.

(8) Notice of project permit application. Notice of a project permit application must be provided to the public and the departments and agencies with jurisdiction over the project permit application. It may be combined with the notice of complete application.

(a) What the notice of application must include:

(i) The date of application, the date of the notice of completion, and the date of the notice of application;

(ii) A description of the proposed project action and a list of the project permits included in the application and a list of any required studies;

(iii) The identification of other permits not included in the application that the proposed project may require, to the extent known by the county or city;

(iv) The identification of existing environmental documents that evaluate the proposed project;

(v) The location where the application and any studies can be reviewed;

(vi) A preliminary determination, if one has been made at the time of notice, of which development regulations will be used for project mitigation and of project consistency as provided in RCW 36.70B.040 and chapter 365-197 WAC;

(vii) Any other information determined appropriate by the local government;

(viii) A statement of the public comment period. The statement must explain the following:

(A) How to comment on the application;

(B) How to receive notice of and participate in any hearings on the application;

(C) How to obtain a copy of the decision once made; and

(D) Any rights to appeal the decision.

(ix) If the project requires a hearing or hearings, and they have been scheduled by the date of notice of application, the notice must specify the date, time, place, and type of any hearings required for the project.

(b) When the notice of application must be provided. Notice of application must be provided within fourteen days of determining an application is complete. If the project permit requires an open record predecision hearing, the county or city must provide the notice of application at least fifteen days before the open record hearing.

(c) How to provide notice of application. A county or city may provide notice in different ways for different types of project permits depending on the size and scope of the project and the types of permit approval included in the project permit. Project review procedures should specify as minimum requirements, how to provide notice for each type of permit. Cities and counties may use a variety of methods for providing notice. However, if the local government does not specify how it will provide public notice, it shall use the methods specified in RCW 36.70B.110 (4)(a) and (b). Examples of reasonable methods of providing notice are:

(i) Posting the property for site-specific proposals;

(ii) Publishing notice in written media such as in the newspaper of general circulation in the general area where the proposal is located, in appropriate regional or neighborhood newspapers, trade journals, agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; or in a local land use newsletter published by the local government;

(iii) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(iv) Notifying the news media;

(v) Mailing to neighboring property owners; or

(vi) Providing notice by posting the application and other documentation using electronic media such as an e-mail and a web site.

(9) The application comment period. The comment period must be at least fourteen days and no more than thirty days from the date of notice of application. A county or city may accept public comments any time before the record closes for an open record predecision hearing. If no open record predecision hearing is provided, a county or city may accept public comments any time before the decision on the project permit.

(10) Project review timelines. Counties and cities must establish and implement a permit process time frame for review of each type of project permit application, and for consolidated permit applications, and must provide timely and predictable procedures for review. The time periods for county or city review of each type of complete application should not exceed one hundred twenty days unless written findings specify the additional time needed for processing. Project permit review time periods established elsewhere, such as in RCW 58.17.140 should be followed for those actions. Counties and cities are encouraged to consider expedited review for project permit applications for projects that are consistent with adopted development regulations and within the capacity of system wide infrastructure improvements.

(11) Hearings. Where multiple permits are required for a single project, counties and cities must allow for consolidated permit review as provided in RCW 36.70B.120(1). Counties and cities must determine which project permits require hearings. If hearings are required for certain permit categories, the review process must provide for no more than one consolidated open record hearing and one closed record appeal. An open record appeal hearing is only allowed for permits in which no open record hearing is provided prior to the decision. Counties and cities may combine an open record hearing on one or more permits with an open record appeal hearing on other permits. Hearings may be combined with hearings required for state, federal or other permits hearings provided that the hearing is held within the geographic boundary of the local government and the state or federal agency is not expressly prohibited by statute from doing so.

(12) Project permit decisions. A county or city may provide for the same or a different decision maker, hearing body or officer for different categories of project permits. The consolidated permit review process must specify which decision maker must make the decision or recommendation, conduct any required hearings or decide an appeal to ensure that consolidated permit review occurs as provided in this section.

(13) Notice of decision.

(a) The notice of decision must include the following:

(i) A statement of any SEPA threshold determination;

(ii) An explanation of how to file an administrative appeal (if provided) of the decision; and

(iii) A statement that the affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

(b) Notice of decision should also include:

(i) Any findings on which the final decision was based;

(ii) Any conditions of permit approval conditions or required mitigation; and

(iii) The permit expiration date, where applicable.

(c) Notice of decision may be in the form of a copy of the report or decision on the project permit application, provided it meets the minimum requirements for a notice of decision.

(d) How to provide notice of decision. A local government may provide notice in different ways for different types of project permits depending on the size and scope of the project and the types of permit approval included in the

project permit. Project review procedures should specify as minimum requirements, how to provide notice for each type of permit. Examples of reasonable methods of providing notice of decision are:

(i) Posting the property for site-specific proposals;

(ii) Publishing notice in written media such as in the newspaper of general circulation in the general area where the proposal is located, in appropriate regional or neighborhood newspapers, trade journals, agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; or in a local land use newsletter published by the county or city;

(iii) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(iv) Notifying the news media;

(v) Mailing to neighboring property owners; or

(vi) Providing notice and posting the application and other documentation using electronic media such as e-mail and a web site.

(e) Cities and counties must provide a notice of decision to the following:

(i) The project applicant;

(ii) Any person who requested notice of decision;

(iii) Any person who submitted substantive comments on the application; and

(iv) The county assessor's office of the county or counties in which the property is situated.

(14) Appeals. A county or city is not required to provide for administrative appeals for project permit decisions. However, where appeals are provided, procedures should allow for no more than one consolidated open record hearing, if not already held, and one closed-record appeal. Provisions should ensure that appeals are to be filed within fourteen days after the notice of final decision and may be extended to twenty-one days to allow for appeals filed under chapter 43.21C RCW.

(15) Monitoring permit decisions. Each county and city shall adopt procedures to monitor and enforce permit decisions and conditions such as periodic review of permit provisions, inspections, and bonding provisions.

(16) Code interpretation. Project permitting procedures must include adopted procedures for administrative interpretation of development regulations. For example, procedures should specify who provides an interpretation related to a specific project, and where a record of such code interpretations are kept so that subsequent interpretations are consistent. Code interpretation procedures help ensure a consistent and predictable interpretation of development regulations.

(17) Development agreements. Counties and cities are authorized by RCW 36.70B.170(1) to enter into voluntary contractual agreements to govern the development of land and the issuance of project permits. These are referred to as development agreements.

(a) Purpose. The purpose of development agreements is to allow a county or city and a property owner/developer to enter into an agreement regarding the applicable regulations, standards, and mitigation that apply to a specific development project after the development agreement is executed.

(i) If the development regulations allow some discretion in how those regulations apply or what mitigation is necessary, the development agreement specifies how the county or city will use that discretion. Development agreements allow counties and cities to combine an agreement on the exercise of its police power with the exercise of its power to enter contracts.

(ii) Development agreements must be consistent with applicable development regulations adopted by a county or city. Development agreements do not provide means of waiving or amending development regulations that would otherwise apply to a project.

(iii) Counties and cities may not use development agreements to impose impact fees, inspection fees, or dedications, or require any other financial contribution or mitigation measures except as otherwise expressly authorized, and consistent with the applicable development regulations.

(b) Parties to the development agreement. The development agreement must include as a party to the agreement, the person who owns or controls the land subject to the agreement. Development agreements may also include others, including other agencies with permitting authority or service providers. Cities and counties may enter into development agreements outside of their boundaries if the agreement is part of a proposed annexation or service agreement.

(c) Content of a development agreement. The development agreement must set forth the development standards and other provisions that apply to, govern, and vest the development, use, and mitigation of the development of the real property for the duration of the agreement. These may include, but are not limited to:

(i) Project elements such as permitted uses, residential densities, and intensity of commercial or industrial land uses and building sizes;

(ii) The amount and payment of fees imposed or agreed to in accordance with any applicable laws or rules in effect at the time, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

(iii) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;

(iv) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

(v) Affordable housing;

(vi) Parks and open space preservation;

(vii) Phasing;

(viii) Review procedures and standards of implementing decisions;

(ix) A build-out or vesting period for applicable standards; and

(x) Any other appropriate development requirement or procedure.

(d) The effect of development agreements. Development agreements may exercise a county's or city's authority to issue permits or its contracting authority. Once executed, development agreements are binding between the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area covering the property covered by the development agreement. The agree-

ment grants vesting rights to the proposed development consistent with the development regulations in existence at the time of execution of the agreement. A permit approval issued by the county or city after the execution of the development agreement must be consistent with the development agreement. A development agreement may obligate a party to fund or provide services, infrastructure or other facilities. A development agreement may not obligate a county or city to adopt subsequent amendments to the comprehensive plan, development regulations or otherwise delegate legislative powers. Any such amendments must still be adopted by the legislative body following all applicable procedural requirements.

(e) A development agreement must reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

(f) Procedures.

(i) These procedural requirements are in addition to and supplemental to the procedural requirements necessary for any actions, such as rezones, street vacations or annexations, called for in a development agreement. Development agreements may not be used to bypass any procedural requirements that would otherwise apply. Counties and cities may combine hearings, analyses, or reports provided the process meets all applicable procedural requirements;

(ii) Only the county or city legislative authority may execute a development agreement;

(iii) A county or city must hold a public hearing prior to executing a development agreement. The public hearing may be conducted by the county or city legislative body, planning commission or hearing examiner, or other body designated by the legislative body to conduct the public hearing; and

(iv) A development agreement must be recorded in the county where the property is located.

NEW SECTION

WAC 365-196-850 Impact fees. (1) Counties and cities planning under the act are authorized to impose impact fees on development activities as part of public facilities financing. However, the financing for system improvements to serve new development must provide a balance between impact fees and other sources of public funds and cannot rely solely on impact fees.

(2) The decision to use impact fees should be specifically implemented through development regulations. The regulations should call for a specific finding on all three of the following limitations whenever an impact fee is imposed. The impact fees:

(a) Must only be imposed for system improvements that are reasonably related to the new development. "System improvements" (in contrast to "project improvements") are public facilities included in the capital facilities plan that are designed to provide service to service areas within the community at large;

(b) Must not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and

(c) Must be used for system improvements that will reasonably benefit the new development.

(3) Impact fees may be collected and spent only for the following capital facilities owned or operated by government entities:

(a) Public streets and roads;

(b) Publicly owned parks;

(c) Open space and recreation facilities;

(d) School facilities; and

(e) Fire protection facilities in jurisdictions that are not part of a fire district.

(4) Capital facilities for which impact fees will be imposed must have been addressed in a capital facilities plan element which identifies:

(a) Deficiencies in public facilities serving existing development and the means by which existing deficiencies will be eliminated within a reasonable period of time;

(b) Additional demands placed on existing public facilities by new development; and

(c) Additional public facility improvements required to serve new development.

(5) The local ordinance by which impact fees are imposed must conform to the provisions of RCW 82.02.060. The department recommends that jurisdictions include the authorized exemption for low-income housing.

NEW SECTION

WAC 365-196-855 Protection of private property. In the drafting of development regulations, counties and cities should consider the attorney general's process of evaluation issued pursuant to RCW 36.70A.370, to assure that governmental actions do not result in an unconstitutional taking of private property. Procedures for avoiding takings, such as variances or exemptions, should be built into the overall regulatory process.

NEW SECTION

WAC 365-196-860 Treatment of residential structures occupied by persons with handicaps. (1) Counties and cities planning under the act may not enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals.

(2) The term "handicap" is defined by the federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3602). It pertains to a person who:

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

(b) Has a record of having such impairment; or

(c) Is regarded as having such impairment.

It does not include current, illegal use of or addiction to a controlled substance (as defined in 21 U.S.C. Sec. 802).

NEW SECTION

WAC 365-196-865 Family day-care providers. (1) Counties and cities may not prohibit the use of a residential dwelling as a family day-care provider's home facility that is located in an area zoned for residential or commercial land

uses. However, counties and cities may regulate such use as a conditional use. Counties and cities may prohibit such use if it would create an incompatible use adjacent to resource lands of long-term commercial significance. Counties and cities may prohibit such use in the primary crash zone of an airport or aviation facility.

(2) See WAC 365-196-210 for the definition of "family day-care providers" used in this section.

(3) A county or city may require the family day-care provider to comply with building and land use regulations. They can require the provider to be certified by the department of early learning and to comply with the sign code; as well as any building, fire, safety, health code, and business licensing requirements. They can also limit the hours of operation to keep the day-care from disrupting other neighborhood uses, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.

(4) The county or city might also require the family day-care provider to show that they notified adjoining property owners of their intent to locate and maintain a family day-care near them.

(5) If disputes arise between neighbors and the family day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute. A forum, in this case, refers to a meeting of the affected parties to discuss and resolve the dispute.

NEW SECTION

WAC 365-196-870 Affordable housing incentive programs. (1) Background.

(a) The act calls on counties and cities to encourage the availability of affordable housing. Addressing the need for affordable housing will require a broad variety of tools to address local needs. This section describes a variety of such tools counties and cities may implement through their development regulations.

(b) The tools described in this section implement RCW 36.70A.540. The authority contained in RCW 36.70A.540 is supplemental to existing authorities and does not limit the powers of local government to enact other incentive programs.

(c) Counties and cites may use affordable housing incentive programs to implement other policies in their comprehensive plan in addition to affordable housing; for instance, encouraging higher densities that reduce the need for land and increase the efficiency of providing public services.

(d) Incentive programs may apply to part or all of a city or county. A county or city may apply different standards to different areas within their jurisdiction.

(e) Incentive programs may be modified to meet local needs.

(f) Incentive programs may include provisions not expressly provided in RCW 36.70A.540 or 82.02.020.

(2) Steps in establishing an incentive program.

(a) When developing incentive programs, counties and cities should start with the gaps identified in the housing element and develop incentive programs as a strategy to implement the housing element and close the gaps identified.

(b) Counties and cities should identify existing standards or limitations that most affect the ability to produce lower cost housing units and design the incentive program to addressing those standards or limitations.

(c) The county or city should identify certain land use designations within a geographic area where increased residential development will help achieve local growth management and housing policies. Increased residential densities must be appropriate urban densities.

(d) The county or city must determine that the increased residential development capacity resulting from the incentives can be achieved in the designated area consistent with other applicable development regulations.

(e) The increase in development capacity may be provided through zoning changes, bonus densities within the urban growth area, height and bulk increases, parking reductions, or other regulatory incentives. Regulatory incentives may include, but are not limited to fee waivers or exemptions, or expedited permitting.

(f) When choosing a mechanism to increase development capacity, counties and cities should consider the standards or limitations identified in subsection (b) of this section. Counties and cities may also provide a variety of available incentives and tailor the type of incentive to the needs of a particular development project.

(g) The county or city may specify a minimum amount of affordable housing that must be provided by any project participating in the incentive program.

(3) Criteria for determining income eligibility of prospective tenants or buyers. When developing an affordable housing incentive program, counties and cities must establish standards for low-income renter or owner occupancy housing consistent with RCW 36.70A.540 (2)(b).

(a) Rental housing affordability. For rental housing, lower-income households are defined as rental housing affordable to households with an income of fifty percent or less of county median family income, adjusted for family size.

(b) Owner-occupied affordability. For owner-occupied housing, lower-income households earn eighty percent or less of county median family income, adjusted for family size.

(c) Adjustments to income levels: Counties and cities may, after holding a public hearing, establish lower or higher income levels based on the conditions of the local housing market. The higher income level may not exceed eighty percent of county median income for rental housing or one hundred percent of median county income for owner-occupied housing.

(4) Maximum rent or sales prices: Counties and cities must establish the maximum rental or sales prices for each low-income housing unit developed under the terms of their affordable housing programs. Counties and cities may adjust these levels based on the average size of the household expected to occupy the unit.

(a) For renter-occupied housing units, the total housing costs, including basic utilities as determined by the jurisdiction, may not exceed thirty percent of the income limit for the low-income housing unit.

(b) For owner-occupied housing units, housing that is affordable has mortgages, amortization, taxes, insurance and condominium or association fees, if any, that consume no more than thirty percent of the owner's gross annual income.

(5) Types of units provided.

(a) Projects participating in the affordable housing incentive program should provide a range of sizes comparable to those units that are available for other residents. To the extent practicable, the number of bedrooms in low-income units should be in the same proportion as the number of bedrooms in units within the entire development.

(b) Counties and cities should encourage the provision of units within the developments for which a bonus or incentive is provided. However, programs may allow units to be provided in a building located in the general area of the development for which a bonus or incentive is provided.

(c) The low-income units should have substantially the same functionality as the other units in the development. In this case, functionality refers to the type of housing.

(6) Enforcement of conditions: Conditions should be enforced using covenants, options or other agreements executed and recorded by owners and developers that use the incentive program. Development regulations should require that affordable units meet established affordability standards for fifty years.

(7) Fee in lieu of providing units allowed. Counties and cities may also allow a payment of money or property in lieu of low-income housing units if the payment achieves a result equal to or better than providing the affordable housing on-site. The payment must be equal to the approximate costs of developing the same number and quality of housing units that would otherwise be provided. The fees must be used to support the development of low-income housing, including support provided through loans or grants to public or private owners or developers of housing.

(8) Incentive programs adopted under RCW 36.70A.540 must be optional. If a developer chooses not to participate in an optional affordable housing incentive program, then a county or city may not condition, deny or delay the issuance of a permit or development approval, provided the project is consistent with zoning and development standards on the subject property without the incentive provisions.

WSR 09-15-176
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed July 22, 2009, 7:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-098.

Title of Rule and Other Identifying Information: Chapter 16-470 WAC, Quarantine—Agricultural pests, the department is proposing to modify the pest-free area boundary in Kittitas County, as it is established in the apple maggot quarantine rule.

Hearing Location(s): Washington Cattlemen's Association, Main Conference Room, 1301 North Dolarway Road, Ellensburg, WA 98926, on August 26, 2009, at 10:00 a.m.

Date of Intended Adoption: September 1, 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 26, 2009.

Assistance for Persons with Disabilities: Contact Henri Gonzales by August 19, 2009, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to modify the boundary of the pest-free area established in the apple maggot quarantine rule for Kittitas County. Changes to the existing rule may better prevent or minimize possible movement of apple maggot from infested areas into uninfested areas, secure access to international and interstate markets, and protect the commercial tree fruit industry from an economically significant pest by quarantine modification.

Reasons Supporting Proposal: The apple maggot is an invasive insect pest native to eastern North America. Its hosts include apples, crabapple, and native hawthorn. In its larval development stage it can cause extensive damage to fruit. It is economically significant to the Washington apple crop not only due to its ability to cause physical crop damage, but also because fruit from demonstrated apple maggot free areas or locations has greater market access for international shipments.

Data collected from the 2008 apple maggot survey provides evidence that the state's apple maggot population has altered its range. Modification of the existing quarantine is necessary in order to respond to this change.

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: Mary Toohey, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1907; Implementation and Enforcement: Brad White, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-2071.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendments will not have a more than minor economic impact on the commercial tree fruit industry. This proposed change to the rule would add two or three commercial fruit orchards, one of which is not a small business, to the hundred plus orchards in the already existing quarantine area. The proposed amendments would have a minimal additional economic impact on those two or three businesses, as the 2008 catch data for apple maggot has triggered inspection requirements for them under existing rules. However, neglecting to change the existing rule may result in loss of markets and potential exports for Washington apples.

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 22, 2009
Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

WAC 16-470-105 Area under order for apple maggot—Pest free area—Quarantine areas. (1) A pest free area for apple maggot is declared for the following portions of Washington state:

(a) Counties of Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Lincoln, Okanogan, Pend Oreille, Stevens, Walla Walla, and Whitman.

(b) The portion of Kittitas County designated as follows: Beginning at the point where Interstate Highway No. 90 crosses longitude 120°31' W; thence southerly to the Kittitas-Yakima County line; thence easterly along the county line to the Yakima River; thence northerly along the Yakima River to its confluence with Lmuma Creek; thence easterly along Lmuma Creek to Interstate Highway No. 82; thence southerly along Interstate Highway No. 82 to the Kittitas-Yakima County line; thence east to the Columbia River; thence northerly along the Columbia River to Interstate Highway No. 90; thence westerly along Interstate Highway No. 90 to the point of beginning.

(c) Yakima County, except for the area designated in subsection (2)(c) of this section.

(2) A quarantine for apple maggot is declared for the following portions of Washington state:

(a) Counties of Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Klickitat, Lewis, Mason, Pacific, Pierce, Snohomish, Spokane, Skagit, Skamania, Thurston, Wahkiakum, and Whatcom.

(b) Kittitas County, except for the area designated in subsection (1)(b) of this section.

(c) The portion of Yakima County designated as follows: Beginning at the northeastern corner of Yakima County on the west bank of the Columbia River; thence southerly along the Columbia River to the Yakima-Benton County line; thence southerly along the county line to latitude N46°30'; thence west to longitude W120°20'; thence north to latitude N46°30.48'; thence west to longitude W120°25'; thence north to latitude N46°31.47'; thence west to longitude W120°28'; thence north to latitude N46°32'; thence west to longitude W120°36'; thence south to latitude N46°30'; thence west to longitude W120°48'; thence southerly to the Klickitat-Yakima County line; thence westerly along the county line to the Yakima-Skamania County line; thence northerly along the county line to the Lewis-Yakima County line; thence easterly and northerly along the county line to the Pierce-Yakima County line; thence northerly and easterly along the county line to the Kittitas-Yakima County line; thence easterly and southerly along the county line to the west bank of the Columbia River and the point of beginning.

(3) A quarantine for apple maggot is declared for all states or foreign countries where apple maggot is established. The area under quarantine includes, but is not limited to, the states of Idaho, Oregon, Utah, and California, and, in the eastern United States, all states and districts east of and including North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, and any other areas where apple maggot is established.

WSR 09-15-177
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed July 22, 2009, 7:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-09-124.

Title of Rule and Other Identifying Information: Chapter 16-354 WAC, Hop rootstocks—Certification, the department is proposing to amend the hop certification rule by:

(1) Changing terminology used in the certification program;

(2) Adding hop stunt viroid and arabis mosaic viruses to the list of diseases that certified hop planting stock needs to be free of; and

(3) Revising the current language to make it more clear and readable and reflect current industry practices.

Hearing Location(s): Washington Hop Commission, 301 West Prospect Place, Boardroom (upstairs), Moxee, WA 98936, on August 26, 2009, at 1:00 p.m.

Date of Intended Adoption: September 2, 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 26, 2009.

Assistance for Persons with Disabilities: Contact Henri Gonzales by August 19, 2009, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend the hop certification rule by: (1) Changing the terminology to be consistent with national terminology for crop certification programs; (2) adding hop stunt viroid and arabis mosaic viruses to the list of diseases that certified hop planting stock needs to be free of; and (3) revising the current language to make it more clear and readable and reflect current industry practices. At the request of the affected industry, hop stunt viroid and arabis mosaic viruses are proposed for addition to the list of diseases that must be absent in order for planting stock to be eligible for certification.

Reasons Supporting Proposal: Certified planting stock is stock that has met standards for freedom from disease and other pests. Hop stunt viroid and arabis mosaic viruses are economically significant, exotic, and highly infectious diseases of commercial hops. Hop stunt viroid has recently been found for the first time in this state's hop planting stock. An industry sponsored project to eliminate it has been initiated at the WSU Irrigated Agriculture Research and Extension Center at Prosser. It would benefit the industry to incorporate freedom from these two diseases into criteria for certified planting stock. Changes to the existing rule may better prevent or minimize the possible spread of these highly infectious pathogens in Washington's hop planting stock and protect the hop industry from economically significant crop losses.

Statutory Authority for Adoption: Chapters 15.14 and 34.05 RCW.

Statute Being Implemented: Chapter 15.14 RCW.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mary Toohey, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1907.

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. This revision adds two pathogens to the list of diseases for which there is zero tolerance in certified planting stock, brings rule terminology into compliance with national certification terminology, and makes other modifications to acknowledge current industry practices. None of these measures should result in a more than minor economic impact on any small business in the industry, and the use of cleaner planting stock is anticipated to have a positive economic impact on yields. 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 22, 2009
Mary A. Martin Toohey
Assistant Director

Chapter 16-354 WAC

HOP ((~~ROOTSTOCKS—~~))PLANTING STOCK CERTIFICATION

AMENDATORY SECTION (Amending WSR 98-09-049, filed 4/15/98, effective 5/16/98)

WAC 16-354-005 Hop ((~~rootstock~~)) planting stock—General. (1) ((~~Rootstocks~~)) Planting stocks of hops and hop plants (*Humulus lupulus L.*) may be designated as foundation stock, registered stock or certified stock, if the ((~~rootstocks~~)) planting stock and plants from which ((~~they were~~)) it was produced have been inspected and tested in accordance with procedures and requirements outlined in ((~~rule~~)) this chapter. At a minimum, these procedures and requirements deal with hop stunt viroid, arabis mosaic viruses, Ilar viruses and virus-like diseases, downy mildew, verticillium wilt, crown gall, rootknot nematode, hop cyst nematode and other serious pests.

(2) Issuance of a state of Washington certified plant tag, stamp, or other document under this chapter means only that the tagged, stamped, or otherwise documented ((~~rootstock or plant~~)) planting stock has been subjected to procedures and requirements described in this chapter and determined to be in compliance with its standards and requirements. The department disclaims all express or implied warranties, including without limitation implied warranties of merchantability and fitness for particular purpose, regarding all plants, plant parts, and plant materials under this chapter.

(3) The department is not responsible for disease, genetic disorders, off-type, failure of performance, mislabeling, or otherwise, in connection with this chapter. No grower, nursery dealer, government official or other person is authorized to give any expressed or implied warranty, or to accept financial responsibility on behalf of the department regarding this chapter.

(4) Participation in the hop ((~~rootstock~~)) planting stock certification program is voluntary.

AMENDATORY SECTION (Amending WSR 98-09-049, filed 4/15/98, effective 5/16/98)

WAC 16-354-010 Definitions. ((~~(1)~~)) "Arabis mosaic viruses" means a grouping of viruses that are polyhedral, have a bipartite genome and induce diseases such as barebine, spidery hop, split leaf blotch and hop chlorotic disease. In combination with satellite RNA, arabis mosaic virus induces hop nettlehead disease.

"Broken or mutilated ((~~rootstock~~)) stock" means the breaking of the root section or splitting of the plant part or other mechanical injury that would affect the normal growth of the plant.

((~~(2) "Certified mother block" means a planting of hop stocks established from foundation rootstock.~~

~~(3)~~)) "Certified ((~~rootstock~~)) stock" means ((~~rootstock~~)) planting stock produced from ((~~certified~~)) foundation stock or a registered mother block((~~s and meeting~~)) that complies with the requirements ((~~as herein provided~~)) of this chapter.

((~~(4)~~)) "Crown" means a slip or layered stem cutting with visible buds, that has been grown for one or two years.

((~~(5)~~)) "Crown gall" means the disease caused by *Agrobacterium tumefaciens* E. F. Sm. & Towns., Conn.

((~~(6)~~)) "Department" means the Washington state department of agriculture.

((~~(7)~~)) "Director" means the director of the Washington state department of agriculture or the director's authorized representative.

((~~(8)~~)) "Downy mildew and/or black rot" means the disease caused by *Pseudoperonospora humuli* Miy. & Tak., G. W. Wils. Black roots caused by this disease ((~~shall~~)) may not be ((~~permitted~~)) certified.

((~~(9)~~)) "Fairly clean" means that the plant parts are not matted or caked with dirt.

((~~(10)~~)) "Fairly fresh" means that the roots or cuttings are not excessively wilted.

((~~(11)~~)) "Firm" means that the plant parts are not soft or spongy, although they may yield to slight pressure.

((~~(12)~~)) "Foundation ((~~rootstock~~)) stock" means planting material taken from hop stocks established and maintained by Washington State University, which are indexed and believed to be free from known viruses((~~. Such stock must, as much as practicable, be~~)) and hop stunt viroid, and which are genetically uniform. Cuttings or rooted plants, which are used to establish registered mother blocks shall be furnished to the applicant for a fee determined by Washington State University.

((~~(13)~~)) "Free from damage caused by freezing injury" means that the roots shall be of a normal color and only mod-

erately affected by discolored roots which affect the normal growth of the plant.

((~~(14)~~)) "Free from damage caused by mold" means that the plants shall be free from excessive mold or decay. Plants slightly affected by mold ((~~shall~~)) may be allowed.

((~~(15)~~)) "Hop cyst nematode" means the nematode *Heterodera humuli* Filipjev.

((~~(16)~~)) "Hop stunt viroid" means a group of viroids consisting of hop stunt viroid and its genetic variants.

"Ilar virus" means a grouping of viruses, including apple mosaic virus and Prunus necrotic ringspot, which share common characteristics including spherical in shape, with genetic material in three different particles and commonly inducing ring spots in hosts.

((~~(17)~~)) "Index" means to determine virus infection by means of inoculation from the plant to be tested to an indicator plant or by any other method.

((~~(18)~~)) "Moist" means that the plant parts are reasonably turgid and not dried to a degree that would affect normal growth.

((~~(19)~~)) "Powdery mildew" means the disease caused by ((~~Sphaerotheca~~)) Podosphaera humuli (DC) Burrill = ((~~Sphaerotheca~~)) Podosphaera macularis (WALLR.: FR) Lind.

((~~(20)~~)) "Registered mother block" means a planting of hops established from foundation stock.

"Rootknot nematode" means the nematode *Meloidogyne* sp.

((~~(21)~~)) "Verticillium wilt" means the disease caused by *Verticillium* albo-atrum Reinke & Berth. or hop strains of this organism.

((~~(22)~~)) "Virus-like" means a transmissible disorder of unknown cause.

AMENDATORY SECTION (Amending WSR 98-09-049, filed 4/15/98, effective 5/16/98)

WAC 16-354-020 Field standards for ((~~production of certified hop rootstock~~)) registered mother blocks. (1) Certified ((~~rootstock~~)) stock may be produced only from ((~~certified~~)) foundation stock or registered mother blocks. In order to be a ((~~certified~~)) registered mother block, a proposed hop planting site must meet all of the following requirements:

(a) The site must be inspected and approved by the department during the growing season immediately prior to planting. An exception may be made to allow inspection and planting during the same growing season, if exclusively greenhouse grown certified plants are planted on or after August 15th.

(b) The site must have been out of hop production, and all poles and trellis removed, for a minimum of three full growing seasons prior to planting.

(c) The site must be entirely free of residual hop plants or hop hullings.

(d) The site must be separated from any other hop plants by a strip of land at least twenty-one feet wide.

(2) A ((~~certified~~)) registered mother block must ((~~meet the following requirements:~~

~~(a) The certified mother block must~~)) consist of no more than one hop variety or strain. ((~~Certified~~))

(3) Registered mother blocks of different varieties or strains must be separated at all points by a strip of land at least twenty-one feet wide and free of hop plants.

((~~(b)~~)) (4) Any material planted in a ((~~certified~~)) registered mother block must ((~~meet~~)) comply with at least one of the following ((~~criteria~~)) requirements:

((~~(i)~~)) (a) Foundation rootstock produced by Washington State University;

((~~(ii)~~)) (b) Rootstock from another ((~~certified~~)) registered mother block;

((~~(iii)~~)) (c) Growing plants or cuttings from foundation mother plants grown by Washington State University; or

((~~(iv)~~)) (d) Growing plants or cuttings from another ((~~certified~~)) registered mother block.

((~~(c)~~)) (5) Plant material, including rootstock and plants described in ((~~(b)(ii) and (iv) of this~~)) subsection (4) of this section, may be moved from one ((~~certified~~)) registered mother block to another ((~~certified~~)) registered mother block site only after appropriate testing by a Washington State University plant pathologist and written approval by the department.

((~~(d)~~)) (6) A ((~~certified~~)) registered mother block must be kept free of hop hullings at all times.

((~~(e)~~)) (7) No ((~~certified~~)) registered mother block location may retain certification for more than:

((~~(i)~~)) (a) Four consecutive growing seasons, if the ((~~certified~~)) registered mother block was produced from rootstock; or

((~~(ii)~~)) (b) Five consecutive growing seasons, if the ((~~certified~~)) registered mother block was produced from cuttings or growing plants.

((~~(f)~~)) (8) If a male plant or pollinated female plant is found during any inspection, the grower may harvest certified ((~~rootstock~~)) planting stock from the ((~~certified~~)) registered mother block for the subsequent harvest only. After this harvest, the registered mother block site must be decertified.

((~~(g)~~)) (9) Plant pests and weeds must be effectively controlled.

((~~(h)~~)) (10) Growers shall rogue (i.e., dig and remove) and immediately destroy all male, diseased, unhealthy appearing or otherwise abnormal plants. ((~~For purposes of assessing disease intensity, an exception may be made for plants exhibiting powdery mildew symptoms.~~))

AMENDATORY SECTION (Amending WSR 98-09-049, filed 4/15/98, effective 5/16/98)

WAC 16-354-030 ((~~Certified~~)) Registered mother block inspections. (1) A minimum of three inspections per year will be conducted by the department at each ((~~certified~~)) registered mother block. Additional inspections may be conducted as needed.

(2) Timing and inspection methods will vary, depending on weather conditions, the disease or pest being sought, and other factors.

(3) The first inspection is intended primarily to detect downy mildew, as well as other diseases and pests.

(4) The second inspection is intended primarily to detect Ilar viruses, viroids and virus-like diseases.

(5) The third inspection is intended primarily to detect powdery mildew, as well as other diseases and pests.

(6) Inspection reports may contain observations and information on diseases, pests, and other factors for which no specific tolerances are established or which do not affect the certification status of the ((~~rootstock or hop plants~~)) planting stock.

(7) The presence of verticillium wilt, detected at any time, shall cause immediate decertification of the site. The grower must dig and destroy all affected plants immediately. Affected material may be removed from the site under suitable precautions only by a Washington State University plant pathologist or the department for diagnostic or verification purposes.

AMENDATORY SECTION (Amending WSR 04-24-050, filed 11/29/04, effective 12/30/04)

WAC 16-354-040 Hop ((~~rootstock~~)) planting stock certification application and fees. (1) Application for inspection and testing of ((~~certified~~)) registered mother blocks and certified stock shall be filed with the department by April 1 of each year accompanied by a seventy-five dollar application fee.

(2) As a condition of participation in the hop ((~~rootstock~~)) planting stock certification program, the applicant grower must furnish to the department all requested information pertinent to the operation of the program and must give consent to the department to take material from ((~~certified~~)) registered mother blocks and/or greenhouses for examination and testing.

(3) Fees for field inspections or inspection of harvested ((~~rootstock~~)) planting stock for grade, phytosanitary certification, or other purposes are assessed at the appropriate rate established in chapter 16-401 WAC.

(4) Payment for each inspection is due upon completion of the inspection. Billing may be arranged subject to department policies and processes.

AMENDATORY SECTION (Amending WSR 04-24-050, filed 11/29/04, effective 12/30/04)

WAC 16-354-050 Hop ((~~rootstock~~)) planting stock tags and identity. (1) Any person selling or offering for sale hop ((~~rootstock~~)) planting stock bearing a certification tag or otherwise identified as certified is responsible for the following:

(a) Accurately identifying the ((~~rootstock~~)) planting stock as to variety and year of harvest;

(b) Accurately identifying the ((~~rootstock~~)) planting stock as complying with all of the conditions of the certified hop ((~~rootstock~~)) planting stock program.

(2) Any person issued certification tag(s) must keep written records of stock produced and sold. These records must be produced at the request of the department.

AMENDATORY SECTION (Amending WSR 98-09-049, filed 4/15/98, effective 5/16/98)

WAC 16-354-070 Hop ((~~rootstock~~)) planting stock field standards. (1) The unit of certification is the entire ((~~certified~~)) registered mother block.

(2) Each entire ((~~certified~~)) registered mother block may have no more than the following percent of affected plants:

	Tolerance
Downy mildew	1%
Visible nematode damage	1%
Verticillium wilt	0
Ilar viruses	0
Arabis mosaic viruses	0
Hop stunt viroid	0

AMENDATORY SECTION (Amending Order 1867, filed 7/16/85)

WAC 16-354-090 Hop ((~~rootstock~~)) planting stock grades and standards. (1) Grades for hop clones which inherently produce slips or rhizomes and/or layered stem cuttings of small caliper shall be determined by a committee appointed by the Washington hop commission.

(2) Washington No. 1 shall consist of hop slips or rhizomes and/or layered stem cuttings of one strain, not less than five inches in length and not less than five-sixteenths inch in diameter and containing at least one visible bud, crowns not less than six inches in length and not less than three-fourths inch in diameter, with one or more visible buds which are:

(a) Fairly fresh.
(b) Firm.
(c) Moist.
(d) Fairly clean.
(e) Free from damage caused by:
(i) Mold.
(ii) Freezing injury.
(iii) Broken or mutilated ((~~rootstocks~~)) planting stock.
(iv) Crown gall.
(v) Black rot.

AMENDATORY SECTION (Amending WSR 98-09-049, filed 4/15/98, effective 5/16/98)

WAC 16-354-100 Hop ((~~rootstock~~)) planting stock tolerances. (1) In order to allow for variations incident to proper grading and packing, not more than a combined total of six percent, by count, of the ((~~rootstocks~~)) planting stock in any lot shall fail to meet the requirements of Washington No. 1, and not more than six percent of the ((~~rootstock~~)) planting stock shall have rhizomes or layered stem cuttings less than five inches in length.

(2) In order to insure lot uniformity, no individual container within a lot may contain more than one and one-half times the established tolerance.

(3) Hop plants shall be packed to retain a fresh condition.

(4) The department may inspect ((~~rootstock~~)) planting stock from ((~~certified~~)) registered mother blocks after harvest

and packing for the purpose of verifying that it meets grades and standards established in rule.

WSR 09-15-178
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed July 22, 2009, 7:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-10-037.

Title of Rule and Other Identifying Information: Chapter 16-662 WAC, Weights and measures—National handbooks, the department is proposing to adopt:

(1) The 2009 edition of the National Institute of Standards and Technology (NIST) Handbook 44 (Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices) as required by RCW 19.94.195;

(2) The 2009 edition of NIST Handbook 130 (Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality);

(3) Modifications to the multi-tier pricing requirements specified in NIST Handbook 44 relative to motor fuels; and

(4) Clarifications to currently existing state retail dispenser labeling requirements for lower blends of biodiesel, so that the rule remains understandable in the context of recent organizational changes in the latest version of NIST Handbook 130.

Hearing Location(s): Washington State Department of Agriculture, Natural Resources Building, Conference Room 271, 1111 Washington Street S.E., Olympia, WA 98504-2560, on August 27, 2009, at 3:00 p.m.

Date of Intended Adoption: September 3, 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 27, 2009.

Assistance for Persons with Disabilities: Contact Henri Gonzales by August 20, 2009, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to adopt the most recent version of NIST Handbook 44 and 130, modifications to the multi-tier pricing requirements specified in NIST Handbook 44, and clarification of the retail dispenser labeling requirements relative to lower blends of biodiesel specified in NIST Handbook 130.

Reasons Supporting Proposal: Multi-tier pricing of motor fuels means the fuel is offered for sale at more than one unit price, depending on the payment method the consumer uses. The requirements for multi-tier pricing of motor fuels are outlined in NIST Handbook 44. These requirements no longer meet the needs of retail fuel establishments in this state. The department is proposing to adopt new modifications to NIST Handbook 44 that would allow fuel retailers and customers more flexibility in method of payment.

RCW 19.112.020 requires fuel pumps offering biodiesel to be labeled with the blend percentage. The department adopts the requirements outlined in NIST Handbook 130 regarding labeling, with the exception of existing modifications to the handbook to comply with state law relative to lower percentage blends of biodiesel. The proposed amendments clarify the existing rule.

RCW 19.94.195 requires that the most current version of NIST Handbook 44 be adopted every year. The department also adopts the current version of NIST Handbook 130 and NIST Handbook 133 in order to maintain uniformity with other states. The currently adopted edition (January 2005) of NIST Handbook 133 (Checking the Net Contents of Packaged Goods) remains the most current.

Statutory Authority for Adoption: Chapters 19.94, 19.112, and 34.05 RCW.

Statute Being Implemented: Chapters 19.94 and 19.112 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: Kirk Robinson, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1856.

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 small businesses in an industry. Analysis of the economic effects of the proposed rule amendments demonstrate that the changes will not be more than a minor cost to 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 22, 2009
Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending WSR 07-05-083, filed 2/21/07, effective 3/24/07)

WAC 16-662-100 What is the purpose of this chapter? (1) This chapter establishes requirements for the state of Washington that are reasonably consistent with the uniform rules adopted by the National Conference on Weights and Measures and that are in effect in other states.

(2) This chapter applies specifically to the:

(a) Uniform specifications, tolerances and other technical requirements for weighing and measuring devices addressed in the *National Institute of Standards and Technology (NIST) NIST Handbook 44*;

(b) Uniform procedures for checking the net contents of packaged goods addressed in *NIST Handbook 133*;

(c) Uniform packaging and labeling regulation addressed in *NIST Handbook 130*;

(d) Uniform regulation for the method of sale of commodities addressed in *NIST Handbook 130*;

(e) Uniform examination procedure for price verification addressed in *NIST Handbook 130*; and

(f) Engine fuels, petroleum products, and automotive lubricants regulation addressed in *NIST Handbook 130*.

(3)(a) *NIST Handbook 44, NIST Handbook 130* and *NIST Handbook 133*, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. They are also available on the National Institute of Standards and Technology web site at ((~~http://ts.nist.gov/ts/htdocs/230/235/owmhome.htm~~)) http://ts.nist.gov/WeightsAndMeasures/index.cfm.

(b) For information regarding the contents and application of these publications, contact the weights and measures program at the Washington State Department of Agriculture, P.O. Box 42560, Olympia, Washington 98504-2560, telephone number 360-902-1857, or e-mail wts&measures@agr.wa.gov.

AMENDATORY SECTION (Amending WSR 08-05-007, filed 2/7/08, effective 3/9/08)

WAC 16-662-105 What national weights and measures standards are adopted by the Washington state department of agriculture (WSDA)? The WSDA adopts the following national standards:

National standard for:	Contained in the:
(1) The specifications, tolerances, and other technical requirements for the design, manufacture, installation, performance test, and use of weighing and measuring equipment	((~~2008~~)) 2009 Edition of *NIST Handbook 44 - Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*
(2) The procedures for checking the accuracy of the net contents of packaged goods	Fourth Edition (January 2005) of *NIST Handbook 133 - Checking the Net Contents of Packaged Goods*
(3) The requirements for packaging and labeling, method of sale of commodities, examination procedures for price verification, and engine fuels, petroleum products and automotive lubricants	((~~2008~~)) 2009 Edition of *NIST Handbook 130 - Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality*, specifically:
(a) Weights and measures requirements for all food and nonfood commodities in package form	*Uniform Packaging and Labeling Regulation*as adopted by the National Conference on Weights and Measures and published in *NIST Handbook 130*, ((~~2008~~)) 2009 Edition
(b) Weights and measures requirements for the method of sale of food and nonfood commodities	*Uniform Regulation for the Method of Sale of Commodities* as adopted by the National Conference on Weights and Measures and published in *NIST Handbook 130*, ((~~2008~~)) 2009 Edition
(c) Weights and measures requirements for price verification	*Examination Procedure for Price Verification* as adopted by the National Conference on Weights and Measures and published in *NIST Handbook 130*, ((~~2008~~)) 2009 Edition
(d) Definitions and requirements for standard fuel specifications; classification and method of sale of petroleum products; retail storage tanks and dispenser filters; condemned product((~~s~~)); product registration; and test methods and reproducibility limits	*Uniform Engine Fuels((~~, Petroleum Products,~~)) and Automotive Lubricants Regulation* as adopted by the National Conference on Weights and Measures and published in *NIST Handbook 130*, ((~~2008~~)) 2009 Edition

AMENDATORY SECTION (Amending WSR 07-01-115A, filed 12/20/06, effective 1/20/07)

WAC 16-662-110 Does the WSDA modify NIST Handbook 44? The WSDA adopts the following modifications to *NIST Handbook 44*, which is identified in WAC 16-662-105(1):

Modified Section:	Modification:
General Code: Section G-UR.4.1. Maintenance of Equipment	In the last sentence of G-UR.4.1., Maintenance of Equipment, change the words "device user" to "device owner or operator." As a result of this modification, the last sentence of G-UR.4.1. will read: "Equipment in service at a single place of business found to be in error predominantly in a direction favorable to the device owner or operator shall not be considered "maintained in a proper operating condition.""
Liquid-Measuring Devices: Section S.1.6.4.1. Unit Price	Modify subsection (b) under section S.1.6.4.1. Unit Price, to read: Whenever a grade, brand, blend, or mixture is offered for sale from a device at more than one unit price, then all of the unit prices at which that product is offered for sale shall be displayed or shall be capable of being displayed on the dispenser using controls available to the consumer prior to the delivery of the product or after prepayment for the product but prior to its delivery. It is not necessary that all of the unit prices for all grades, brands, blends, or mixtures be simultaneously displayed prior to the delivery of the product. This subsection shall not apply to fleet sales, other contract sales, or truck refueling sales (e.g., sales from dispensers used to refuel trucks).

AMENDATORY SECTION (Amending WSR 07-05-083, filed 2/21/07, effective 3/24/07)

WAC 16-662-115 Does the WSDA modify NIST Handbook 130? The WSDA adopts the following modifications to the *Uniform Regulation for the Method of Sale of Commodities* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(b):

Modified Section:	Modification:
(1) Section 2.20. Gasoline-Oxygenate Blends	Modify section 2.20.1. Method of Retail Sale ((-)). Type of Oxygenate must be Disclosed, to read: All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. For example, the label may read "contains ethanol." The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type). Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. Ethanol at no less than one percent and no more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol." Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol." (Example: E85 Ethanol.) Modify section 2.20.2. Documentation for Dispenser Labeling Purposes, to read: At the time of delivery of the fuel, the retailer shall be provided, on an invoice, bill of lading, shipping paper, or other documentation a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is

Modified Section:	Modification:
	blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol.
(2) Section 2.23. Animal Bedding	Add a new subsection((,)) which reads: 2.23.1. Sawdust, Barkdust, Decorative Wood Particles, and Similar Products. As used in this subsection, "unit" means a standard volume equal to 200 cubic feet. When advertised, offered for sale, or sold within Washington state, quantity representations for sawdust, barkdust, decorative wood particles, and similar loose bulk materials must be in cubic measures or units and fractions thereof.
(3) Section 2.31.2 Labeling of Retail Dispensers	Add a new subsection which reads: 2.31.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing not less than two percent and not more than five percent biodiesel must be labeled "Contains up to 5% Biodiesel." Retail dispensers containing less than two percent biodiesel may not be labeled as dispensing biodiesel or biodiesel blends. Add a new subsection which reads: 2.31.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel Blend).
(4) Section 2.31.4. Exemption	Delete section 2.31.4.

The WSDA adopts the following modifications to the *Uniform Engine Fuels((, Petroleum Products,)) and Automotive Lubricants Regulation* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(d):

Modified Section:	Modification:
(1) Section 2.12. Motor Oil	Delete section 2.12.
(2) Section 2.13. Products for Use in Lubricating Manual Transmissions, Gears, or Axles	Delete section 2.13.
(3) Section 2.14. Products for Use in Lubricating Automatic Transmissions	Delete section 2.14.
(4) Section 3.2.6. Method of Retail Sale. Type of Oxygenate must be Disclosed	Modify section 3.2.6 to read: All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. For example, the label may read "contains ethanol." The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type). Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. Ethanol at no less than one percent and no more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol." Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E85 Ethanol).
(5) Section 3.2.7. Documentation for Dispenser Labeling Purposes	Modify section 3.2.7 to read: The retailer shall be provided, at the time of delivery of the fuel, on an invoice, bill of lading, shipping paper, or other documentation, a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing

Modified Section:	Modification:
	more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol.
(6) Section 3.8.2. ((~~Retail Dispenser~~)) Labeling Requirements	((~~Modify section 3.8.2 to read: Each retail dispenser of not less than one percent and not more than ten percent, by volume, fuel ethanol must be labeled "Contains up to 10% Ethanol."~~)) Add a new subsection which reads: (c) Each retail dispenser of greater than ten percent fuel ethanol by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E85 Ethanol).
(7) Section 3.9.2. Retail Dispenser Labeling	((~~Modify section 3.9.2 to read:~~)) Add a new subsection which reads: (c) Each retail dispenser of fuel methanol shall be labeled by the capital letter M followed by the numerical value maximum volume percent and ending with the word "methanol." (Example: M85 Methanol.)
(8) Section 3.13. Oil	Delete section 3.13.
(9) Section 3.14. Automatic Transmission Fluid	Delete section 3.14.
(10) Section 3.15.2. Labeling of Retail Dispensers ((~~Containing between 5% and 20% Biodiesel~~))	((~~Modify section 3.15.2 to read: 3.15.2.~~)) Add a new subsection which reads: 3.15.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. Each retail dispenser of biodiesel blend containing not less than two percent and not more than five percent biodiesel must be labeled "Contains up to 5% Biodiesel." ((~~3.15.2.1.~~)) Retail dispensers containing less than two percent biodiesel may not be labeled as dispensing biodiesel or biodiesel blends. ((~~Delete section 3.15.2.2.~~)) Add a new subsection which reads: 3.15.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel blend).
((~~(11) Section 3.15.3. Labeling of Retail Dispensers Containing more than 20% Biodiesel~~	~~Modify section 3.15.3 to read: 3.15.3. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel blend).~~))
((~~(12)~~)) (11) Section ((~~3.15.5~~)) 3.15.4. Exemption	Delete section ((~~3.15.5~~)) 3.15.4.
((~~(13)~~)) (12) Section 7. Test Methods and Reproducibility Limits	Add a new subsection ((~~that~~)) which reads: 7.3. Biodiesel Blends ((~~-~~)). The test method for determining the percent biodiesel in a blend of biodiesel and diesel fuel shall be EN 14078 "Liquid petroleum products - Determination of fatty methyl esters (FAME) in middle distillates - Infrared spectroscopy method." When ASTM develops a comparable standard test method, the ASTM method will become the standard method for purposes of this rule.

WSR 09-15-180
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed July 22, 2009, 7:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-09-123.

Title of Rule and Other Identifying Information: Chapter 16-497 WAC, Hop disease quarantine, at the request of the affected industry, the department is proposing to amend the hop disease quarantine rule by adding hop stunt viroid and arabis mosaic viruses to the list of diseases that hop planting stock entering the state needs to be certified free of. In addition, the department is proposing to revise the current language to make it more clear and readable and to reflect current industry practices.

Hearing Location(s): Washington Hop Commission, 301 West Prospect Place, Boardroom (upstairs), Moxee, WA 98936, on August 26, 2009, at 1:00 p.m.

Date of Intended Adoption: September 2, 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 26, 2009.

Assistance for Persons with Disabilities: Contact Henri Gonzales by August 19, 2009, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend the hop disease quarantine rule by adding hop stunt viroid and arabis mosaic viruses to the list of diseases that hop planting stock entering the state needs to be certified free of and revising the current language to make it more clear and readable and to reflect current industry practices.

Reasons Supporting Proposal: Certified planting stock is stock that has met standards for freedom from disease and other pests. Hop stunt viroid and arabis mosaic viruses are economically significant, exotic, and highly infectious diseases of commercial hops. Hop stunt viroid has recently been found for the first time in this state's hop planting stock. An industry sponsored project to eliminate it has been initiated at the WSU Irrigated Agriculture Research and Extension Center at Prosser. Adding it to the list of prohibited diseases in the existing quarantine rule has been proposed by the affected industry to protect the state from reinfestation. Changes to the existing quarantine may better prevent or minimize the possible spread of these highly infectious pathogens into Washington's hop planting stock and protect the state's hop industry from economically significant crop yield losses.

Statutory Authority for Adoption: Chapters 17.24, 15.14, and 34.05 RCW.

Statute Being Implemented: Chapters 17.24 and 15.14 RCW.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mary Toohey, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1907.

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. This revision adds two pathogens to the list of diseases for which there is zero tolerance in planting stock imported from other states, brings rule terminology into compliance with national certification terminology, and makes other modifications to acknowledge current industry practices. None of these measures should result in a more than minor economic impact on any small business in the industry, and the use of cleaner planting stock is anticipated to have a positive economic impact on yields. 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 22, 2009

Mary A. Martin Toohey

Assistant Director

AMENDATORY SECTION (Amending Order 5082, filed 8/28/95, effective 9/28/95)

WAC 16-497-005 Hop disease quarantine—Definitions. ((~~(1) "Director" means the director of the Washington state department of agriculture or the director's authorized representative.~~

~~(2) "Department" means the Washington state department of agriculture.~~

~~(3) "Ilar viruses" means a grouping of viruses, including Apple Mosaic Virus and Prunus Necrotic Ringspot, which share common characteristics including spherical in shape, with genetic material in three different particles and commonly inducing ring spots in hosts.~~

~~(4) "Verticillium wilt" means the disease caused by Verticillium albo-atrum Reinke & Berth, or hop strains of this organism.~~

~~(5) "Powdery mildew" means the disease caused by Sphaerotheca macularis (WALLR.: FR) Lind = Sphaerotheca humuli (DC) Burrill.~~)) "Arabis mosaic viruses" means a grouping of viruses that are polyhedral, have a bipartite genome and induce diseases such as bare-bine, spidery hop, split leaf blotch and hop chlorotic disease. In combination with satellite RNA, arabis mosaic virus induces hop nettlehead disease.

"Department" means the Washington state department of agriculture.

"Director" means the director of the Washington state department of agriculture or the director's authorized representative.

"Hop stunt viroid" means a group of viroids consisting of hop stunt viroid and its genetic variants.

"Ilar viruses" means a grouping of viruses, including apple mosaic virus and Prunus necrotic ringspot, which share common characteristics including spherical in shape, with genetic material in three different particles and commonly inducing ring spots in hosts.

"Powdery mildew" means the disease caused by Podosphaera macularis (WALLR.: FR) Lind = Podosphaera humuli (DC) Burrill.

"Verticillium wilt" means the disease caused by Verticillium albo-atrum Reinke & Berth, or hop strains of this organism.

AMENDATORY SECTION (Amending Order 2077, filed 3/27/91, effective 4/27/91)

WAC 16-497-020 Regulated articles. Plants and all parts ((~~thereof~~)) (except the kiln dried cone) of hops (Humulus lupulus L.)

AMENDATORY SECTION (Amending Order 5082, filed 8/28/95, effective 9/28/95)

WAC 16-497-030 Regulations—Conditions governing the movement of regulated articles. Hop plants and all hop plant parts ((~~thereof~~)) will be admitted into the state of Washington((~~: Provided, That~~)), if all of the following provisions are complied with((~~.~~)):

(1) The hop plant or hop plant parts ((~~thereof~~)) have been certified in accordance with the regulations of an official state agency, ((~~which~~)) in a certification program that requires a minimum of all of the following:

(a) At least two field inspections during the growing season((~~, and requires that~~)).

(b) Zero percent certification tolerances ((~~shall not exceed:~~)) for powdery mildew, Verticillium wilt (((~~albo atrum (dm)~~))), hop stunt viroid, arabis mosaic viruses and Ilar viruses((~~, zero percent: And provided further, That~~)).

(c) All shipments of ((~~such hop~~)) certified planting stock ((~~shall be~~)) are apparently free of insect pests ((~~and shall be~~)).

(d) All shipments are accompanied by a certificate issued by an official agency of the state of origin certifying that the hop planting stock was produced under official certification regulations and meets official standards.

(2) All shipments of hop planting stock ((~~shall be~~)) are plainly marked with the contents on the outside of the package or container.

(3) Persons shipping or transporting regulated articles into this state from areas under quarantine ((~~shall~~)) must notify the department's plant ((~~certification branch~~)) services program of the nature and quantity of each shipment, the expected date of arrival at destination, the name of the intended receiver and the destination. The person to whom the articles are shipped ((~~shall~~)) must hold ((~~the same~~)) them in isolation from other hop planting stock until they are inspected and/or released by the department.

AMENDATORY SECTION (Amending Order 2077, filed 3/27/91, effective 4/27/91)

WAC 16-497-050 Exemption. The restrictions on the movement of regulated articles set forth in this chapter shall not apply to hop plants or parts of plants imported for ((~~experimental or trial~~)) research purposes by the United States Department of Agriculture or the state experiment stations in the state of Washington.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-497-060 Violation and penalty.

WSR 09-15-181
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed July 22, 2009, 7:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-10-034.

Title of Rule and Other Identifying Information: Chapter 16-752 WAC, Noxious weed control, the department is proposing to amend chapter 16-752 WAC by:

(1) Adding additional species to the wetland and aquatic weed quarantine (floating primrose-willow, variable-leaf milfoil, ricefield bulrush, and water soldier);

(2) Adding additional species to the noxious weed seed and plant quarantine (false brome, shiny geranium, and European hawkweed);

(3) Revising permit requirements for educational or training materials;

(4) Adding language regarding botanical synonyms; and

(5) Increasing its clarity and readability by removing obsolete definitions and updating the language.

Hearing Location(s): Washington State Department of Agriculture, Natural Resources Building, Conference Room 205, 1111 Washington Street S.E., Olympia, WA 98504-2560, on August 27, 2009, at 11:00 a.m.

Date of Intended Adoption: September 3, 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 27, 2009.

Assistance for Persons with Disabilities: Contact Henri Gonzales by August 20, 2009, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend the noxious weed control rule by: Adding additional species to the wetland and aquatic weed quarantine; adding additional species to the noxious weed seed and plant quarantine; revising permit requirements for educational or training materials; adding language regarding botanical synonyms; and increasing its clarity and readability by removing obsolete definitions and updating the language.

The purpose of enacting these and other quarantines is to prevent the establishment and spread of harmful nonnative species. Once established, they can have a serious impact on Washington's natural resources by displacing native species, altering habitat, reducing recreational use of waterways, and impacting agricultural production.

Reasons Supporting Proposal: The intrusion into this state of nonnative, invasive weed species continues to be a concern. The spread of these weeds presents a risk to the economic well-being of the agricultural, forest, horticultural, and floricultural industries, and the environmental quality and natural resources of the state. Initiating quarantines forbidding entry or distribution of weed species may be critical for their exclusion or control.

Statutory Authority for Adoption: Chapters 17.10, 17.24, and 34.05 RCW.

Statute Being Implemented: Chapters 17.10 and 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. Of the seven species of invasive plants these amendments would prohibit from distribution, only one (variable-leaf milfoil) is sold commercially as an aquarium plant. We were able to identify a sole commercial grower in this state who grows this species and were told by that grower that prohibiting the plant would not have a more than minor impact, as there are several alternative species readily available in commerce. Analysis of the economic effects of the proposed rule amendments demonstrates that the changes will not be more than a minor cost to small business in the regulated industry and, therefore, an SBEIS is not required. However, failure to adopt these changes has potential to have a large negative economic impact on the state, due to the cost of eliminating these species if they were to become established.

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 22, 2009
Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending Order 2054, filed 9/20/90, effective 10/21/90)

WAC 16-752-001 Definitions. The definitions set forth in this section shall apply throughout this chapter, unless the context otherwise requires:

((~~(1) "Director" means the director of agriculture of this state, or a duly authorized representative.~~

~~(2) "Department" means the Washington state department of agriculture.~~

~~(3) "Person" means any individual, partnership, corporation, association, agency, or organized group of persons whether or not incorporated.~~

~~(4) "Hay" means the harvested herbage of forage plants, including but not limited to grasses, legumes, sedges and rushes.~~

~~(5) "State board" means the Washington state noxious weed control board.~~

~~(6) "Applicant" means a project sponsor.~~

~~(7) "BARS" means the budgeting, accounting, and reporting system of municipal fiscal management.~~

~~(8) "Environmental checklist" means the form in WAC 197-11-960.~~

~~(9) "Executive secretary" means the state noxious weed control board executive secretary.~~

~~(10) "Integrated pest management" means a decision-making process which combines all feasible control techniques into a program for managing targeted noxious weeds including but not limited to prevention, monitoring, consideration of alternative methods, and evaluation.~~

~~(11) "Local noxious weed control agency" means any activated county or regional noxious weed control board created under chapter 17.10 RCW, any weed district created under chapter 17.04 RCW, or any intercounty weed district created under chapter 17.06 RCW.~~

~~(12) "Monitoring" means inspecting to gather and record site specific information on which decisions about treatment choices are to be based.~~

~~(13) "Objectives" means statements of precise outcomes which can be measured to determine actual accomplishments.~~

~~(14) "Principal investigator" means the person under whose direction the noxious weed control project will be carried out such as the county weed control coordinator or county weed control board chairperson.~~

~~(15) "Project sponsor" means the county legislative authority of a county with an activated noxious weed control board, a local weed control agency, or a combination of two or more agencies acting through a lead agency, responsible for implementing an approved project.~~

~~(16) "Public benefits" means those services, goods, or other benefits, whether tangible or intangible, which accrue to persons other than those on whose property weed control measures pursuant to this chapter are undertaken.~~

~~(17) "Public costs" means those costs, whether tangible or intangible, which accrue to persons other than those on whose property weed control measures pursuant to this chapter are undertaken.~~

~~(18) "Significant environmental harm" means a reasonable likelihood of more than a moderate adverse impact on environmental quality as set forth in WAC 197-11-794.~~)) "Department" means the Washington state department of agriculture.

"Director" means the director of agriculture of this state, or a duly authorized representative.

"Hay" means the harvested herbage of forage plants, including but not limited to grasses, legumes, sedges and rushes.

YELLOW NUTSEDGE QUARANTINE

AMENDATORY SECTION (Amending WSR 03-16-038, filed 7/30/03, effective 8/30/03)

WAC 16-752-300 Yellow nutsedge—Establishing quarantine. Yellow nutsedge **(Cyperus esculentus L.)** is a herbaceous perennial that is one of the most serious noxious weeds of agronomic crops. It propagates by seed, rhizomes, bulbs, and nutlets. Soil containing nutlets is the primary mode of spread in cultivated land. It is highly invasive and its unchecked spread would entail great economic loss to the agricultural industries of the state. It is a class B noxious weed designated for control in Thurston County (WAC 16-750-011 ((~~(33)~~)) (49)(a)). Yellow nutsedge infests a plant nursery site at the Port of Olympia in Tumwater, Washington. Movement of material from this site initiates additional infestations. RCW 17.10.210 provides that either the director or the county noxious weed control board or a weed district may issue an order for quarantine and restriction or denial of access to land determined to be so seriously infested that control measures cannot be undertaken without quarantine of the land. The director has determined:

(1) That the identified site is so seriously infested as to require quarantine; and

(2) That the movement of contaminated materials from this site presents an immediate threat of infestation to the rest of the county agricultural and nonagricultural areas; and

(3) That the restriction of such spread is critical to control efforts.

AMENDATORY SECTION (Amending WSR 03-16-038, filed 7/30/03, effective 8/30/03)

WAC 16-752-305 Yellow nutsedge—Quarantine area. The quarantine area shall encompass the Port of Olympia, located at the Olympia Airport, Tumwater, Washington, and more particularly described as follows:

County of Thurston, state of Washington:

Parcel number 12711230000 - a portion of this parcel containing twenty-two acres of nursery production, more or less and three access roads one of which begins at 85th Avenue SW, the other two begin at Old Highway 99 SW.

A tract of land in Section 11, Township 17 north, Range 2 west of the Willamette Meridian, more particularly described as follows:

A portion of the Southeast Quarter of the Southwest Quarter and the Southwest Quarter of the Southeast Quarter, Section 11, Township 17 North, Range 2 West, W.N., Thurston County, Washington.

Beginning at the South Quarter corner of Section 11; thence north 01°53'09"E, along the center of the section line 77.6 feet to the southerly edge of the infestation, said point being 75 feet northerly of the center of taxiway 5 and the point of beginning; thence south 88°14'46"E parallel to and 75 feet northerly of taxiway 5, 1254.2 feet to coordinate pair N 604966 E 1043268 North American Datum 83/91, Washington State Lambert projection South Zone; thence north 01°32'43"E parallel to and 75 feet westerly of taxiway 5, 256.1 feet (N 605222 E 1043275); thence north 74°44'42"W, parallel to and 200 feet southerly of runway 8-26, 2031.7 feet (N 605757 E 1041315); thence south 12°53'58"W, parallel to and 75 feet easterly of taxiway 4, 744.6 feet (N 605031 E 1041148); thence south 88°14'46"E parallel to and 75 feet northerly of taxiway 5, 866.5 feet to the point of beginning. TOGETHER WITH: Two (2) 50 foot easements for ingress and egress described as follows: Beginning at the centerline of Old Highway 99 at coordinate pair N 605688 E 1044159; thence south 62°13'04"W, 337 feet (N 605531 E 1043861); thence south 37°34'07"W, 66 feet (N 605479 E 1043821); thence south 15°34'51"W, 432 feet (N 605063 E 1043705); thence south 56°50'31"W, 90 feet (N 605014 E 1043630); thence north 73°42'21"W, 135 feet (N 605052 E 1043500); thence south 73°31'23"W, 47 feet (N 605031 E 1043429).

Beginning at the coordinate pair N 605479 E 1043821; thence north 10°18'17"W, 78 feet (N 605556 E 103807); thence north 52°23'38"W, 93 feet (N 605613 E 1043733); thence north 74°34'40"W, 331 feet (N 605701 E 1043414); thence north 24°31'11"W, 63 feet (N 605758 E 1043388); thence north 0°58'36"W, 352 feet (N 606110 E 1043382).

Beginning at the end of 85th Avenue SE; thence north 14°36'57"W, 44 feet; thence north 1°44'13"E, 103 feet; thence north 1°44'13"E, 122 feet; thence north 4°2'36"E, 103 feet; thence north 1°44'13"E, 140 feet; thence north 3°31'10"E, 134 feet; thence north 1°44'13"E, 146 feet; thence north 6°43'41"W, 141 feet; thence north 6°3'35"W, 92 feet; thence north 1°44'13"E, 128 feet; thence north 15°58'50"W, 96 feet; thence south 85°33'49"W, 113 feet; thence north 88°15'39"W, 100 feet; thence north 85°38'49"W, 133 feet; thence north 88°15'36"W, 137 feet; thence north 85°28'20"W, 125 feet; thence south 89°35'45"W, 162 feet; thence north 88°15'32"W, 129 feet; thence north 88°15'30"W, 200 feet; thence north 88°15'28"W, 150 feet; thence north 85°43'23"W, 137 feet; thence north 88°38'45"E, 113 feet; thence north 83°56'12"W, 242 feet; thence north 40°38'52"W, 25 feet; thence north 40°6'3"W, 25 feet.

AMENDATORY SECTION (Amending WSR 98-01-056, filed 12/11/97, effective 1/11/98)

WAC 16-752-310 Yellow nutsedge—Articles whose movement is restricted. The movement of all plants and parts of plants of yellow nutsedge and soil contaminated with propagules of the plant, including soil in nursery pots, is ((~~covered by this quarantine~~)) restricted. The movement of all balled and burlap nursery stock is ((~~covered by this quarantine~~)) restricted.

AMENDATORY SECTION (Amending WSR 03-16-038, filed 7/30/03, effective 8/30/03)

WAC 16-752-315 Yellow nutsedge—Regulations. Use of the property identified in WAC 16-752-305 is restricted as follows:

(1) All removal of sand or soil, potted nursery plants and other plants from the quarantine site, except as provided in subsection (6) of this section, is prohibited without a permit from the Thurston County noxious weed control board that details the end use and exact geographic destination.

(2) All land disturbing operations including excavation, utilities work, and similar activities require a one time, no fee permit from the weed board that obligates the operator to thoroughly hose down all equipment before leaving the quarantine area and record the next two areas where the equipment is used after leaving the quarantine area.

(3) All off-road vehicles are banned in the quarantine area without the written permission of the Thurston County noxious weed control board, except in designated parking areas.

(4) All weed control measures and irrigation practices in the quarantine area are to be conducted at the direction of the Thurston County noxious weed control board.

(5) Yellow nutsedge control shall take precedence over all other land uses in the quarantine area.

(6) The Thurston County noxious weed control board may designate and clearly mark portions of the site as free from infestation and allow removal of sand or soil from these areas without specific permit to nonagricultural sites: Provided, That adequate precautions are taken to prevent com-

mingling of infested and noninfested soils and equipment used in the infested area is thoroughly cleaned before use in the area designated as uninfested.

AMENDATORY SECTION (Amending WSR 03-16-038, filed 7/30/03, effective 8/30/03)

WAC 16-752-320 Yellow nutsedge—Costs of quarantine. The costs of serving the notice required by RCW 17.10.210(2) shall be borne by the department. The costs of control work shall be borne by the landowner unless otherwise determined by the Thurston County noxious weed control board or the director in consultation with the Washington state noxious weed control board.

AMENDATORY SECTION (Amending WSR 98-01-056, filed 12/11/97, effective 1/11/98)

WAC 16-752-330 Yellow nutsedge—Violation and penalty. Any person who violates this quarantine shall have committed a civil infraction and shall be subject to the provisions of RCW 17.10.310 and 17.10.350 and WAC 16-750-020 which provides monetary penalties of up to one thousand dollars per infraction.

AMENDATORY SECTION (Amending Order 2050, filed 7/18/90, effective 8/18/90)

WAC 16-752-400 Establishing quarantine. The Lythrum ((~~species~~)) genus (Purple loosestrife) is an aggressive, semiaquatic, herbaceous perennial weed that has infested wetlands in the state of Washington causing serious harm to native plants and destroying habitat for birds and small mammals. Some varieties of loosestrife are cultivated and sold as nursery stock in the horticultural industry. The director of agriculture, pursuant to the powers provided in chapter 17.24 RCW and RCW 17.10.074 (1)(c), and chapter 15.13 RCW, has determined that the regulation and exclusion of this plant, plant parts, and seeds is necessary to preserve Washington wetlands from further infestation.

AMENDATORY SECTION (Amending WSR 05-21-028, filed 10/11/05, effective 11/11/05)

WAC 16-752-505 Wetland and aquatic weed quarantine—Regulated articles. All plants and plant parts of the following are regulated articles under this chapter:

Scientific Name	Common Name
Butomus ((~~umbelatus~~)) umbellatus	flowering rush
Cabomba caroliniana	fanwort
Crassula helmsii	Australian swamp stonecrop
Egeria densa	Brazilian elodea
Epilobium hirsutum	hairy willow herb
Glossostigma diandrum	mud mat
Gyceria maxima	reed sweetgrass, tall manna grass
Hydrilla verticillata	hydrilla
Hydrocharis morsus-ranae	European frog-bit
Lagarosiphon major	African elodea
Ludwigia hexapetala	water primrose
Ludwigia peploides	floating primrose-willow
Lysimachia vulgaris	garden loosestrife
Murdannia keisak	marsh dew flower, Asian spiderwort
Myriophyllum aquaticum	parrotfeather
Myriophyllum heterophyllum	variable-leaf milfoil
Myriophyllum spicatum	Eurasian watermilfoil
Najas minor	slender-leaved naiad, brittle naiad
Nymphoides peltata	yellow floating heart
Sagittaria graminea	grass-leaved arrowhead
Sagittaria platyphylla	delta arrowhead
Schoenoplectus mucronatus	ricefield bulrush
Spartina alterniflora	smooth cordgrass
Spartina anglica	common cordgrass
Spartina densiflora	dense-flowered cordgrass
Spartina patens	salt meadow cordgrass
Stratiotes aloides	water soldier
Trapa natans	water chestnut, bull nut
Trapa bicornus	water caltrap, devil's pod, bat nut
Utricularia inflata	swollen bladderwort

This list is comprised of the most recent and accepted scientific and common names of the quarantine plant species. Regulated status also applies to all synonyms of these botanical names.

AMENDATORY SECTION (Amending WSR 01-01-014, filed 12/6/00, effective 1/6/01)

WAC 16-752-515 Wetland and aquatic weed quarantine—Exemptions. The prohibition on transporting plants or plant parts in WAC 16-752-510 shall not apply to plants or plant parts collected for herbariums, research in control methods, creation of pressed specimens for educational or identification purposes and other scientific activities((~~, except that~~)). However, all activities requiring live plants, except pressed specimens, ((~~are~~)) must be conducted under permit from the director and ((~~are~~)) must be conducted in such a way that no infestation is created. No permit is required to transport plants or plant parts, as a part of a noxious weed control activity, to a sanitary landfill, to be burned, or otherwise for disposition, if such activities are conducted under the supervision of an official weed control agency or other public agency with management responsibilities for the control efforts and are conducted in such a manner that seed dispersal or dispersal of propagative materials to uninfested areas is prevented. ((~~No permit is required for live plants for educa-~~

~~tional or training purposes, if the specimens are disposed of in such a manner as to prevent infestation.~~))

AMENDATORY SECTION (Amending WSR 04-19-004, filed 9/2/04, effective 10/3/04)

WAC 16-752-610 Noxious weed seed and plant quarantine—Regulated articles. All plants, plant parts, and seeds in packets, blends, and "wildflower mixes" of the following listed species are regulated under the terms of this noxious weed seed and plant quarantine:

Scientific Name	Common Names
Abutilon theophrasti	velvetleaf
Alliaria petiolata	garlic mustard
Amorpha fruticosa	indigobush, lead plant
Anchusa officinalis	common bugloss, alkanet, anchusa
Anthriscus sylvestris	wild chervil
Brachypodium sylvaticum	false brome
Carduus acanthoides	plumeless thistle
Carduus nutans	musk thistle, nodding thistle
Carduus pycnocephalus	Italian thistle
Carduus tenuiflorus	slenderflower thistle
Centaurea calcitrapa	purple starthistle
Centaurea diffusa	diffuse knapweed
Centaurea jacea	brown knapweed, rayed knapweed, brown centaury horse-knobs, hardheads
Centaurea jacea x nigra	meadow knapweed
Centaurea biebersteinii	spotted knapweed
Centaurea macrocephala	bighead knapweed
Centaurea nigra	black knapweed
Centaurea nigrescens	Vochin knapweed
Chaenorrhinum minus	dwarf snapdragon
Crupina vulgaris	common crupina
Cytisus scoparius	Scotch broom
Daucus carota	wild carrot, Queen Anne's lace
Echium vulgare	blueweed, blue thistle, blue devil, viper's bugloss, snake flower
Euphorbia esula	leafy spurge
Euphorbia oblongata	eggleaf spurge
Galega officinalis	goatsrue
Geranium lucidum	shiny geranium
Helianthus ciliaris	Texas blueweed
Heracleum mantegazzianum	giant hogweed, giant cow parsnip
Hibiscus trionum	Venice mallow, flower-of-an-hour, bladder ketmia, modesty, shoo-fly
Hieracium aurantiacum	orange hawkweed, orange paintbrush, red daisy flameweed, devil's weed, grim-the-collier
Hieracium caespitosum	yellow hawkweed, yellow paintbrush, devil's paintbrush, yellow devil, field hawkweed, king devil
Hieracium floribundum	yellow devil hawkweed
Hieracium pilosella	mouseear hawkweed
Hieracium sabaudum	European hawkweed
Impatiens glandulifera	policeman's helmet
Isatis tinctoria	dyers' woad
Kochia scoparia	kochia, summer-cyprus, burning-bush, fireball, Mexican fireweed
Lepidium latifolium	perennial pepperweed
Leucanthemum vulgare	oxeye daisy, white daisy, whiteweed, field daisy, marguerite, poorland flower
Linaria dalmatica spp. dalmatica	Dalmatian toadflax
Mirabilis nyctaginea	wild four o'clock, umbrella-wort
Onopordum acanthium	Scotch thistle
Polygonum cuspidatum	Japanese knotweed
Polygonum polystachyum	Himalayan knotweed
Polygonum sachalinense	giant knotweed
Polygonum x bohemicum	Bohemian knotweed, Japanese and giant knotweed hybrid
Proboscidea louisianica	unicorn-plant
Pueraria montana var. lobata	kudzu
Salvia aethiopis	Mediterranean sage
Salvia pratensis	meadow clary
Salvia sclarea	clary sage
Senecio jacobaea	tansy ragwort
Silybum marianum	milk thistle
Solanum elaeagnifolium	silverleaf nightshade
Solanum rostratum	buffaloburr
Soliva sessilis	lawnweed
Sorghum halepense	johnsongrass
Spartium junceum	Spanish broom
Tamarix ramosissima	saltcedar
Thymelaea passerina	spurge flax
Torilis arvensis	hedgeparsley
Ulex europaeus	gorse, furze
Zygophyllum fabago	Syrian bean-caper

This list is comprised of the most recent and accepted scientific and common names of the quarantine plant species. Regulated status also applies to all synonyms of these botanical names.

WSR 09-15-187
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed July 22, 2009, 9:42 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-282-990 Sanitary control of shellfish—Fees—Commercial geoduck paralytic shellfish poisoning testing.

Hearing Location(s): Department of Health, TC2 - Room #158, 111 Isreal [Israel] Road S.E., Tumwater, WA 98504, on August 27, 2009, at 1:30 p.m.

Date of Intended Adoption: August 27, 2009.

Submit Written Comments to: Brandy Brush, Department of Health, 111 Isreal [Israel] Road S.E., P.O. Box 47824, Tumwater, WA 98504-7824, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2257, by August 20, 2009.

Assistance for Persons with Disabilities: Contact Brandy Brush by August 20, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To equitably assess the costs associated with commercial geoduck paralytic shellfish poison (PSP) testing. The cost assessment will follow the annual redistribution formula which is based on the number of tests done in the previous year. This testing is essential to public health as it is the only means available to determine if dangerous levels of PSP exist in commercial geoduck, and ensures toxic shellfish do not reach consumers.

Reasons Supporting Proposal: It will redistribute geoduck PSP fees based on the 2008 total cost of service for the entities that submitted geoduck tests and the number of tests done for each entity.

Statutory Authority for Adoption: RCW 43.70.250.

Statute Being Implemented: RCW 43.70.250.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Brandy Brush, 111 Israel Road S.E., Tumwater, WA, (360) 236-3342; Implementation and Enforcement: Maryanne Guichard, 111 Israel Road S.E., Tumwater, WA, (360) 236-3391.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement (SBEIS) was not prepared. Under RCW 19.85.025 and 34.05.310 (4)(f), an SBEIS is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

July 22, 2009
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 08-13-067, filed 6/13/08, effective 7/14/08)

WAC 246-282-990 Fees. (1) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	$263
Shellstock Shipper	
0 - 49 Acres	$297
50 or greater Acres	$476
Scallop Shellstock Shipper	$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	$542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	$656
Plants with floor space > 5000 sq. ft.	$1,210

(2) The fee for each export certificate is $10.30.

(3) Annual PSP testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

Fee Category

Type of Operation	Number of Harvest Sites	Fee
Harvester	≤ 2	$173
Harvester	3 or more	$259
Shellstock Shipper 0 - 49 acres	≤ 2	$195
Shellstock Shipper 0 - 49 acres	3 or more	$292
Shellstock Shipper 50 or greater acres	N/A	$468
Shucker-Packer (plants < 2000 ft^2)	≤ 2	$354
Shucker-Packer (plants < 2000 ft^2)	3 or more	$533
Shucker-Packer (plants 2000 - 5000 ft^2)	≤ 2	$429
Shucker-Packer (plants 2000 - 5000 ft^2)	3 or more	$644
Shucker-Packer (plants > 5000 ft^2)	N/A	$1,189

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

(i) At the time of first licensure; or

(ii) January 1 of each year for companies licensed as harvesters; or

(iii) July 1 of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(4) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Fee
Department of natural resources (quota tracts harvested by DNR contract holders)	$((~~12,094~~)) 10,452
Jamestown S'Klallam Tribe	$((~~4,682~~)) 2,503
Lower Elwah Klallam Tribe	$((~~2,991~~)) 2,208
Lummi Nation	$((~~390~~)) 147
Nisqually Indian Tribe	$((~~3,121~~)) 3,091

Harvester	Fee
Port Gamble S'Klallam Tribe	$((~~3,121~~)) 4,416
Puyallup Tribe of Indians	$((~~8,453~~)) 8,244
Skokomish Indian Tribe	$((~~260~~)) 1,619
Squaxin Island Tribe	$((~~4,151~~)) 1,767
Suquamish Tribe	$((~~13,665~~)) 21,198
Swinomish Tribe	$((~~390~~)) 589
Tulalip Tribe	$((~~4,552~~)) 1,619
((~~Discovery Bay Shellfish~~)) Washington Shell Fish, Inc.	$((~~130~~)) 147

(5) PSP fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(6) Refunds for PSP fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

WSR 09-15-192
PROPOSED RULES
HOME CARE QUALITY AUTHORITY
[Filed July 22, 2009, 11:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-08-079.

Title of Rule and Other Identifying Information: IP Fingerprinting, one hundred twenty-day provisional hire, the agency is amending and adopting new rules in chapter 257-10 WAC, Home care quality authority—Referral registry, amending WAC 257-10-120 What qualifies individual providers or prospective individual providers to be included on the referral registry?

Hearing Location(s): Home Care Quality Authority Board Room, 4317 6th Avenue S.E., Suite 101, Lacey, WA 98503 (link to HCQA map available from http://www.hcqa.wa.gov/Contact/contact_hcqa.html or by calling (360) 493-9350), on August 25, 2009, at 11:00 a.m.

Date of Intended Adoption: Not earlier than September 22, 2009.

Submit Written Comments to: Lisa Livingston, HCQA Rules Coordinator, P.O. Box 40940, Olympia, WA 98504-0940, delivery 4317 6th Avenue S.E., Suite 101, Lacey, WA 98503, e-mail llivingston@hcqa.wa.gov, fax (360) 493-9380, by 5:00 p.m. on August 25, 2009.

Assistance for Persons with Disabilities: Contact Lisa Livingston, by August 18, 2009, phone (360) 493-9350.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To maintain consistency with other WAC, statute and policies related to fingerprint-based background check requirements for individual providers.

This amendment will allow for a provider to be placed on the referral registry for a one hundred twenty-day provisional period pending the outcome of the fingerprint check.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.39A.280(3) Authority duties, Title 74 RCW.

Statute Being Implemented: RCW 74.39A.280(3).

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

Name of Proponent: Home care quality authority, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lisa Livingston, P.O. Box 40940, Olympia, WA 98504-0940, (360) 493-9350; and Enforcement: Rick Hall, P.O. Box 40940, Olympia, WA 98504-0940, (360) 493-9350.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that no new costs will be imposed on small businesses or nonprofit organizations.

A cost-benefit analysis is not required under RCW 34.05.328. Rule[s] are exempt per RCW 34.05.328(5).

May 20, 2009
R. A. Hall
Executive Director

AMENDATORY SECTION (Amending WSR 05-14-113, filed 7/1/05, effective 8/1/05)

WAC 257-10-120 What qualifies individual providers or prospective individual providers to be included on the referral registry? The individual provider or prospective individual provider must:

(1) Satisfactorily complete a Washington state patrol background check and not be convicted of a disqualifying crime ((~~listed in RCW 43.43.830 as specified by DSHS home and community services or developmental disabilities or children's administration~~)) based on the appropriate department of social and health services list of crimes and negative actions; and

(2) Complete an FBI fingerprint-based background check if the person has lived in the state of Washington fewer than three years((~~;~~)). An individual provider or prospective individual providers who has lived in the state fewer than three years may be included on the referral registry for a one hundred twenty-day provisional period as allowed by law or program rules when:

(a) A fingerprint-based background check is pending; and

(b) The individual provider or prospective individual provider is not disqualified based on the immediate result of the Washington state patrol background check.

(3) Not be listed on any long-term care abuse and neglect registry used by DSHS;

(4) Be eighteen years of age or older;

(5) Provide picture identification;

(6) Have a Social Security card or authorization to work in the United States; and

(7) Comply with requirements listed in WAC 257-10-180.

WSR 09-15-193
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed July 22, 2009, 11:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-12-066.

Title of Rule and Other Identifying Information: Driver training school program—Administration and enforcement.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA (check in at counter on first floor), on August 25, 2009, at 2:00 p.m.

Date of Intended Adoption: August 26, 2009.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 586-8351, by August 24, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending WAC 308-108-020 to clarify definitions and update the definition of "branch office" to conform to 2009 legislation; WAC 308-108-025 to update fees; WAC 308-108-070 to clarify background check requirements; WAC 308-108-080 to clarify instructor's license application requirements; WAC 308-108-090 to update instructor training requirements; WAC 308-108-110 to revise requirements for traffic safety education vehicles; WAC 308-108-120 to revise written policy requirements and update record-keeping requirements to conform to 2009 legislation; WAC 308-108-140 to revise reporting requirements; WAC 308-108-150 to revise curriculum schedule requirements; WAC 308-108-160 to revise student in-vehicle driver observation requirements; WAC 308-108-170 to clarify requirements for establishing student accomplishment; and creating a new section WAC 308-108-165, prohibiting use of wireless communication devices during instruction.

Reasons Supporting Proposal: Necessary to update driver training school program rules to account for recent legislation and make administrative enhancements.

Statutory Authority for Adoption: RCW 46.82.290.

Statute Being Implemented: Chapter 46.82 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Doron Maniece, Highways-Licenses Building, Olympia, Washington, (360) 902-3850.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

July 22, 2009
D. Maniece
Assistant Director

Driver Training Schools
Draft 2.0

AMENDATORY SECTION (Amending WSR 07-01-069, filed 12/18/06)

WAC 308-108-020 Definitions. The definitions of this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Behind the wheel instruction" means that portion of a traffic safety education course that consists of on-street, dual-controlled vehicle operation or similar instruction given under simulated conditions that has ((~~had prior approval of~~)) been approved by the director.

(2) "Branch office" or "branch classroom" means a facility within a thirty-five mile radius of a driver training school's established place of business, except where the thirty-five mile radius requirement has been waived or extended by the department as provided by RCW 46.82.360 (6)(c), that has been approved by the department for use by the driver training school.

(3) "Engage in a course of instruction" means to enroll in, schedule, collect a fee for, or sign an application for an instruction permit in order to attend or take part in a driver training education course.

(4) "Inactive Instructor" means an instructor with a valid Washington instructor's license who is no longer employed by or otherwise associated with a licensed driver training school.

(5) "Instructor-trainer" means a currently licensed instructor who is training ((~~driving~~)) traffic safety education instructors and who has not less than:

(a) One thousand hours of experience in providing traffic safety education in the past year;

(b) Five years of previous experience in providing traffic safety education; or

(c) One thousand hours or five years experience in the field of traffic safety and proof of training acceptable to the director in how to teach and train others, and not less than three hundred hours of previous experience in training others.

(6) "Records" means all documents, papers and reports required to own a driver training school, including but not limited to:

(a) Vehicle registration, title, insurance policy, and maintenance information;

(b) Business financial documents, such as franchise agreements, corporate documents, bank records, partnership agreements, lease agreements, and purchase and sale agreements; and

(c) Student classroom and behind-the-wheel instruction reports.

(7) "Student" means any person ((~~attending a~~)) enrolled in an approved driver training education course who is at least fifteen years of age.

AMENDATORY SECTION (Amending WSR 07-01-069, filed 12/18/06)

WAC 308-108-025 Fees. The following fees shall be charged by the driver services division, department of licensing:

Title of Fee	Fee
Driver training school license original application	$500.00
Driver training school license renewal application	250.00
Driver training school license transfer	500.00
Branch office or branch classroom original application	250.00
Branch office or branch classroom renewal application	125.00
Instructor's license original application	((~~75.00~~)) 125.00
Instructor's license renewal application	((~~50.00~~)) 100.00
Duplicate license	10.00
Knowledge and/or skill examination	25.00

AMENDATORY SECTION (Amending WSR 07-01-069, filed 12/18/06)

WAC 308-108-070 Background check and fingerprint check. An instructor, owner, or other person affiliated with a school who has contact with students must complete a background check through the Washington state patrol criminal identification system and through the federal bureau of investigation, including a fingerprint check, as required by RCW 46.82.325(1).

(1) An applicant for an instructor's license must complete the check at the time of initial application or, for a currently licensed instructor who has not completed such check within the past five years, at the time of the next application for a license renewal.

(2) An owner must complete the check at the time of initial application for a driver training school license or, for an owner of a currently licensed school who has not completed such check within the past five years, at the time of the next application for a license renewal.

(3) A person affiliated with a school who has contact with students must complete the check at the time of initial affiliation with the school or, for a person who is currently affiliated with a school who has not completed such check within the past five years, within the sixty-days prior to the next application for a license renewal for the school. A person who must complete the check under this subsection at the time of initial affiliation with a school may begin duties following the department's notice that it has received an acceptable local criminal background check through the Washington state patrol criminal identification system, pending the outcome of the fingerprint check using the fingerprint card.

(4) For the purpose of chapter 46.82 RCW, a person affiliated with a school is considered to be a person directly or indirectly interested in the driver training school's business.

AMENDATORY SECTION (Amending WSR 07-01-069, filed 12/18/06)

WAC 308-108-080 Instructor's license—Application. (1) To ensure that an applicant or instructor meets the conditions set out in RCW 46.82.330 (2)(a), the department shall review the complete abstract of driving record for all instructor's license applicants and licensed instructors. For this purpose:

(a) A moving traffic violation is an offense listed as a moving violation in WAC 308-104-160. The department will determine the number of moving traffic violations received by an applicant within a given time period based on the date(s) that the violation(s) occurred.

(b) ((~~An~~)) A drug or alcohol-related traffic violation will be deemed to have occurred if ((~~within the seven-year period immediately preceding the time of application an alcohol-related traffic incident occurred that~~)) it resulted in:

(i) A conviction or finding that a traffic infraction was committed for violation of RCW 46.61.502, 46.61.503, 46.61.504, 46.61.519, 46.61.5195, 46.61.520 (1)(a), 46.61.-522 (1)(b), or 46.61.5249, or a substantially similar law, administrative regulation, local law, ordinance, regulation, or resolution of a political subdivision of this state, the federal government, or any other state;

(ii) An administrative action imposed under RCW 46.20.3101;

(iii) An administrative action imposed under RCW 46.25.090 (1)(a), (b), or (e); or

(iv) Entry into a deferred prosecution agreement for an alcohol-dependency based case.

((~~(c) A driver's license suspension, cancellation, revocation, or denial will be deemed to exist within the preceding five years if any such suspension, cancellation, revocation, or denial has been in effect at any time within the five-year period immediately preceding the time of application.~~))

(2) The instructor's license applicant must submit satisfactory evidence of completion of a course of instruction as approved by the director in the training of drivers at time of initial application.

(3) For instructor's licenses that expire on or after July 1, 2007, each application for renewal of an instructor's license must be accompanied by proof of no less than eight hours of continuing professional development as approved by the director.

(4) Application for initial or renewal of an instructor's license is not complete until the applicant passes any examination requirement for licensure under RCW 46.82.320(1) or 46.82.330 (2)(e).

AMENDATORY SECTION (Amending WSR 07-01-070, filed 12/18/06)

WAC 308-108-090 Instructing instructors in the training of drivers. (1) The course of instruction approved by the director in the training of drivers required under RCW 46.82.330 (2)(d) shall include instruction in driver education classroom methods and principles that prepare an instructor to provide traffic safety education as described in these rules and in state law.

(2) To ensure the quality of the training given, the instruction course must:

(a) Be provided by, and under the direct supervision of:

(i) An institution of higher learning accredited by the Northwest Association of Schools and Colleges or by an accrediting association recognized by the higher education board;

(ii) A licensed private vocational school as that term is defined by RCW 28C.10.020(7); or

(iii) An instructor-trainer.

(b) Be not less than one hundred hours in total length and consist of:

(i) Not less than ((~~fifty~~)) forty hours of instruction in behind the wheel teaching methods;

(ii) Not less than ((~~ten~~)) twenty hours of supervised practice in behind the wheel teaching of driving techniques;

(iii) Not less than forty hours total of instruction that includes all of the following areas:

(A) Education and special education;

(B) Driver education teacher, instructor, or trainer skills training;

(C) Classroom teaching techniques;

(D) Communication skills;

(E) Teaching the concepts of driving and traffic safety to others;

(F) Educational methods, theories and concepts in teaching a driver education course, and knowledge of all aspects of the driving task;

(G) Developing instructional materials and activities that aid student learning and performance;

(H) Defining and describing the nature of the driving task on public highways;

(I) Establishing and maintaining classroom organization;

(J) Managing enrollment, student scheduling, student records, and required reports; and

(K) Planning a course of student instruction with outlines, lesson plans, and student performance evaluation tools.

(3) The department must approve an instructor training course curriculum before use by an instructor-trainer.

(4) Any revision to an approved instructor training course curriculum used by an instructor-trainer must be submitted for review and approval by the department no less than thirty days prior to its use.

(5) The department may consider other instructional methods, instruction providers, or academic instruction in lieu of those listed in subsection (2) of this section.

(6) ((~~Before an instructor training course is given, the instructor-trainer or owner must submit a list of the dates, times, and locations for the training, the names of the persons to be trained, and the name of the instructor-trainer who will be providing training.~~

~~(7)~~)) The department may monitor instructor education courses at any time to ensure that the instructor training requirements of this section are being satisfied.

AMENDATORY SECTION (Amending WSR 07-01-069, filed 12/18/06)

WAC 308-108-110 Traffic safety education vehicles. (1) All vehicles used for student instruction by a commercial driver training school shall:

(a) Carry a minimum twenty-piece ((~~Occupational Safety and Health Act (OSHA)~~)) approved first aid kit, fire extinguisher safely secured in the vehicle and fully charged, and ((~~emergency strobe light or~~)) a reflective ((~~triangles~~)) triangle or two eighteen-inch traffic cones;

(b) ((~~Pass~~)) Maintain an annual vehicle inspection form meeting minimum equipment and safety criteria established by the department that has been conducted by or for the school owner; and

(c) Be used exclusively for driver training purposes at all times when student instruction is being given.

(2) Records of all traffic safety education vehicles used by a commercial driver training school shall:

(a) Be maintained at the school's primary place of business; and

(b) Include the original insurance policy or policies covering the vehicles and copies of the current vehicle registrations and annual vehicle safety inspection report.

AMENDATORY SECTION (Amending WSR 07-01-069, filed 12/18/06)

WAC 308-108-120 Administration. (1) The driver training school's license and all instructor certificates shall be posted in a conspicuous place at the location where instruction takes place. The school license must be posted before engaging students in a course of instruction.

(2) Each driver training school shall adopt and provide for its customers a written policy that includes, but is not limited to:

(a) Enrollment criteria;

(b) Student fees and student fee refunds;

(c) Course failures and course repeats;

(d) The minimum and maximum course duration;

(e) Refusing to allow a student to attend a driver training education course before the age of fifteen years;

(f) Refusing to enroll new students in a driver education course after the first three classes have been completed; and

(g) Information about Washington's intermediate licensing requirements, restrictions, and penalties and a place for parents to initial indicating that they have received the information.

(3) Driver training school owners and instructors shall maintain individual student records on forms provided by the department or on substantially similar forms that have been approved by the department. Student records shall document for each student:

(a) Course attendance, starting, and ending dates;

(b) The dates and times for each session of classroom and behind the wheel instruction;

(c) Classroom and behind the wheel progress and time involvement or flowchart;

(d) Classroom and behind the wheel performance evaluation results;

(e) The name and signature of the instructor who provided each session of classroom and behind the wheel instruction; and

(f) That both the student and parent received intermediate license requirements, restriction, and penalty information.

(4) Student records must be maintained by a driver training school for the past ((~~five~~)) three years from the date instruction has ended.

(5) Driver training school records that must be maintained by a driver training school for the past ((~~five~~)) three years, include but are not limited to:

(a) The school's written curriculum guide;

(b) Insurance policies;

(c) Collision or injury reports;

(d) Traffic safety education vehicle registration records; and

(e) Records of any traffic violations committed by an instructor employed by the school.

(6) Upon the sale or other transfer of a school by its owner, the school and student records shall be transferred to the new owner and become the property and responsibility of the new owner.

(7) The driving school owner must notify the department within thirty days of closing the school and submit all unused traffic safety certificates and student course completion reports to the department.

(8) Class size must not exceed city fire code requirements for the classroom.

(9) Traffic safety education classroom hours shall not overlap between two or more classes.

(10) Failure to renew a school license before it expires will put all related branch office or branch classroom licenses into an inactive status.

(11) Student records are subject to department audit and inspection anytime after ninety days of the school's initial licensing, or as soon as practicable for the department.

(12) Branch office or classroom locations must display an official license issued by the department in a conspicuous place.

AMENDATORY SECTION (Amending WSR 07-01-069, filed 12/18/06)

WAC 308-108-140 Reporting requirements. All driver training school owners shall:

(1) Report to the department within ten days any driving or traffic-related incidents involving an instructor employed by the school, including but not limited to:

(a) Conviction for a traffic violation;

(b) Finding that a traffic infraction has been committed;

(c) Entry into a deferred prosecution agreement; or

(d) Suspension, revocation, cancellation, or denial of driving privileges.

(2) Report to the department within twenty-four hours following any traffic safety education vehicle involved in a traffic collision for which an accident report must be or has been made under the provisions of RCW 46.52.030. Prior to the return to service of any traffic safety education vehicle that has been involved in a collision, the school owner must forward a vehicle inspection report to the department.

(3) Forward to the department by the seventh day of each month, a report of student enrollment in traffic safety education courses provided by the school, including but not limited to:

(a) The start date and end date of any courses provided by the school that are initiated during the reporting period, including the total number of students enrolled in each course;

(b) The names and certificate numbers of all instructors providing classroom and/or behind the wheel instruction for each course;

(c) The names and instruction permit or driver's license numbers or dates of birth of all students enrolled in each course, along with the identifying number of the traffic safety education certificate reserved for each student for issuance upon successful completion of the course.

(4) Not less than annually, ((~~forward to the department~~)) have completed and have on file at the main school location a vehicle inspection report as required under WAC 308-108-110 (1)(b) for all traffic safety education vehicles in use by the school.

(5) Report to the department within ten days any new vehicles used by the school for instructional purposes or any vehicles taken out of service.

AMENDATORY SECTION (Amending WSR 07-01-069, filed 12/18/06)

WAC 308-108-150 Curriculum schedule. A driver training school may offer classroom and behind the wheel instruction to students throughout the year. In order to be approved by the director, a curriculum schedule must satisfy or include the following requirements:

(1) Classroom and behind the wheel instruction that is complementary. This means that classroom instruction is integrated in a timely manner with behind the wheel instruction;

(2) Having students under age eighteen complete no more than two hours of classroom instruction during any single day, except for make-up classes which shall be no more than two additional hours of class not to exceed three total make-up classes during the traffic safety education course, and no more than one hour of behind the wheel instruction during any single day;

(3) For students under the age of eighteen to meet the traffic safety education requirement of RCW 46.20.100, instruction that:

(a) Includes not less than thirty hours of classroom instruction; ((~~and~~))

(b) Meets the behind the wheel instruction and observation requirements of WAC 308-108-160;

(c) Consists of at least one hour minimum and no more than two hours maximum of class session during a single day, except when adding a make-up class as provided in subsection (2) of this section, in which case classroom instruction must not exceed four hours in a single day;

(d) With the exception of make-up lessons, ensures that all students in a classroom session must be on the same lesson. Open enrollment or self-paced instruction is not permitted; and

(e) Ensures that each traffic safety education classroom course is at least fifty-percent instructor-led verbal instruction consisting of:

(i) In-person training;

(ii) Teacher and student interaction; and

(iii) Questions and answers;

(4) Classroom and behind the wheel instruction in a course that is scheduled for not less than thirty days ((~~and not more than twenty-six~~)) in which lessons must be in contiguous weeks ((~~in length~~));

(5) ((~~Student enrollment in and attendance of classes no later than the third class session after the start date of the course. Once enrollment is closed, no new students may be enrolled in that traffic safety education course or participate in the classroom instruction or behind the wheel instruction and observation for that course~~)) Students may not enroll in a traffic safety education course after the third class session of any given course;

(6) ((~~Arrangements for any missed classroom sessions to be made up within the maximum twenty-six week length of the course.~~)) All make-up assignments and instruction must be equivalent to the instruction given during the missed sessions;

(7) Distributing to students instructional material developed by the department and the federally designated organ procurement organization for Washington state relating to organ and tissue donation awareness education; ((~~and~~))

(8) Review and approval of the local school curriculum by the department as part of the initial application for a school license. To help ensure that minimum standards of instruction are met, the local school curriculum must include but is not limited to the following:

(a) Comprehensive elements of classroom and behind the wheel instruction as defined by the department;

(b) Comprehensive written and behind the wheel examinations, to include:

(i) Written examinations as submitted to and approved by the department; and

(ii) Behind the wheel examination criteria as approved by the department;

(c) A flow chart that indicates how the classroom and behind the wheel instruction are integrated; ((~~and~~))

(d) Information on the state of Washington's intermediate license requirements, restrictions, violations, and sanctions for violation of these requirements; and

(e) A designated time for a parent night that is no less than one hour, which shall not be a part of the thirty hours required for student training, and must include:

(i) Instruction on the parent responsibilities and the importance of parent involvement with their teen driver;

(ii) Information on intermediate license laws, restrictions, and sanctions;

(iii) An introduction to the parent guide to teen driving; and

(iv) A questions and answers period; and

(9) No more than thirty-five students are to be enrolled in any single class.

AMENDATORY SECTION (Amending WSR 07-01-070, filed 12/18/06)

WAC 308-108-160 Behind the wheel instruction and observation. (1) Instruction provided to students under the age of eighteen must include:

(a) Behind the wheel instruction consisting of:

(i) Not less than six hours of on-street behind the wheel vehicle operation under the direct supervision and direction of a licensed instructor; or

(ii) Five or more hours of on-street behind the wheel vehicle operation and four or more hours of driving simulation instruction under the direct supervision and direction of a licensed instructor; and

(b) ((~~One~~)) Four or more hours of additional in-vehicle driver observation.

(2) Behind the wheel instruction must be documented on a form provided or approved by the department, including the time the instruction was conducted, the signature of the instructor, and initials of the student.

AMENDATORY SECTION (Amending WSR 07-01-069, filed 12/18/06)

WAC 308-108-170 Ensuring student accomplishment. (1) Each driver training school must have a written curriculum guide available to each instructor and such guide shall be used for student instruction.

(2) In order to receive a traffic safety education certificate, all students under the age of eighteen must satisfactorily complete all portions of the course of instruction included in the student curriculum as approved by the driver instructors' advisory committee.

(3) In order to satisfactorily complete a school's driver training course, all students under the age of eighteen must pass a comprehensive driving knowledge and skills test or tests ((~~meeting~~)) that deals with all or many of the relevant details of the course curriculum that meets the standards established by the department.

(4) Each driver training school must assess the needs and progress of students and give appropriate direction for additional driving experience and/or parent guided practice.

NEW SECTION

WAC 308-108-165 Prohibition on wireless communication devices during instruction. (1) Driving school instructors must not use wireless communication devices, hands-free or otherwise, that distract from or interfere with the behind the wheel or classroom instruction task. This includes the use of any communications devices that result in verbal or written text responses while conducting instruction. While supervising the operation of a vehicle, instructors are additionally prohibited from sending or receiving messages with these devices. Ring volumes for these devices, or any phone in proximity, are to be silenced so as not to interfere in any way with the student learning or interacting with the instructor.

(2) This section does not apply to voice activated GPS devices or classroom devices that are being used as part of an approved curriculum. This section also does not preclude the use of devices to report illegal activity, summon medical or other emergency help, or prevent injury to a person or property, as permitted under RCW 46.61.667.

(3) An unreasonable risk associated with a failure to obey this section is a violation of RCW 18.235.130(4).

WSR 09-15-194
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed July 22, 2009, 11:35 a.m.]

Continuance of WSR 09-13-101.

Preproposal statement of inquiry was filed as WSR 06-22-105.

Title of Rule and Other Identifying Information: Chapter 308-110 WAC, Motorcycle safety program.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA (check in at counter on first floor), on August 27, 2009, at 3:00 p.m.

Date of Intended Adoption: August 28, 2009.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 586-8351, by August 26, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Create new chapter 308-110 WAC to establish basic requirements governing the operations and scope of motorcycle skills education courses offered by commercial and noncommercial entities, under contract with the department of licensing. Establish policies and procedures for monitoring and ensuring the ongoing quality of the motorcycle safety program. Provide definitions, application requirements, training requirements, and reporting requirements. Establish administration requirements and provide for audits and inspections. Provide for disciplinary action, suspension, and decertification.

Statutory Authority for Adoption: RCW 46.81A.020, 46.01.110.

Statute Being Implemented: RCW 46.20.520 and chapter 46.81A RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Doron Maniece, Highways-Licenses Building, Olympia, Washington, (360) 902-3850.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

July 22, 2009
D. Maniece
Assistant Director

Chapter 308-110 WAC
Motorcycle Skills Education Program
Draft 1.0

NEW SECTION

WAC 308-110-010 Adoption—Authority. Pursuant to chapter 46.81A RCW, this chapter is adopted for the purpose of establishing basic requirements governing the operations and scope of motorcycle safety programs offered by commercial businesses and non-commercial entities, under contract with the department, and includes policies and procedures for monitoring and ensuring the ongoing quality of the motorcycle safety program.

NEW SECTION

WAC 308-110-020 Definitions. The definitions of this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Chief instructor" means an instructor holding WMSP Chief Instructor and Motorcycle Safety Foundation (MSF) RiderCoach Trainer certification. A chief instructor may be employed by WMSP or hold a contract with WMSP to perform technical functions, training, and evaluations.

(2) "Department" means the department of licensing.

(3) "Director" means the director of the department of licensing.

(4) "Instructor" means a person, approved by the director, to train students in motorcycle skills education.

(5) "Instructor candidate" means a person, approved by the director, under training to become an instructor.

(6) "Instructor preparation (IP) course" means a series of training events to prepare instructor candidates to certify as instructors.

(7) "Mentor instructor" means an instructor certified by WMSP who assists the program with quality assurance and instructor development activities.

(8) "Motorcycle skills education program" means a motorcycle rider skills training program to be administered by the department.

(9) "Range" means the area of pavement, approved by the director, on which the riding instruction takes place.

(10) "Sponsor" means a person, business, organization, college, university, or club, who contract with WMSP to provide rider skills training. Sponsors are not agents or employees of the department. Sponsors will conduct courses using only the approved curriculum following all policies and procedures of WMSP.

(11) "Sidecar/Trike Education Program" (S/TEP) means the approved curriculum for three-wheel training.

(12) "Student" means any person enrolled in a motorcycle skills education course.

(13) "Training motorcycle" means either:

(a) A motorcycle used for rider education that may be on loan from a motorcycle dealer, owned by the sponsor, or owned by the department; or

(b) A privately owned motorcycle used by a student attending a WMSP contracted course.

(14) "Training site" means a physical address where the riding instruction portion of motorcycle skills education is conducted. Training sites may include more than one range.

(15) "Trike" means a three-wheeled motorcycle as defined in RCW 46.04.330.

(16) "Washington Motorcycle Safety Program" (WMSP) means the department's motorcycle skills education program.

NEW SECTION

WAC 308-110-030 Instructor candidates—Application—Background check and fingerprint check. (1) Unless waived by the department, an applicant for instructor certification must provide a complete criminal background check, including a fingerprint check and driving abstract.

(2) The department shall review the instructor candidate's criminal background check at the time of initial application. A background check would be considered unacceptable if it contains any conviction of a crime involving violence.

(3) The department shall review the instructor candidate's complete driving abstract at the time of initial application. A driving record would be considered unacceptable if it contains:

(a) An alcohol-related traffic violation within a seven-year period immediately preceding the time of application that resulted in:

(i) A conviction or finding that a traffic infraction was committed for violation of the following:

(A) RCW 46.61.502: Driving under the influence;

(B) RCW 46.61.503: Driver under twenty-one consuming alcohol – Penalties;

(C) RCW 46.61.504: Physical control of vehicle under the influence;

(D) RCW 46.61.519: Alcoholic beverages—Drinking or open container in vehicle on highway—Exceptions;

(E) RCW 46.61.5195: Disguising alcoholic beverage container;

(F) RCW 46.61.520 (1)(a): Vehicular homicide—Penalty;

(G) RCW 46.61.522 (1)(b): Vehicular assault—Penalty; or

(H) RCW 46.61.5249: Negligent driving—First degree; or

(ii) A conviction or finding that a traffic infraction was committed for violation of a substantially similar law, administrative regulation, local law, ordinance, regulation, or resolution of a political subdivision of this state, the federal government, or any other state;

(b) An administrative action imposed under RCW 46.20.3101 within a seven-year period immediately preceding the time of application;

(c) An administrative action imposed under RCW 46.25.090 within a seven-year period immediately preceding the time of application;

(d) Entry into a deferred prosecution agreement for an alcohol dependency-based case within a seven-year period immediately preceding the time of application;

(e) A driver's license suspension, cancellation, revocation, or denial any time within the five-year period immediately preceding the time of application.

(f) More than three moving traffic violations within a twelve-month period or more than four moving traffic violations within a twenty-four-month period, as defined in WAC 308-104-160.

NEW SECTION

WAC 308-110-040 Instructor training. (1) Initial training for instructor candidates will prepare them to teach motorcycle rider safety courses as required under RCW 46.81A.020 (3)(a). The training shall include instruction in motorcycle safety education classroom methods, range management, riding skills instruction, and other principles that prepare an instructor to provide motorcycle safety education as described in these rules and in state law.

(2) The instruction course must be provided by, and under the direct supervision of, a certified chief instructor. The course shall consist of not less than eighty total hours of the approved curriculum covering the following areas:

(a) Education principles and techniques;

(b) Motorcycle riding skills;

(c) Classroom teaching techniques;

(d) Communication skills; and

(e) Course administration.

The department may monitor sponsor-provided instructor candidate training at any time to ensure that the instructor training requirements of this section are being satisfied.

NEW SECTION

WAC 308-110-050 Instructor requirements. All candidates for instructor training shall meet the following minimum requirements:

(1) Be a high school graduate, or equivalent, and be at least twenty-one years of age.

(2) Pass all background checks as required by WAC 308-110-030.

(3) Possess a valid Washington driver license with proper motorcycle endorsement.

(4) Be an experienced motorcyclist who owns and regularly operates a street-legal, registered motorcycle, side-car equipped motorcycle, or trike that complies with all applicable vehicle laws and codes.

(5) Have successfully completed a novice rider course (two-wheel candidate), or basic S/TEP course (three-wheel candidate), within twelve months of the IP course.

(6) Be willing to maintain professional conduct as defined by the director-approved curriculum and the WMSP policies and procedures.

(7) Be in good physical condition. Instructors can have no medical conditions inconsistent with the performance of all instructor duties.

(8) Have a current first aid and cardiopulmonary resuscitation (CPR) certification approved by the program coordinator.

NEW SECTION

WAC 308-110-060 Administration. (1) Sponsors must have written policies covering registration fee collection and refund, drop-out, counsel-out, no-show, and retest guidelines. These policies are to be provided to students before the commencement of class.

(2) Sponsors shall maintain individual student records on forms provided by the department or on substantially similar forms that have been approved by the department. Required information is contained within the current version of the policies and procedures.

(3) Student records must be maintained by sponsors for a period of six years.

NEW SECTION

WAC 308-110-070 Audits and inspections. (1) The department may require that rider education sponsors submit to an inspection or review of the school's operations and records at any time during regular business hours.

(2) The department may schedule annual audits of each sponsor's facilities, operations, records, and procedures.

(3) Records shall be immediately available for inspection at a sponsor's primary place of business.

NEW SECTION

WAC 308-110-080 Reporting requirements. All rider education sponsors shall report to the department:

(1) Any incident involving injury to a student within seventy-two hours of the incident.

(2) Any impending legal action against the sponsor within twenty-four hours of notification of the action.

(3) A properly completed class invoice within twenty calendar days of course completion. The invoice must be accompanied by a course completion report.

(4) Other reports as required by the current version of the policies and procedures.

NEW SECTION

WAC 308-110-090 Disciplinary action. (1) Rider education sponsors and instructors are responsible for knowing and complying with the requirements of WMSP's policies and procedures, as well as the current rider education curriculum.

(2) Any failure to comply with these requirements may lead to disciplinary action affecting a sponsor's contract, instructor's certification, or ability to otherwise provide rider skills education training.

NEW SECTION

WAC 308-110-100 Instructor—Suspension or decertification. (1) WMSP instructor certification may be suspended by the WMSP program manager for up to ninety days for documented behavior that is inappropriate, inadequate, or for failing to maintain standards as defined by WMSP policies and procedures, instructor standards and responsibilities, and/or curriculum principles.

(2) To be reinstated, a suspended instructor must:

(a) Develop a written plan for corrective action in cooperation with the sponsor. The written corrective action plan must be approved by WMSP.

(b) The suspended instructor will teach a minimum of one novice rider course or basic sidecar/trike class, or more as necessary, under the supervision of a chief instructor or WMSP mentor. For each class, a mentor class report will be submitted.

(c) The suspended instructor must demonstrate a working knowledge of WMSP policies and procedures, instructor standards and responsibilities, and curriculum principles.

(d) Following the observed class, the sponsor will schedule a time with the WMSP coordinator or designee to evaluate the suspended instructor. The sponsor and WMSP coordinator or designee will review the course reports. The WMSP coordinator or designee will make a determination if the necessary corrections were implemented satisfactorily.

(3) Suspended instructors must have instructor status reinstated prior to being allowed to instruct any portion of a training course without the supervision of a mentor or WMSP representative.

(4) The WMSP program manager may decertify an instructor for the following actions:

(a) A conviction of a crime involving violence.

(b) An unacceptable driving record as defined in WAC 308-110-030.

(c) Documented unprofessional conduct, or conduct inconsistent with the program standards, as defined in the WMSP policies and procedures.

(d) An inability to meet curriculum standards.

(4) Instructors may appeal a suspension or decertification by requesting a hearing before a department arbitrator. The arbitrator, following the hearing, will make his or her recommendations to the director, who will make a final determination in the matter.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 09-15-195
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed July 22, 2009, 11:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-09-127.

Title of Rule and Other Identifying Information: Chapter 308-107 WAC, Ignition interlock driver's license—Application, eligibility, requirements, deadlines, duration.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA (check in at counter on first floor), on August 26, 2009, at 3:00 p.m.

Date of Intended Adoption: August 27, 2009.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 586-8351, by August 25, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC 308-107-020 to clarify application and eligibility requirements for an ignition interlock driver's license, impose a deadline for meeting requirements after an application has been submitted, and add information on license duration.

Reasons Supporting Proposal: Administrative review and informal advice from attorney general's office.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.385.

Statute Being Implemented: RCW 46.20.385.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Doron Maniece, Highways-Licenses Building, Olympia, Washington, (360) 902-3850.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

July 22, 2009
D. Maniece
Assistant Director

AMENDATORY SECTION (Amending WSR 08-24-059, filed 11/26/08)

WAC 308-107-020 Ignition interlock license—Application—License term. (1) A person applying for an ignition interlock driver's license must meet the requirements of RCW 46.20.380 and 46.20.385, and submit ((~~a nonrefundable fee as required by RCW 46.20.380, and submit an application on a form provided by the department~~)) the following:

(a) A nonrefundable application fee of one hundred dollars;

(b) An application on a form provided by the department;

(c) Satisfactory proof of financial responsibility under chapter 46.29 RCW; and

(d) Proof from an installer approved by the department that a functioning ignition interlock device has been installed.

If all the requirements for an ignition interlock driver's license are not met within thirty days after the application has been accepted by the department, the license will be denied.

(2) In the event of an alcohol-related deferred prosecution, the ignition interlock driver's license requirement shall extend for a two-year term from the date the deferral was granted.

(3) Reapplication for the ignition interlock driver's license may be required whenever a new administrative suspension or revocation is imposed.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WSR 09-15-197
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed July 22, 2009, 11:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-12-014.

Title of Rule and Other Identifying Information: WAC 308-125-120 Fees and charges.

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Conference Room 2209, Olympia, WA, on August 27, 2009, at 10:00 a.m.

Date of Intended Adoption: September 22, 2009.

Submit Written Comments to: Ralph C. Birkedahl, P.O. Box 9015, Olympia, WA 98507-9015, e-mail rbirkedahl@dol.wa.gov, fax (360) 570-4981, by August 21, 2009.

Assistance for Persons with Disabilities: Contact Joan Robinson by August 21, 2009, TTY (360) 664-8885 or (360) 664-6504.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To increase fees identified below to defray operating costs for the administration of the real estate appraiser program: Increase WAC 308-125-120(1), Application fee, from $246.00 to $370.00; increase WAC 308-125-120(2), Examination, from 106.00 to 120.00; increase WAC 308-125-120(3), Reexamination, from 106.00 to 120.00; increase WAC 308-125-120(4), Original certification, from 206.00 to 250.00; increase WAC 308-125-120(5), Certification renewal, from 407.00 to 530.00 increase WAC 308-125-120(7), Duplicate certificate, from 28.00 to 30.00; increase WAC 308-125-120(8), Certification history record, from 27.00 to 30.00; increase WAC 308-125-120(9), Application for reciprocity, from 246.00 to 370.00; increase WAC 308-125-120(10), Original certification via reciprocity, from 206.00 to 250.00; increase WAC 308-125-120(12), Trainee registration, from 100.00 to 200.00; and increase WAC 308-125-120(13), Trainee registration renewal, from 100.00 to 200.00.

Reasons Supporting Proposal: Under the provisions of RCW 43.24.086, the cost of each professional licensing program shall be borne by the members of the profession. The director of the department of licensing is charged with setting gees [fees] at a level sufficient to defray the costs of administering the program. Projected revenue for the 2009-2011 biennium from licensing fees is not sufficient to cover operating costs for the program. Projections of new entrants into the profession have not been realized and licensees have opted not to renew due to market conditions and new restrictions within the industry. The program has an increase in

consumer complaints which will increase the need for staff training, travel, investigation and legal support.

Statutory Authority for Adoption: RCW 18.140.050, 42.24.086.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The real estate appraiser program was established in compliance with Title XI of the Financial Institutions Recovery, Reform and Enforcement Act of 1989. The program is required to be self-supporting.

Name of Proponent: Department of licensing, real estate appraiser program, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ralph C. Birkedahl, Olympia, (360) 664-6504.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The increases do not impose unreasonable costs on businesses and are exempt from small business economic impact statement preparation under RCW 19.85.030. The proposed rule also adjusts fees with legislative approval.

A cost-benefit analysis is not required under RCW 34.05.328. This rule change sets or adjusts fees with legislative approval.

July 22, 2009
Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-06-069, filed 2/28/06, effective 4/1/06)

WAC 308-125-120 Fees and charges. The following fees shall be paid under the provisions of chapter 18.140 RCW:

	Title of Fee	Fee
(1)	Application for examination	$((~~246.00~~)) 370.00
(2)	Examination	((~~106.00~~)) 120.00**
(3)	Reexamination	((~~106.00~~)) 120.00**
(4)	Original certification	((~~206.00~~)) 250.00*
(5)	Certification renewal	((~~407.00~~)) 530.00*
(6)	Late renewal penalty	38.00
(7)	Duplicate certificate	((~~28.00~~)) 30.00
(8)	Certification history record	((~~27.00~~)) 30.00
(9)	Application for reciprocity	((~~246.00~~)) 370.00
(10)	Original certification via reciprocity	((~~206.00~~)) 250.00*
(11)	Temporary practice	150.00
(12)	Trainee registration	((~~100.00~~)) 200.00
(13)	Trainee registration renewal	((~~100.00~~)) 200.00

* Proposed fees for these categories marked with an asterisk include an estimated $((~~25.00~~)) 50.00 to be submitted by the state to Federal Government. Title XI, SEC. 1109 requires each state to submit a roster listing of state certified appraisers to the Appraiser Subcommittee "no less than annually." The state is also required to collect from such individuals who perform appraisals in federally related transactions, an annual registry fee of "not more than $((~~50~~)) 25," such fees to be transmitted by the state to the federal government on an annual basis.

** Charges for categories marked with a double asterisk are determined by contract with an outside testing service.