

WSR 09-17-013
PERMANENT RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY

[Filed August 6, 2009, 11:29 a.m., effective September 8, 2009]

Effective Date of Rule: September 8, 2009.

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

Citation of Existing Rules Affected by this Order: Amending SRCAA Regulation I, Article IX and Section 10.09.

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

Other Authority: Chapter 70.94 RCW, 42 U.S.C. 7401 et seq., 42 U.S.C. 7412.

Adopted under notice filed as WSR 09-13-028 on June 8, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 6, 2009.

Matt Holmquist
Compliance Administrator

AMENDATORY SECTION

REGULATION I, SECTION 9.02 DEFINITIONS

A. AHERA Building Inspector means a person who has successfully completed the training requirements for a building inspector established by EPA Asbestos Model Accredita-

tion Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

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

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

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

E. Asbestos-Containing Waste Material means any waste that contains or is contaminated with asbestos-containing material, except for nonfriable asbestos-containing roofing that remains nonfriable. Asbestos-containing waste material includes asbestos-containing material that has been removed from a structure, disturbed, or deteriorated in a way that it is no longer an integral part of the structure or component, asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or high efficiency particulate air (HEPA) filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

F. Asbestos Project means any activity involving the abatement, renovation, demolition, removal, salvage, clean-up or disposal of asbestos-containing material, or any other action or inaction that disturbs or is likely to disturb any asbestos-containing material. It includes the removal and disposal of asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released nor does it include nonfriable asbestos-containing roofing material that will not be rendered friable.

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

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

I. Contiguous means touching or adjoining (~~properties adjoining one another or in close proximity (e.g., structures~~

separated only by a public roadway) that have the same property owner)).

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

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

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

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

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

~~(N)~~ O. Friable Asbestos-Containing Material means asbestos-containing material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Each of these descriptions is separate and distinct, meaning the term includes asbestos-containing material that, when dry, can be:

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

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

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

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

~~(O)~~ P. Leak-Tight Container means a dust-tight and liquid tight container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

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

dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal).

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

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

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

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

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

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

~~(S)~~ T. Owner's Agent means any person who leases, operates, controls, or is responsible for an asbestos project, renovation, demolition, or property subject to Article IX of this Regulation. It also includes the person(s) submitting a notification pursuant to Section 9.04 of this Regulation and/or performing the asbestos survey.

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

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

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

~~(W)~~ X. Surfacing Material means material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fireproofing material on structural members, or other material on surfaces for decorative purposes.

~~(X)~~ Y. Suspect Asbestos-Containing Material means material that has historically contained asbestos including,

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

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

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

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

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

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

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

AMENDATORY SECTION

REGULATION I, SECTION 9.03 ASBESTOS SURVEY REQUIREMENTS

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

B. Asbestos Survey Procedures.

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

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

lected and analyzed pursuant to Section 9.02.D of this Regulation to determine that material does not contain asbestos.

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

C. Asbestos Survey Report.

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

1. General Information.

a. Date that the inspection was performed;

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

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

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

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

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

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

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

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

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

1) Laboratory name, address and NVLAP certification number;

2) Bulk sample numbers;

3) Bulk sample descriptions;

4) Bulk sample results showing asbestos content; and

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

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

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

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

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

D. Asbestos Survey Posting.

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

the owner's agent in a readily accessible and visible area at the work site for all persons at the work site.

E. Asbestos Survey Retention.

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

F. Exceptions.

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

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

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

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

3. Alternate Asbestos Survey

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

4. Demolition by Fire Fighting Instruction Fires.

Pursuant to RCW 52.12.150(6), asbestos surveys need not be performed by an AHERA Building Inspector. How-

ever, pursuant to Section 9.04.A.6 of this Regulation, the project fee in Section 10.09 is waived for any demolition performed in accordance with RCW 52.12.150(6), where the good faith inspection referred to in RCW 52.12.150(6) is an asbestos survey performed by an AHERA Building Inspector, as required in Section 9.03.A-E of this Regulation.

5. Underground Storage Tanks.

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

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

AMENDATORY SECTION

REGULATION I, SECTION 9.04 NOTIFICATION REQUIREMENTS

A. General Requirements.

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

1. When the Notification Waiting Period Begins

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

2. (~~Asbestos~~) Project Duration

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

3. Multiple Asbestos Projects or Demolitions.

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

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

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

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

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

4. Notification Expiration.

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

5. Record Keeping.

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

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

6. Notification Exceptions.

a. Asbestos Project Thresholds.

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

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

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

c. Owner-Occupied, Single-Family Residences.

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

d. Underground Storage Tanks.

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

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

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

f. Demolition by Fire Fighting Instruction Fires.

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

g. Abandoned Asbestos-Containing Material.

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

h. Emergencies.

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

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

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

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

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

i. State of Emergency.

If a state of emergency is declared by an authorized local, state, or federal governmental official due to a storm, flooding, or other disaster, the Control Officer may temporarily waive part or all of the project fee(s) by written authorization. The written authorization shall reference the appli-

cable state of emergency, what fee(s) will be waived, to what extent the fee(s) will be waived, and the effective date(s) of the fee(s) waiver.

B. Amendments.

1. Mandatory Amendments.

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

a. Project Type.

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

b. Job Size.

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

c. Type of Asbestos.

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

d. Start Date.

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

e. Completion Date.

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

2. Opportunity for Amendment.

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

In no case shall an amendment be accepted by the Agency if it is filed after the last completion date on record. Where the notification project type indicates asbestos removal only, the last completion date on record refers to the last asbestos project completion date on record. Where the notification project type indicates asbestos removal and demolition or demolition with no asbestos removal, the last completion date on record is 365 days from the earliest original

notification start date. In the case of additional work to be performed after the last completion date on record, a new notification shall be submitted to the Agency and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09 of Article X of this Regulation.

b. Canceled Notification.

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

c. Adding Structures or Changing Project Sites.

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

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

AMENDATORY SECTION

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

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

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

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

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

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

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

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

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

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

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

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

2. AWP Contents.

The AWP must contain all of the following information:

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

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

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

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

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

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

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

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

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

3. Asbestos Survey.

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

4. AWP Procedures.

The AWP must identify in detail all procedures that will be followed for controlling asbestos emissions during the asbestos project (e.g., during asbestos removal, when work-

ers are off-site, etc.). Unless alternate procedures are specified in the AWP by an AHERA Project Designer who is also a Certified Industrial Hygienist or an AHERA Project Designer who is also a Licensed Professional Engineer, the AWP shall include all of the following requirements in Section 9.08.A.4.a-f of this Regulation:

a. Controlled Area.

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

b. Wetting.

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

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

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

c. Asbestos-Containing Waste Materials.

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

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

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

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

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

d. Air Monitoring.

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

1) The procedures shall require that any air sampling cassette(s) that become(s) overloaded with dust be immediately replaced. Work shall stop until an AHERA Project Designer (who is also a Certified Industrial Hygienist or a

Licensed Professional Engineer) has re-evaluated the engineering controls for dust control, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

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

e. Competent Person.

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

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

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

f. Separation of Materials.

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

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

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

5. Visible Emissions.

No visible emissions shall result from an asbestos project.

6. Record Keeping.

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

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

7. Other Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Determination of a Hazardous Condition.

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

3. AWP Contents.

The AWP must contain all of the following information:

- a. Date the work area was evaluated by the AHERA Project Designer that prepared the AWP;
- b. Site address(es)/location(s) where the inspection was performed;
- c. A copy of the hazardous conditions determination from a government official or licensed structural engineer;
- d. If an asbestos survey was performed, incorporate it by reference;
- e. All procedures that will be followed for controlling asbestos emissions during the asbestos project;
- f. The AHERA Project Designer that prepares the AWP must state in the AWP, that in his/her professional opinion, the control methods identified in the AWP will be protective of public health; and
- g. Signature of the AHERA Project Designer that prepared the AWP, AHERA Project Designer certification number, and date certification expires.

4. AWP Procedures.

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

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

AMENDATORY SECTION

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

A. Disposal Within 10 Days of Removal.

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

B. Waste Tracking Requirements.

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

1. Maintain waste shipment records, beginning prior to transport, using a separate form for each waste generator that includes all of the following information:
 - a. The name, address, and telephone number of the waste generator.
 - b. The approximate quantity in cubic meters or cubic yards.
 - c. The name and telephone number of the disposal site operator.
 - d. The name and physical site location of the disposal site.
 - e. The date transported.
 - f. The name, address, and telephone number of the transporter.
 - g. A certification that the contents of the consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition to transport by highway according to applicable waste transport regulations.

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

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

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

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

C. Temporary Storage Site.

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

1. A complete application for Temporary Storage of asbestos containing waste material is submitted to and approved by the Agency.
2. The application must be accompanied by a non-refundable fee as set in the fee schedule.
3. Accumulated asbestos-containing waste material shall be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons.
4. All asbestos-containing waste material shall be stored in leak-tight containers which are maintained in leak-tight condition.
5. The storage area must be locked except during transfer of asbestos-containing waste material.
6. Storage, transportation, disposal, and return of the waste shipment record to the waste generator shall not exceed 90 calendar days.
7. Asbestos-Containing Waste Material Temporary Storage Permits approved by the Agency are valid for one calendar year unless a different time frame is specified in the permit.

D. Disposal of Asbestos Cement Pipe.

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

disposed of at a waste disposal site authorized to accept such waste.

AMENDATORY SECTION

REGULATION I, SECTION 9.10 COMPLIANCE WITH OTHER RULES

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

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

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

AMENDATORY SECTION

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

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

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

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

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

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

WSR 09-18-018

PERMANENT RULES

SECRETARY OF STATE

[Filed August 21, 2009, 4:09 p.m., effective September 21, 2009]

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

Purpose: An incorrect RCW citation needs to be fixed in WAC 434-840-080. WAC 434-840-080(4) refers to RCW 40.24.030 (1)(b). Due to a law change in 2008 (SB 6339), the reference is no longer correct. The reference will be changed to RCW 40.24.030.

Citation of Existing Rules Affected by this Order: Amending WAC 434-840-080.

Statutory Authority for Adoption: RCW 40.24.090.

Adopted under notice filed as WSR 09-13-039 on June 10, 2009.

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

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

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

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

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

Date Adopted: August 18, 2009.

Steve Excell
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 05-13-059, filed 6/9/05, effective 7/10/05)

WAC 434-840-080 Service of process. (1) The secretary of state shall be an agent of the program participant upon whom any summons, writ, notice, demand, or process may be served.

(2) Service on the secretary of state of any such summons, writ, demand, notice, or process shall be made by mailing to the substitute address or by delivering to the secretary of state at his/her office in Olympia, WA: (a) Two copies of the summons, writ, notice, demand, or process; and (b) twenty-five dollars service-of-process fee for each action or document filed.

(3) If a summons, writ, notice, demand, or process is served on the secretary of state, the secretary of state shall immediately forward a copy to the program participant at the participant's current mailing address shown on the records.

(4) The secretary of state shall maintain in the program participant's file, a record of all summonses, writs, notices, demands, and processes served upon the secretary of state for that participant under RCW 40.24.030 (~~((1)(b))~~), which shall include the date of such service and the secretary of state's action.

WSR 09-18-032

PERMANENT RULES

FOREST PRACTICES BOARD

[Filed August 25, 2009, 11:41 a.m., effective September 25, 2009]

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

Purpose: Amend WAC 222-30-021 to change timber harvest and leave tree requirements in riparian management zones adjacent to Type S and F Waters and to respond to the scientific study completed by the forest practices board's cooperative monitoring, evaluation, and research committee.

Citation of Existing Rules Affected by this Order: Amending WAC 222-30-021.

Statutory Authority for Adoption: RCW 76.09.040.

Other Authority: RCW 76.09.370.

Adopted under notice filed as WSR 09-13-022 on June 5, 2009.

A final cost-benefit analysis is available by contacting Gretchen Robinson, Department of Natural Resources, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1705, fax (360) 902-1428, e-mail gretchen.robinson@dnr.wa.gov.

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

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

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

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

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

Date Adopted: August 12, 2009.

Peter Goldmark
Chair

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-30-021 *Western Washington riparian management zones. These rules apply to all typed waters on forest land in Western Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in this section. See ~~((the))~~ board manual section 7 for riparian design and layout guidelines.

*** (1) Western Washington RMZs for Type S and F Waters** have three zones: The core zone is nearest to the water, the inner zone is the middle zone, and the outer zone is furthest from the water. (See definitions in WAC 222-16-010.) RMZ dimensions vary depending on the site class of the land, the management harvest option, and the bankfull width of the stream. See tables for management options 1 and 2 below.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the inner zone RMZ rules. See ~~((the))~~ board manual section 1.

(a) **Core zones.** No timber harvest or construction is allowed in the core zone except operations related to forest roads as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors in the core zone must be left on the site. Any trees cut as a result of road construction to cross a stream may be removed from the site, unless used as part of a large woody debris placement strategy or as needed to reach stand requirements.

(b) **Inner zones.** Forest practices in the inner zone must be conducted in such a way as to meet or exceed stand requirements to achieve the goal in WAC 222-30-010(2). The width of the inner zone is determined by site class, bankfull width, and management option. Timber harvest in this zone must be consistent with the stand requirements in order to reach the desired future condition targets.

"Stand requirement" means a number of trees per acre, the basal area and the proportion of conifer in the combined inner zone and adjacent core zone so that the growth of the trees would meet desired future conditions. The following

table defines basal area targets when the stand is ~~((140))~~ one hundred forty years old.

Site Class	Desired future condition target basal area per acre (at 140 years)
I	((285)) <u>325</u> sq. ft.
II	((275)) <u>325</u> sq. ft.
III	((258)) <u>325</u> sq. ft.
IV	((224)) <u>325</u> sq. ft.
V	((190)) <u>325</u> sq. ft.

Growth modeling is necessary to calculate whether a particular stand meets stand requirement and is on a trajectory towards these desired future condition basal area target. The appropriate growth model will be based on stand characteristics and will include at a minimum, the following components: The number of trees by diameter class, the percent of conifer and hardwood, and the age of the stand. See ~~((the))~~ board manual section 7.

(i) **Hardwood conversion in the inner zone.** When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone, except in connection with hardwood conversion.

(A) The landowner may elect to convert hardwood-dominated stands in the **inner zone** to conifer-dominated stands. Harvesting and replanting shall be in accordance with the following limits:

(I) Conversion activities in the **inner zone** of any harvest unit are only allowed where all of the following are present:

- Existing stands in the combined core and inner zone do not meet stand requirements (WAC 222-30-021 (1)(b));
- There are fewer than ~~((57))~~ fifty-seven conifer trees per acre ~~((8))~~ eight inches or larger dbh in the conversion area;
- There are fewer than ~~((100))~~ one hundred conifer trees per acre larger than ~~((4))~~ four inches dbh in the conversion area;
- There is evidence (such as conifer stumps, historical photos, or a conifer understory) that the conversion area can be successfully reforested with conifer and support the development of conifer stands;
- The landowner owns ~~((500))~~ five hundred feet upstream and ~~((500))~~ five hundred feet downstream of the harvest unit;
- The core and inner zones contain no stream adjacent parallel roads;
- Riparian areas contiguous to the proposed harvest unit are owned by the landowner proposing to conduct the conversion activities, and meet shade requirements of WAC 222-30-040 or have a ~~((75-))~~ seventy-five foot buffer with trees at least ~~((40))~~ forty feet tall on both sides of the stream for ~~((500))~~ five hundred feet upstream and ~~((500))~~ five hundred feet downstream of the proposed harvest unit (or the length of the stream, if less);
- If the landowner has previously converted hardwood-dominated stands, then post-harvest treatments must have been performed to the satisfaction of the department.

(II) In addition to the conditions set forth above, permitted conversion activities in the **inner zone** of any harvest unit are limited by the following:

- Each continuous conversion area is not more than ~~((500))~~ five hundred feet in length; two conversion areas will be considered "continuous" unless the no-harvest area separating the two conversion areas is at least half the length of the larger of the two conversion areas.

- Type S and F (Type 1, 2, or 3) Water: Up to ~~((50%))~~ fifty percent of the inner zone area of the harvest unit on one side of the stream may be converted provided that:

- ◆ The landowner owns the opposite side of the stream and the landowner's riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a ~~((75-))~~ seventy-five foot buffer of trees at least ~~((40))~~ forty feet tall or:

- ◆ The landowner does not own land on the opposite side of the stream but the riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a ~~((75-))~~ seventy-five foot buffer of trees at least ~~((40))~~ forty feet tall.

- Not more than ~~((25%))~~ twenty-five percent of the inner zone of the harvest unit on both sides of a Type S or F Water may be converted if the landowner owns both sides.

(III) Where conversion is allowed in the **inner zone**, trees within the conversion area may be harvested except that:

- Conifer trees larger than ~~((20))~~ twenty inches dbh shall not be harvested;

- Not more than ~~((40%))~~ ten percent of the conifer stems greater than ~~((8))~~ eight inches dbh, exclusive of the conifer noted above, within the conversion area may be harvested; and

- The landowner must exercise reasonable care in the conduct of harvest activities to minimize damage to all residual conifer trees within the conversion area including conifer trees less than ~~((8))~~ eight inches dbh.

(IV) Following harvest in conversion areas, the landowner must:

- Reforest the conversion area with **conifer** tree species suitable to the site in accordance with the requirements of WAC 222-34-010; and

- Conduct post-harvest treatment of the site until the conifer trees necessary to meet acceptable stocking levels in WAC 222-34-010(2) have crowns above the brush or until the conversion area contains a minimum of ~~((150))~~ one hundred fifty conifer trees greater than ~~((8))~~ eight inches dbh per acre.

- Notify the department in writing within three years of the approval of the forest practices application for hardwood conversion, if the hardwood conversion has been completed.

(V) **Tracking hardwood conversion.** The purpose of tracking hardwood conversion is to determine if hardwood conversion is resulting in adequate enhancement of riparian functions toward the desired future condition while minimizing the short term impacts on functions. The department will use existing or updated data bases developed in cooperation with the Washington Hardwoods Commission to identify watershed administrative units (WAUs) with a high percentage of hardwood-dominated riparian areas and, thus have the potential for excessive hardwood conversion under these rules. The department will track the rate of conversion of hardwoods in the riparian zone: (1) Through the application

process on an annual basis; and (2) at a WAU scale on a biennial basis as per WAC 222-30-120 through the adaptive management process which will develop thresholds of impact for hardwood conversion at the watershed scale.

(ii) **Harvest options.**

(A) No inner zone management. When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone. When no harvest is permitted in the inner zone or the landowner chooses not to enter the inner zone, the width of core, inner and outer zones are as provided in the following table:

No inner zone management RMZ widths for Western Washington

Site Class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			I	200'	50'	83'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(B) Inner zone management. If trees can be harvested and removed from the inner zone because of surplus basal area consistent with the stand requirement, the harvest and removal of the trees must be undertaken consistent with one of two options:

(I) **Option 1. Thinning from below.** The objective of thinning is to distribute stand requirement trees in such a way as to shorten the time required to meet large wood, fish habitat and water quality needs. This is achieved by increasing the potential for leave trees to grow larger than they otherwise would without thinning. Thinning harvest under option 1 must comply with the following:

- Residual trees left in the combined core and inner zones must meet stand requirements necessary to be on a trajectory

to desired future condition. See board manual section 7 for guidelines.

- Thinning must be from below, meaning the smallest dbh trees are selected for harvest first, then progressing to successively larger diameters.
- Thinning cannot decrease the proportion of conifer in the stand.
- Shade retention to meet the shade rule must be confirmed by the landowner for any harvest inside of ~~((75))~~ seventy-five feet from the outer edge of bankfull width or outer edge of CMZ, whichever is greater.
- The number of residual conifer trees per acre in the inner zone will equal or exceed ~~((57))~~ fifty-seven.

Option 1. Thinning from below.

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			I	200'	50'	83'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(II) **Option 2. Leaving trees closest to the water.** Management option 2 applies only to riparian management zones for site class I, II, and III on streams that are less than or equal to ~~((10))~~ ten feet wide and RMZs in site class I and II for streams greater than ~~((10))~~ ten feet wide. Harvest must comply with the following:

- Harvest is not permitted within ~~((30))~~ thirty feet of the core zone for streams less than or equal to ~~((10))~~ ten feet wide

and harvest is not permitted within ~~((50))~~ fifty feet of the core zone for streams greater than ~~((10))~~ ten feet wide;

- Residual leave trees in the combined core and inner zone must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for calculating stand requirements;
- A minimum of ~~((20))~~ twenty conifers per acre, with a minimum ~~((12-))~~ twelve inch dbh, will be retained in any por-

tion of the inner zone where even-age harvest occurs. These riparian leave trees will ~~((not))~~ be counted ~~((or considered))~~ towards meeting applicable stand requirements ~~((not can))~~. The number of riparian leave trees cannot be reduced below ~~((20))~~ twenty for any reason.

- Trees are selected for harvest starting from the outer most portion of the inner zone first then progressively closer to the stream.

- If (II) of this subsection results in surplus basal area per the stand requirement, the landowner may take credit for the surplus by harvesting additional riparian leave trees required to be left in the adjacent outer zone on a basal area-for-basal area basis. The number of leave trees in the outer zone can be reduced only to a minimum of ~~((10))~~ ten trees per acre.

Option 2. Leaving trees closest to water.

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width				Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width ≤10'	stream width >10'	stream width >10'	stream width ≤10'	stream width >10'
				minimum floor distance (measured from outer edge of core zone)		minimum floor distance (measured from outer edge of core zone)		
I	200'	50'	84'	30'	84'	50'	66'	66'
II	170'	50'	64'	30'	70'	50'	56'	50'
III	140'	50'	44'	30'	**	**	46'	**

**Option 2 for site class III on streams >10' is not permitted because of the minimum floor (100') constraint.

(iii) **Where the basal area components of the stand requirement cannot be met** within the sum of the areas in the inner and core zone due to the presence of a stream-adjacent parallel road in the inner or core zone, a determination must be made of the approximate basal area that would have been present in the inner and core zones if the road was not occupying space in the core or inner zone and the shortfall in the basal area component of the stand requirement. See definition of "stream-adjacent parallel road" in WAC 222-16-010.

(A) Trees containing basal area equal to the amount determined in (iii) of this subsection will be left elsewhere in the inner or outer zone, or if the zones contain insufficient riparian leave trees, substitute riparian leave trees will be left within the RMZ width of other Type S or F Waters in the same unit or along Type Np or Ns Waters in the same unit in addition to all other RMZ requirements on those same Type S, F, Np or Ns Waters.

(B) When the stream-adjacent road basal area calculated in (iii) of this subsection results in an excess in basal area (above stand requirement) then the landowner may receive credit for such excess which can be applied on a basal area-by-basal area basis against the landowner's obligation to leave trees in the outer zone of the RMZ of such stream or other waters within the same unit, provided that the number of trees per acre in the outer zone is not reduced to less than ~~((10))~~ ten trees per acre.

(C) When the basal area requirement cannot be met, as explained in (iii) of this subsection, the shortfall may be reduced through the implementation of an acceptable large woody debris placement plan. See board manual section 26 for guidelines.

(iv) If a harvest operation includes both yarding and harvest activities within the RMZ, all calculations of basal area for stand requirements will be determined as if the yarding

corridors were constructed prior to any other harvest activities. If trees cut or damaged by yarding are taken from excess basal area, these trees may be removed from the inner zone. Trees cut or damaged by yarding in a unit which does not meet the basal area target of the stand requirements cannot be removed from the inner zone. Any trees cut or damaged by yarding in the core zone may not be removed.

(c) **Outer zones.** Timber harvest in the outer zone must leave ~~((20))~~ twenty riparian leave trees per acre after harvest. "**Outer zone riparian leave trees**" are trees that must be left after harvest in the outer zone in Western Washington. Riparian leave trees must be left uncut throughout all future harvests:

Outer zone riparian leave tree requirements

Application	Leave tree spacing	Tree species	Minimum dbh required
Outer zone	Dispersed	Conifer	12" dbh or greater
Outer zone	Clumped	Conifer	12" dbh or greater
Protection of sensitive features	Clumped	Trees representative of the overstory including both hardwood and conifer	8" dbh or greater

The ~~((20))~~ twenty riparian leave trees to be left can be reduced in number under the circumstances delineated in (c)(iv) of this subsection. The riparian leave trees must be left on the landscape according to one of the following two strategies. A third strategy is available to landowners who agree to a LWD placement plan.

(i) **Dispersal strategy.** Riparian leave trees, which means conifer species with a diameter measured at breast height (dbh) of ~~((12))~~ twelve inches or greater, must be left

dispersed approximately evenly throughout the outer zone. If riparian leave trees of ~~((12"))~~ twelve inches dbh or greater are not available, then the next largest conifers must be left. If conifers are not present, riparian leave trees must be left according to the clumping strategy in subsection (ii) below.

(ii) **Clumping strategy.** Riparian leave trees must be left clumped in the following way:

(A) Clump trees in or around one or more of the following **sensitive features** to the extent available within the outer zone. When clumping around sensitive features, riparian leave trees must be ~~((8))~~ eight inches dbh or greater and representative of the overstory canopy trees in or around the sensitive feature and may include both hardwood and conifer species. Sensitive features are:

(I) Seeps and springs;

(II) Forested wetlands;

(III) Topographic locations (and orientation) from which leave trees currently on the site will be delivered to the water;

(IV) Areas where riparian leave trees may provide windthrow protection;

(V) Small unstable, or potentially unstable, slopes not of sufficient area to be detected by other site evaluations. See WAC 222-16-050 (1)(d).

(VI) Archaeological or historical sites registered with the Washington state department of archaeology and historic preservation. See WAC 222-16-050 (1)(g); or

(VII) Sites containing evidence of Native American cairns, graves or glyptic records. See WAC 222-16-050 (1)(f).

(B) If sensitive features are not present, then clumps must be well distributed throughout the outer zone and the leave trees must be of conifer species with a dbh of ~~((12))~~ twelve inches or greater. When placing clumps, the applicant will consider operational and biological concerns. Tree counts must be satisfied regardless of the presence of stream-adjacent parallel roads in the outer zone.

(iii) **Large woody debris in-channel placement strategy.** A landowner may design a LWD placement plan in cooperation with the department of fish and wildlife. The plan must be consistent with guidelines in ~~((the))~~ board manual section 26. The landowner may reduce the number of trees required to be left in the outer zone to the extent provided in the approved LWD placement plan. Reduction of trees in the outer zone must not go below a minimum of ~~((10))~~ ten trees per acre. If this strategy is chosen, a complete forest practices application must include a copy of the WDFW approved hydraulics project approval (HPA) permit.

(iv) **Twenty riparian leave trees must be left after harvest** with the exception of the following:

(A) If a landowner agrees to implement a placement strategy, see (iii) of this subsection.

(B) If trees are left in an associated channel migration zone, the landowner may reduce the number of trees required to be left according to the following:

(I) Offsets will be measured on a basal area-for-basal area basis.

(II) Conifer in a CMZ equal to or greater than ~~((6"))~~ six inches dbh will offset conifer in the outer zone at a one-to-one ratio.

(III) Hardwood in a CMZ equal to or greater than ~~((10"))~~ ten inches dbh will offset hardwood in the outer zone at a one-to-one ratio.

(IV) Hardwood in a CMZ equal to or greater than ~~((10"))~~ ten inches dbh will offset conifer in the outer zone at a three-to-one ratio.

***(2) Western Washington protection for Type Np and Ns Waters.**

(a) An **equipment limitation zone** is a ~~((30-))~~ thirty foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water where equipment use and other forest practices that are specifically limited by these rules. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil on more than ~~((10%))~~ ten percent of the surface area of the zone:

(A) Ground based equipment;

(B) Skid trails;

(C) Stream crossings (other than existing roads); or

(D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection (2) reduces or eliminates the department's authority to prevent actual or potential material damage to public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

(b) **Sensitive site and RMZs protection along Type Np Waters.** Forest practices must be conducted to protect Type Np RMZs and sensitive sites as detailed below:

(i) A ~~((50-))~~ fifty foot, no-harvest buffer, measured horizontally from the outer edge of bankfull width, will be established along each side of the Type Np Water as follows:

Required no-harvest, 50-foot buffers on Type Np Waters.

Length of Type Np Water from the confluence of Type S or F Water	Length of 50' buffer required on Type Np Water (starting at the confluence of the Type Np and connecting water)
Greater than 1000'	500'
Greater than 300' but less than 1000'	Distance of the greater of 300' or 50% of the entire length of the Type Np Water
Less than or equal to 300'	The entire length of Type Np Water

(ii) No timber harvest is permitted in an area within ~~((50))~~ fifty feet of the outer perimeter of a soil zone perennially saturated from a headwall seep.

(iii) No timber harvest is permitted in an area within ~~((50))~~ fifty feet of the outer perimeter of a soil zone perennially saturated from a side-slope seep.

(iv) No timber harvest is permitted within a ~~((56-))~~ fifty-six foot radius buffer patch centered on the point of intersection of two or more Type Np Waters.

(v) No timber harvest is permitted within a ~~((56-))~~ fifty-six foot radius buffer patch centered on a headwater spring

or, in the absence of a headwater spring, on a point at the upper most extent of a Type Np Water as defined in WAC 222-16-030(3) and 222-16-031.

(vi) No timber harvest is permitted within an alluvial fan.

(vii) At least ((50%)) fifty percent of a Type Np Waters' length must be protected by buffers on both sides of the stream (2-sided buffers). Buffered segments must be a minimum of ((100)) one hundred feet in length. If an operating area is located more than ((500)) five hundred feet upstream from the confluence of a Type S or F Water and the Type Np Water is more than ((1,000)) one thousand feet in length, then buffer the Type Np Water according to the following table. If the percentage is not met by protecting sensitive sites listed in (b)(i) through (vii) of this subsection, then additional buffers are required on the Type Np Water to meet the requirements listed in the table.

Minimum percent of length of Type Np Waters to be buffered when more than 500 feet upstream from the confluence of a Type S or F Water

Total length of a Type Np Water upstream from the confluence of a Type S or F Water	Percent of length of Type Np Water that must be protected with a 50 foot no harvest buffer more than 500 feet upstream from the confluence of a Type S or F Water
1000 feet or less	Refer to table in this subsection (i) above
1001 - 1300 feet	19%
1301 - 1600 feet	27%
1601 - 2000 feet	33%
2001 - 2500 feet	38%
2501 - 3500 feet	42%
3501 - 5000 feet	44%
Greater than 5000 feet	45%

The landowner must select the necessary priority areas for additional ((2)) two-sided buffers according to the following priorities:

- (A) Low gradient areas;
- (B) Perennial water reaches of nonsedimentary rock with gradients greater than ((20%)) twenty percent in the tailed frog habitat range;
- (C) Hyporheic and ground water influence zones; and
- (D) Areas downstream from other buffered areas.

Except for the construction and maintenance of road crossings and the creation and use of yarding corridors, no timber harvest will be allowed in the designated priority areas. Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a designated priority area buffer.

(c) None of the limitations on harvest in or around Type Np Water RMZs or sensitive sites listed in (b) of this subsection will preclude or limit:

(i) The construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050.

(ii) The creation and use of yarding corridors in WAC 222-30-060(1).

To the extent reasonably practical, the operation will both avoid creating yarding corridors or road crossings through Type Np Water RMZ or sensitive sites and associated buffers, and avoid management activities which would result in soil compaction, the loss of protective vegetation or sedimentation in perennially moist areas.

Where yarding corridors or road crossings through Type Np Water RMZs or sensitive sites and their buffers cannot reasonably be avoided, the buffer area must be expanded to protect the sensitive site by an area equivalent to the disturbed area or by providing comparable functions through other management initiated efforts.

Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a Type Np Water RMZs or sensitive site buffer.

**WSR 09-18-051
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS**

[Filed August 27, 2009, 9:47 a.m., effective September 27, 2009]

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

Purpose: The purpose of this rule-making order is to adopt new WAC 415-108-432 PERS Plan 1 duty disability benefit, and 415-108-434 PERS Plan 1 nonduty disability benefit. The PERS Plan 1 duty disability benefit is available to members who are totally incapacitated due to an accident or occupational disease that occurred while they were in the line of duty. The PERS Plan 1 nonduty disability benefit is available to members who have at least five years of service and are totally incapacitated by a disability that did not occur while in the line of duty.

Statutory Authority for Adoption: RCW 41.50.050(5).

Other Authority: For WAC 415-108-432 is RCW 41.40.200, 41.40.210, 41.40.220; and for WAC 415-108-434 is RCW 41.40.230, 41.40.235, 41.40.250.

Adopted under notice filed as WSR 09-13-012 on June 4, 2009.

Changes Other than Editing from Proposed to Adopted Version: There have been minor changes to these rules from the proposed to adopted versions, although the substance and meaning of the rules are not changing. Changes include grammar and formatting.

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

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

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

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

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

Date Adopted: August 27, 2009.

Steve Hill
Director

NEW SECTION

WAC 415-108-432 PERS Plan 1 duty disability benefits. This section covers benefits provided for in RCW 41.40.200 through 41.40.220 for PERS Plan 1 members who incur a disability in the line of duty. You may also be eligible for benefits from the Washington state departments of labor and industries and social and health services, the U.S. Social Security Administration, your employer, and other disability insurers.

(1) Am I eligible for a PERS Plan 1 duty disability benefit? You are eligible for a PERS Plan 1 duty disability benefit if the department determines that all of the following are true:

- (a) You are a member of PERS Plan 1;
- (b) You have separated from PERS employment;
- (c) At the time you separated from PERS employment, you were totally incapacitated to perform the duties of your job or any other position for which you are qualified by training or experience;
- (d) You are under sixty years of age;
- (e) Your disability is the result of:
 - (i) An accident that occurred in the performance of duty;
- or
- (ii) An occupational disease as defined in RCW 51.08.140 for which you qualify to receive workers' compensation benefits under Title 51 RCW. To "qualify" means that you have received a formal determination from the department of labor and industries that you are eligible to receive Title 51 RCW benefits on account of an occupational disease.
- (f) Your disability is not the result of willful negligence on your part;
- (g) Your disability is not the result of your criminal conduct committed after April 21, 1997. See RCW 41.40.054; and
- (h) You apply for benefits within the specific time limits set forth in subsection (5) of this section.

(2) What is the PERS Plan 1 duty disability benefit? If you qualify to receive a duty disability benefit, you will receive the following for as long as you remain eligible:

- (a) A monthly benefit of three hundred fifty dollars or two-thirds of your monthly average final compensation, whichever is less, until you attain the age of sixty.
 - (i) The degree of your disability or impairment will not affect the amount of your benefit.
 - (ii) Your monthly disability benefit will be reduced by any amounts you receive for the same disability under workers' compensation or similar law. See RCW 41.40.300.

Example: Tiegan is a member of PERS Plan 1. Due to a work-related accident, she separated from service and began receiving a Title 51 RCW benefit in the amount of \$1,500 from the department of labor and industries (L&I). She then qualified for a duty disability benefit of \$350 per month from DRS. Because her duty disability benefit is offset by her Title 51 RCW benefit, Tiegan will receive, per month, \$0 from DRS and \$1,500 from L&I.

Example: Jennifer is a member of PERS Plan 1. Due to a work-related accident, she separated from service and began receiving a duty disability benefit of \$350 per month from DRS. Jennifer then began receiving a Title 51 RCW benefit from L&I in the amount of \$100 per month. Because her duty disability benefit will be offset by her Title 51 RCW benefit, Jennifer will receive, per month, \$250 from DRS and \$100 from L&I.

(b) One month of service credit for each month you receive a monthly benefit. You will accrue service credit even if your monthly benefit is totally offset by benefits you receive from other sources.

(3) How do I apply? To apply for a PERS Plan 1 duty disability the following documents must be submitted to the department:

(a) A properly completed three-part disability retirement application, consisting of:

(i) Part 1: Application for disability retirement. You must complete and sign the application.

(ii) Part 2: Employer's statement and report. You must complete the member information portion. The remainder must be completed, signed, and returned directly to the department by your employer.

(iii) Part 3: Medical report. You must complete the member information portion. The remainder must be completed, signed, and returned directly to the department by a person licensed according to Washington state law to practice medicine and/or surgery (including osteopathic medicine and/or surgery), advanced nursing, or psychology.

(b) Additional information, such as vocational and/or occupational information, requested by the department; and

(c) Any other material you want the department to consider.

(4) Who is responsible for expenses related to my application? You are responsible for all costs associated with your application for a benefit.

(5) What is the time limit for filing a PERS Plan 1 duty disability application? In general, you have two years to file an application for a duty disability benefit. You are considered an applicant for a duty disability benefit when the department receives Part 1 of your application. If your disability is the result of:

(a) An **accident**, you must apply within two years from the date you know or should know that you are totally incapacitated and cannot return to work.

Example: Linda is a member of PERS Plan 1 and was injured on the job. After her injury, Linda resumed employment. Three years after the

injury, her condition unexpectedly worsened and she could no longer work. Although more than two years had passed since her duty-related injury, Linda had no way of knowing that the injury would eventually cause her to be totally incapacitated to perform the duties of her job. Linda may apply for a duty disability benefit because the two-year time limit began when Linda knew she could no longer perform the duties for which she has training or experience.

Example: Hunter is a member of PERS Plan 1. He is injured on the job and knows immediately that he cannot return to work. Hunter goes on sick leave for two months, followed by two years of unpaid leave of absence. At the end of the unpaid leave, he applies for duty disability retirement. He is not eligible because more than two years have passed from the time he knew that his injury was such that he could not return to work.

(b) An **occupational disease**, you must apply within two years from separation of service. The two-year time limit begins running on the last day you are reported as an employee by your employer. If you are on an authorized leave of absence (paid or unpaid) you have not separated from service.

Example: Celina is a member of PERS Plan 1. She falls ill and goes on unpaid leave of absence for twenty-six months. At the end of the twenty-six months, she is diagnosed with a disease caused by her occupation and terminates her employment. Celina may apply for a duty disability benefit because the two-year time limit starts on the last day her employer reports her as an employee to the department.

(6) **What information will the department use to determine whether I am entitled to a duty disability benefit?** To determine your eligibility for a duty disability benefit, the department will consider any relevant information submitted by you, your employer, your physician, or otherwise available, including:

- (a) Information and determinations by the department of labor and industries or a self-insurer;
- (b) Medical, vocational, and other information about your disability;
- (c) Your job description;
- (d) Your membership records, maintained by the department; and
- (e) Any other relevant information.

(7) **If I am eligible for a service retirement under RCW 41.40.180, may I still apply for a disability retirement?** Yes, you may apply for a disability retirement if you are eligible for a service retirement, as long as you are under age sixty. If you are sixty years old or older, you must apply for a service retirement; see subsection (14) of this section.

(8) **When will the department evaluate my eligibility for a duty disability benefit?** The department will evaluate your eligibility for a duty disability benefit once it receives:

- (a) All three parts of your properly completed application and supporting documentation;
- (b) If your disability is the result of an occupational disease, written documentation from L&I that you have qualified for benefits under Title 51 RCW; and
- (c) Other documentation requested by the department.

(9) **If my application is approved, when will my benefit begin?** If your application for a duty disability benefit is approved, your benefit will accrue from the first day of the calendar month following the month you separate from service.

(a) If you separate from service **before** your application is approved, your disability benefit accrues from the first day of the calendar month following the date you separate from service. You will be eligible for a retroactive payment of the benefits that accrued between your separation from service and the approval of your application.

(b) If you separate from service **after** your application is approved, your disability benefit will not begin to accrue until you separate from service. If you are on an approved leave of absence (either paid or unpaid) at the time of your application for benefits, you have not separated from service.

(i) If you do not separate from service within ninety days of the department's approval of your application, the approval will lapse.

(ii) If your approval for a benefit lapses while you are still on an authorized leave of absence, you may request a reinstatement of approval. The department will reinstate its approval only if your employer verifies that you have been on an authorized leave of absence continuously from the time your application was first approved.

(10) **What are my options if my application is denied?** If your application for a duty disability benefit is denied, you have the following options:

(a) If you continue to work in a PERS position, you may reapply for a duty disability benefit at a later time if your condition worsens. You must submit new information to the department that shows you were totally incapacitated at the time of your separation from employment.

(b) You may petition for review of the department's decision according to the provisions of chapter 415-04 WAC.

(11) **What happens if I am receiving a duty disability benefit and I die before age sixty?** If you are receiving a duty disability benefit and you die before you reach age sixty, your beneficiary will receive a lump sum distribution of the accumulated contributions in your account; please see RCW 41.40.220(3).

(12) **What information must I provide to the department if I am receiving a duty disability benefit?** If you are receiving a duty disability benefit, you must report the following to the department:

- (a) Any compensation you are eligible to receive under workers' compensation or similar law for the same disability;
- (b) Any improvement in your condition. Your doctor is also responsible to report any improvements; and

(c) If you resume employment, either public or private, the name of your employer and amount of compensation, regardless of the number of hours you work.

(13) **Is my medical condition monitored while I am receiving disability retirement?** The department may require comprehensive medical examinations, pursuant to RCW 41.40.310, to reevaluate your eligibility for disability benefits. The department will pay the medical fees associated with these examinations.

(14) **How long will I receive a monthly disability benefit?** You will receive a monthly disability benefit until you reach age sixty. Your benefit may be recalculated or discontinued under certain circumstances. At age sixty you will become eligible for a service retirement as provided in RCW 41.40.220(2).

(a) Your benefit will be recalculated if you return to employment; see subsection (15) of this section for more information.

(b) Your benefit will be discontinued if:

- (i) You return to active PERS membership;
- (ii) A doctor determines that you are no longer totally incapacitated; or
- (iii) You refuse to submit to medical examinations required by RCW 41.40.310.

(c) When you become eligible for a service retirement at age sixty, you must apply for your retirement benefit; it will not start automatically. The service credit used to calculate your service retirement benefit includes both the service credit earned for services performed and the service credit credited to your account during your period of duty disability.

(15) **If I return to employment, how will my monthly disability benefit be recalculated?** The recalculation of your disability benefit is based on whether your current compensation is greater than your allowable earnings. Your "allowable earnings" are the difference between your compensation at retirement, adjusted for inflation, and your monthly disability benefit.

(a) If your current compensation is **greater** than your allowable earnings your monthly disability benefit will be reduced or discontinued.

(i) If the difference between your current compensation and your allowable earnings is less than \$350, your disability benefit will be **reduced** by this difference.

Example: Due to a work-related accident, Martha separated employment and began receiving \$350 per month in duty disability benefits. Martha became gainfully employed in a new job earning \$1,800 per month. Martha's compensation at the time of separation adjusted for inflation is \$2,000. Because Martha's current compensation (\$1,800) is greater than her allowable earnings ($\$2,000 - \$350 = \$1,650$) by \$150 (an amount less than \$350) her benefit will be reduced by \$150. Martha's reduced disability benefit will be \$200 ($\$350 - \150).

(ii) Your benefit will be **discontinued** if your current compensation is greater than your allowable earnings by an amount equal to or greater than your disability benefit.

Example: Due to a work-related accident, Rebecca separated employment and began receiving \$350 per month in duty disability benefits. Rebecca became gainfully employed in a new job earning \$2,750 per month. Rebecca's compensation at the time of separation adjusted for inflation is \$2,500. Because Rebecca's current compensation (\$2,750) is greater than her allowable earnings ($\$2,500 - \$350 = \$2,150$) by an amount (\$600) that is greater than her disability benefit (\$350), her benefit will be discontinued.

(b) If your current compensation is **less** than your allowable earnings your benefit will not be reduced or discontinued.

Example: Ted separated employment due to a work-related accident and began receiving \$350 per month in duty disability benefits. Ted became gainfully employed in a new job earning \$1,000 per month. Ted's compensation at the time of separation adjusted for inflation is \$3,000. Because Ted's current compensation (\$1,000) is less than his allowable earnings ($\$3,000 - \$350 = \$2,650$), his benefit will not be reduced.

(16) **Is my PERS Plan 1 duty disability benefit taxable?** You should consult with your tax advisor regarding all payments you receive from the department. The department does not:

(a) Guarantee that payments are exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(17) **Are PERS Plan 1 duty disability benefits subject to court or administrative orders?** Your PERS Plan 1 duty disability benefits may be subject to court or administrative orders. For more information, see RCW 41.40.052(3) or contact the department.

(18) **If I am a member of more than one retirement system, does my eligibility for a PERS Plan 1 duty disability benefit make me eligible for a benefit from the other system?** If you are a member of more than one retirement system, your PERS Plan 1 duty disability benefit does not qualify you to receive a benefit from any other system. See chapters 41.54 RCW and 415-113 WAC.

NEW SECTION

WAC 415-108-434 PERS Plan 1 nonduty disability benefits. This section covers benefits provided in RCW 41.40.230 through 41.40.250 for PERS Plan 1 members who incur a disability outside the performance of duty. You may also be eligible for benefits from the Washington state departments of labor and industries and social and health services, the U.S. Social Security Administration, your employer, and other disability insurers.

(1) **Am I eligible for a PERS Plan 1 nonduty disability benefit?** You are eligible for a PERS Plan 1 nonduty disability benefit if the department determines that all of the following are true:

(a) You are a PERS Plan 1 member and have been employed with a PERS eligible employer for at least five years;

(b) You separate from PERS employment;

(c) At the time you separated from PERS employment, you were totally incapacitated to perform the duties of your job or any other position for which you are qualified by training or experience;

(d) Your disability is likely to be permanent;

(e) Your disability was not incurred during the performance of your job duties; and

(f) Your disability is not the result of your criminal conduct committed after April 21, 1997. See RCW 41.40.054.

(2) **What is the PERS Plan 1 nonduty disability benefit?** If you qualify to receive a nonduty disability benefit, you will receive a benefit under RCW 41.40.235 or, if you were a PERS Plan 1 member on February 25, 1972, you may irrevocably choose to receive a benefit under RCW 41.40.250.

If you are eligible to receive a benefit under RCW 41.40.235, your benefit will equal two percent of your average final compensation for each year of service credit, reduced by two percent for every year or fraction of a year that your age is less than fifty-five. For example, if you are fifty years old, your monthly disability benefit will be reduced by ten percent.

(a) Your monthly disability benefit will not exceed sixty percent of your average final compensation.

(b) The degree of your disability or impairment will not affect the amount of your benefit.

(c) Your monthly disability benefit will be reduced by any amounts you receive for the same disability under workers' compensation or similar law. See RCW 41.40.300.

(d) Your monthly disability benefit will be actuarially reduced if you choose a benefit option with a survivor feature. See WAC 415-108-326.

(3) **How do I apply?** To apply for a nonduty disability benefit the following documents must be submitted to the department:

(a) A properly completed three-part disability retirement application, consisting of:

(i) Part 1: Application for disability retirement. You must complete and sign the application. If you are married, your spouse must sign consenting to the option you choose. Your signature(s) must be notarized.

(ii) Part 2: Employer's statement and report. You must complete the member information portion. The remainder must be completed, signed, and returned directly to the department by your employer.

(iii) Part 3: Medical report. You must complete the member information portion. The remainder must be completed, signed, and returned directly to the department by a person licensed according to Washington state law to practice medicine and/or surgery (including osteopathic medicine and/or surgery), advanced nursing, or psychology.

(b) Additional information, such as vocational and/or occupational information, requested by the department; and

(c) Any other material you want the department to consider.

(4) **Who is responsible for expenses related to my application?** You are responsible for all costs associated with your application for benefits.

(5) **What is the time limit for filing an application for a nonduty disability benefit?** There is no time limit for filing an application for a nonduty disability benefit. However, you must prove that you were totally incapacitated at the time you separated from PERS employment.

(6) **What information will the department use to determine whether I am entitled to a nonduty disability benefit?** To determine your eligibility for a nonduty disability benefit, the department will consider any relevant information submitted by you, your employer, or your physician, or otherwise available, including:

(a) Information and determinations by the department of labor and industries or a self-insurer;

(b) Medical, vocational, and other information about your disability;

(c) Your job description;

(d) Your membership records, maintained by the department; and

(e) Any other relevant evidence.

(7) **If I am eligible for a service retirement under RCW 41.40.180, may I still apply for a disability retirement?** Yes, if you are eligible for both you may elect a disability retirement or a service retirement. If you elect a service retirement, you may not later change to a disability retirement.

(8) **When will the department evaluate my eligibility for benefits?** The department will evaluate your eligibility for a nonduty disability benefit once it receives all three parts of your properly completed application, supporting documentation, and all other information requested by the department.

(9) **If my application is approved, when will my benefit accrue?** If your application for a nonduty disability benefit is approved, your benefit will accrue from the first day of the calendar month following the month you separate from service.

(a) If you separate from service **before** your application is approved, you will be eligible for a retroactive payment of the benefit that accrued between the month following your date of separation from service and the approval of your application.

(b) If you separate from service **after** your application is approved, your disability benefit will not begin to accrue **until** you separate from service. If you are on an approved leave of absence (either paid or unpaid) at the time of your application for a benefit, you have not separated from service.

(i) If you do not separate from service within ninety days of the department's approval of your application, the approval will lapse.

(ii) If your approval for a benefit lapses while you are still on an authorized leave of absence, you may request a reinstatement of approval. The department will reinstate its approval only if your employer verifies that you have been on an authorized leave of absence continuously from the time your application was first approved.

(10) What are my options if my application is denied?

(a) If your application is denied and you continue in or resume PERS employment, you may reapply for a nonduty disability benefit at a later time if your condition worsens. You must submit new information to the department that shows you meet the requirements in subsection (1) of this section.

(b) If your application is denied, you may petition for review of the department's decision under the provisions of chapter 415-04 WAC.

(11) What happens if I die within sixty days of applying for nonduty disability benefits? If you die within sixty days of the date the department receives your application for a nonduty disability benefit, the beneficiary you name on the application may choose to receive either:

(a) A lump sum amount equal to the contributions in your PERS account; or

(b) A monthly benefit calculated according to whichever of the following methods will give your beneficiary the greatest benefit:

(i) A benefit calculated according to subsection (2) of this section and the benefit option indicated on your application; or

(ii) If otherwise qualified, the benefit provided in RCW 41.40.270 (4)(a).

(12) What information must I provide to the department if I am receiving nonduty disability benefits? If you are receiving nonduty disability benefits, you must report the following to the department:

(a) Any compensation you are eligible to receive under workers' compensation or similar law for the same disability;

(b) Any improvement in your condition. Your doctor is also responsible to report any improvements; and

(c) If you resume employment, either public or private, the name of your employer and amount of compensation, regardless of the number of hours you work.

(13) Is my medical condition monitored while I receive disability benefits? The department may require comprehensive medical examinations, pursuant to RCW 41.40.310, to reevaluate your eligibility for disability benefits. The department will pay the medical fees associated with these examinations.

(14) How long will I receive a monthly disability benefit? During your lifetime, you will receive a monthly disability benefit unless one of the following occurs:

(a) If you return to gainful employment, your monthly disability benefit will be recalculated, as set forth in subsection (15) of this section.

(b) If you return to active PERS membership, your disability benefit will be discontinued.

(c) If a doctor determines that you are no longer totally incapacitated, your disability benefit will be discontinued.

(d) If you refuse to submit to medical examinations required by RCW 41.40.310, your disability benefit will be discontinued.

(15) If I return to employment, how will my monthly disability benefit be recalculated? The recalculation of your disability benefit is based on whether your current compensation is greater than your allowable earnings. Your "allowable earnings" are the difference of your compensation

at retirement, adjusted for inflation, and your monthly disability benefit.

(a) If your current compensation is **greater** than your allowable earnings your benefit will be reduced or discontinued.

Example of benefit being reduced:

Due to a nonduty-related disability, Joe separated from service and began receiving a disability benefit of \$1,000 per month. Joe became gainfully employed earning \$2,500 per month. Joe's compensation at the time of separation adjusted for inflation is \$3,000. Because Joe's current compensation, \$2,500, is greater than his allowable earnings ($\$3,000 - \$1,000 = \$2,000$) by \$500, his benefit will be reduced by \$500. Joe's reduced disability benefit will be \$500 per month ($\$1,000 - \500).

Example of benefit being discontinued:

Due to a nonduty-related disability, Heidi separated from service and began receiving a disability benefit of \$1,000 per month. Heidi became gainfully employed earning \$4,000 per month. Heidi's compensation at the time of separation adjusted for inflation is \$3,000. Because Heidi's current compensation, \$4,000, is greater than her allowable earnings ($\$3,000 - \$1,000 = \$2,000$) by an amount (\$2,000) that is greater than her disability benefit (\$1,000), her benefit will be discontinued.

(b) If your current compensation is **less** than your allowable earnings, then your benefit will not be reduced or discontinued.

Example:

Due to a nonduty-related disability, you separated from service and began receiving a disability benefit of \$1,000 per month. You become gainfully employed earning \$1,000 per month. Your compensation at the time of separation adjusted for inflation is \$3,000. Because your current compensation, \$1,000, is less than your allowable earnings ($\$3,000 - \$1,000 = \$2,000$), your disability benefit will not be reduced or discontinued.

(16) Is my PERS Plan 1 nonduty disability benefit taxable? You should consult with your tax advisor regarding all payments you receive from the department. The department reports disability benefits to the Internal Revenue Service as required by federal law and does not:

(a) Guarantee that payments are exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property, or other tax consequence will occur because of its determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(17) Are disability benefits subject to court or administrative orders? Your nonduty disability benefit may be subject to court or administrative orders. For more information, see RCW 41.40.052(3) or contact the department.

(18) If I am a member of more than one retirement system, does my eligibility for a PERS Plan 1 nonduty dis-

ability make me eligible for a benefit from the other system? If you are a member of more than one retirement system, you may be entitled to additional benefits under portability law. See chapters 41.54 RCW and 415-113 WAC.

WSR 09-18-056

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed August 27, 2009, 3:54 p.m., effective September 27, 2009]

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

Purpose: This rule will (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.

Citation of Existing Rules Affected by this Order: Amending WAC 468-70-050 Business eligibility and 468-70-060 Signing details.

Statutory Authority for Adoption: RCW 47.36.030 and 47.36.320.

Adopted under notice filed as WSR 09-15-126 on July 20, 2009.

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

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

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

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

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

Date Adopted: August 27, 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 motorist 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 district 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 specifications, 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 busi-

ness 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 09-18-070
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-187—Filed August 28, 2009, 5:14 p.m., effective September 28, 2009]

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

Purpose: The rule changes the measurement criteria for sturgeon to fork length instead of total length for Columbia River treaty Indian and non-Indian fisheries. It also adds language that allows for revocation of a commercial carp permit. This rule provides consistency with tribal fishing rules and rules of the Oregon department of fish and wildlife in concurrent waters of the Columbia River.

Citation of Existing Rules Affected by this Order: Amending WAC 220-32-057 Season—Sturgeon and 220-20-020 General provisions—Lawful and unlawful acts—Food fish other than salmon.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Adopted under notice filed as WSR 09-12-023 on May 22, 2009.

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

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

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

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

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

Date Adopted: August 21, 2009.

Miranda Wecker, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 06-301, filed 12/27/06, effective 1/27/07)

WAC 220-20-020 General provisions—Lawful and unlawful acts—Food fish other than salmon. (1) It is unlawful to fish for or possess for commercial purposes any round, undressed sturgeon less than ~~((48))~~ 43 inches in fork length or greater than ~~((60))~~ 54 inches in fork length.

(2) It is unlawful to fish for, possess, or retain green sturgeon taken with commercial gear. Any green sturgeon taken with any type of commercial gear incidental to a lawful fishery shall immediately be returned to the water unharmed.

(3) It is unlawful to fish for or possess for commercial purposes or possess aboard a commercial fishing vessel for any purpose any species of halibut (*Hippoglossus*) unless permitted by the current regulations of the International Pacific Halibut Commission.

(4) It is unlawful to fish for or possess for commercial purposes sturgeon taken from any of the waters of Puget Sound or tributaries ~~((and))~~. Any sturgeon taken with any type of commercial gear incidental to a lawful fishery shall immediately be returned to the water unharmed.

(5) It is unlawful to fish for food fish for commercial purposes in the waters of Shilshole Bay, inland and inside a line projected in a southwesterly direction from Meadow Point to West Point.

(6) It is unlawful to fish for or possess for commercial purposes any starry flounder less than 14 inches in length taken by any commercial gear, in all Puget Sound Marine Fish-Shellfish Areas.

(7) It ~~((shall be))~~ is unlawful to harvest herring eggs naturally deposited on marine vegetation or other substrate ~~((;))~~ unless a person has a permit issued by the director.

(8) It is unlawful to fish for or possess carp taken for commercial purposes except as authorized by written permit from the director. However, ~~((except that))~~ carp taken incidental to a commercial fishery for other species may be retained for commercial purposes. Failure to comply with the provisions of the carp permit constitutes unlawful use of the carp commercial fishery license and may result in revocation of the carp permit.

(9) It is unlawful to fin sharks in Washington state waters, and it is unlawful to possess shark fins in the field unless the carcass of the shark is retained ~~((except that))~~. However, once a commercially taken shark carcass has been delivered to a licensed wholesale dealer or a person acting in that capacity, and the sale of the shark has been recorded on a fish receiving ticket, the shark fins need not be retained with the shark carcass.

AMENDATORY SECTION (Amending Order 00-146, filed 8/17/00, effective 9/17/00)

WAC 220-32-057 Season—Sturgeon. (1) It is unlawful to take, fish for or possess sturgeon taken for commercial purposes in Columbia River Salmon Management and Catch

Reporting Areas 1F, 1G, and 1H except individuals possessing treaty fishing rights pursuant to the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for sturgeon with setline gear from January 1 through January 31, and during seasons opened under emergency rule by the department and as provided in this section.

(2) During the open season, it is unlawful to:

(a) ~~((It is unlawful to))~~ Retain for commercial or subsistence purposes sturgeon less than ~~((48))~~ 38 inches in fork length or greater than ~~((60))~~ 54 inches in fork length in Columbia River Salmon Management and Catch Reporting Area (SMCRA) 1F. It is unlawful to retain for commercial or subsistence purposes sturgeon less than 43 inches in fork length or greater than 54 inches in fork length in Columbia River SMCRA 1G and 1H;

(b) ~~((To))~~ Sell, barter, or attempt to sell or barter sturgeon eggs that have been removed from the body cavity of a sturgeon prior to the sale of the sturgeon to a wholesale dealer licensed under chapter 75.28 RCW, or to sell or barter sturgeon eggs at retail; or

(c) ~~((To))~~ Deliver to a wholesale dealer licensed under chapter 75.28 RCW any sturgeon that are not in the round with the head and tail intact.

(3) Gear:

(a) Maximum 100 hooks per setline;

(b) Minimum hook size 9/0;

(c) Treble hooks prohibited; and

(d) Visible buoys required, with operator name and tribal identification clearly marked on the buoy.

WSR 09-18-071

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed August 31, 2009, 8:23 a.m., effective October 1, 2009]

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

Purpose: Provides clarification for frame certification. Removes welding requirements and requires that the builder certify the structural strength of the frame.

Citation of Existing Rules Affected by this Order: Amending WAC 204-10-022.

Statutory Authority for Adoption: RCW 46.37.005 and 46.37.240.

Adopted under notice filed as WSR 09-15-151 on July 21, 2009.

A final cost-benefit analysis is available by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, phone (360) 596-4017, fax (360) 596-4015, e-mail WSPRules@wsp.wa.gov.

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

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

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

Date Adopted: August 26, 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) 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; or

(b) 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

(c) If the vehicle is a kit vehicle, as outlined in RCW 46.12.440, documentation from the manufacturer of the vehicle frame that informs the owner that the frame has not been certified as meeting the applicable federal motor vehicle

safety standard set under 49 CFR 571 Parts 201, 214, 216, and 220 through 224, and the applicable SAE Standards.

WSR 09-18-072
PERMANENT RULES
WASHINGTON STATE PATROL

[Filed August 31, 2009, 8:23 a.m., effective October 1, 2009]

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

Purpose: 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.

Citation of Existing Rules Affected by this Order: Amending WAC 204-93-010, 204-93-030, 204-93-040, 204-93-050, 204-93-060, 204-93-070, 204-93-080, 204-93-090, 204-93-100, 204-93-110, 204-93-120, 204-93-130, 204-93-140, 204-93-150, and 204-93-160.

Statutory Authority for Adoption: RCW 46.37.005, 46.37.197, and 46.52.120.

Adopted under notice filed as WSR 09-15-148 on July 21, 2009.

A final cost-benefit analysis is available by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, phone (360) 596-4017, fax (360) 596-4015, e-mail WSPRules@wsp.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 15, Repealed 0.

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

Date Adopted: August 26, 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 09-18-073

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed August 31, 2009, 8:23 a.m., effective October 1, 2009]

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

Purpose: Updating current language for clarification to include the change from the equipment and standards unit to the impaired driving section.

Citation of Existing Rules Affected by this Order: Amending WAC 204-50-030, 204-50-040, 204-50-050, 204-50-070, 204-50-080, 204-50-090, 204-50-110, 204-50-120, and 204-50-130.

Statutory Authority for Adoption: RCW 46.37.005 and 46.04.215.

Adopted under notice filed as WSR 09-15-149 on July 21, 2009.

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

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

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Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 9, Repealed 0.

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

Date Adopted: August 26, 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:

~~((+))~~ (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 09-18-075

PERMANENT RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 09-183—Filed August 31, 2009, 8:51 a.m., effective October 1, 2009]

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

Purpose: The rule implements a program to recover lost or abandoned commercial crab gear after the close of the coastal commercial fishery season through permits issued to licensed commercial crab fishers. Lost or abandoned crab gear can continue to entrap crabs and other marine species and contribute to habitat degradation. The program allows commercial crab fishers to reduce these negative effects on marine life and habitat by removing derelict crab gear from the ocean.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-040 Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Adopted under notice filed as WSR 09-12-054 on May 28, 2009.

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

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

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

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

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

Date Adopted: August 21, 2009.

Susan Yeager
for Miranda Wecker, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 07-285, filed 11/20/07, effective 12/21/07)

WAC 220-52-040 Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (1) **Net fishing boats shall not have crab ~~((aboard))~~ on board.** It is unlawful for any ~~((vessel geared or equipped with commercial net fishing gear))~~ person to ~~((have aboard))~~ possess any quantity of crab on board a vessel geared or equipped with commercial net fishing gear while ~~((it is))~~ fishing with the net gear for commercial purposes or ~~((when it has other))~~ while there are commercial quantities of food fish or shellfish ~~((aboard for commercial purposes))~~ on board. Violation of this section is punishable under RCW 77.15.550(1), violation of commercial fishing area or time. However, if such crab are taken or possessed in amounts that constitute a violation of commercial fishing area or time in the first degree, the violation is punishable under RCW 77.15.550(2).

(2) **Area must be open to commercial crabbing.** ~~((Unless otherwise))~~ Except when acting lawfully under the authority of a valid permit as provided in (a) and (c) of this subsection, it is unlawful for any person to set, maintain, or operate any baited or unbaited shellfish pots or ring nets for taking crabs for commercial purposes in any area or at any time when the location is not ~~((opened))~~ open for ~~((taking crabs for))~~ commercial ~~((purposes))~~ crabbing by permanent rule or emergency rule of the department~~((: Provided, That))~~. Violation of this section is punishable under RCW 77.15.550(1), violation of commercial fishing area or time. However, if such crab are taken or possessed in amounts that constitute a violation of commercial fishing area or time in the first degree, the violation is punishable under RCW 77.15.550(2).

(a) Following the close of a commercial crab season, ~~((permission))~~ an emergency coastal crab gear recovery permit may be granted by the director or his or her designee. These emergency permits will be considered on a case-by-case basis ~~((for))~~ to allow crab fishers to recover shellfish pots that were irretrievable due to extreme weather conditions at the end of the lawful season opening. Crab fishers must notify and apply to ~~((department))~~ the department's enforcement program for such ~~((permission))~~ emergency permits within twenty-four hours prior to the close of the commercial crab season.

(b) It is unlawful to fail to follow the provisions of an emergency coastal crab gear recovery permit. Violation of this section is punishable under ESHB 1516.

(c) Fifteen days after the close of the primary coastal commercial crab season, a coastal crab gear recovery permit may be granted by the director or his or her designee for licensed coastal Dungeness crab fishers to recover crab pots belonging to state licensed fishers that remain in the ocean.

(d) It is unlawful to fail to follow the provisions of a coastal crab gear recovery permit. Violation of this section is punishable under ESHB 1516.

(3) **Crabs must be male and 6-1/4 inches across the back.** It is unlawful for any person acting for commercial purposes to take, possess, deliver, or otherwise control:

(a) Any female Dungeness crabs; or

(b) Any male Dungeness crabs measuring less than 6-1/4 inches, caliper measurement, across the back of the crab's shell immediately in front of the shell's tips. Violation of this section is punishable under RCW 77.15.550(1)(c).

(4) **Each person and each Puget Sound license is limited to 100 pots.** It is unlawful for any person to take or fish for crab for commercial purposes in the Puget Sound licensing district if he or she is using, operating, or controlling any more than an aggregate total of 100 shellfish pots or ring nets. This limit shall apply to each license. However, this shall not preclude a person ~~((holding))~~ who holds two Puget Sound crab licenses from designating and using the licenses from one vessel as authorized by RCW 77.65.130. Violation of this section is punishable under RCW 77.15.520.

(5) **Additional area gear limits.** ~~((The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel and))~~ It is unlawful for any person to use, maintain, operate, or control crab pots or ring nets in excess of the ~~((following))~~ limits~~((:))~~ prescribed in each of the following Marine Fish-Shellfish Management and Catch Reporting Areas. Violation of this section is punishable under RCW 77.15.520.

(a) 10 pots in Marine Fish-Shellfish Management and Catch Reporting Area 25E~~((:))~~;

(b) 10 pots in all waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A south of a line projected true west from Travis Spit on Miller Peninsula~~((:))~~;

(c) 20 pots in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of a line projected from the new Dungeness Light to the mouth of Cooper Creek, and east of a line projected from the new Dungeness Light to the outermost end of the abandoned dock at the Three Crabs Restaurant on the southern shore of Dungeness Bay~~((:))~~; and

(d) 10 pots in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the I77 Rayonier Dock.

(6) **Groundline gear is unlawful.** ~~((No crab pot or ring net may be attached))~~ It is unlawful to attach or ~~((connected))~~ connect a crab pot or ring net to ~~((other))~~ another crab pot or ring net by a common groundline or any other means that connects crab pots together. Violation of this section is punishable under RCW 77.15.520.

(7) **Crab buoy~~((s))~~ and pot~~((s))~~ tagging requirements.**

(a) It is unlawful to place in the water, pull from the water, possess on the water, or transport on the water any crab buoy or crab pot without an attached buoy and pot tag~~((s))~~ that meet~~((s))~~ the requirements of this subsection except as provided for in (b) of this subsection. Violation of this section is punishable under RCW 77.15.520.

(b) Persons operating under a valid coastal gear recovery permit issued by the department may possess crab pots or buoys missing tags or bearing the tags of another license holder, provided that the permittee adheres to provisions of the permit.

~~((b))~~ (c) Coastal crab pot tags: Each shellfish pot used in the coastal Dungeness crab fishery must bear a tag that identifies either the name of the vessel being used to operate the pot or the Dungeness crab fishery license number of the owner of the pot, and the telephone number of a contact person.

~~((e))~~ (d) Puget Sound crab pot tags: In Puget Sound, all crab pots must have a durable, nonbiodegradable tag securely attached to the pot and permanently and legibly marked with the license owner's name or license number, and telephone number. If the tag information is illegible, or if the tag is lost for any reason, the pot is not in compliance with state law.

~~((f))~~ (e) Crab buoy tags: The department will issue crab pot buoy tags to the owner of each commercial crab fishery license upon payment of an annual buoy tag fee ~~((of seventy cents))~~ per crab pot buoy tag. Prior to setting gear, each Puget Sound crab license holder must purchase 100 tags, and each coastal crab fisher must purchase 300 or 500 tags, depending on the crab pot limit assigned to the license. Only department-issued crab buoy tags may be used, and each crab pot is required to have a buoy tag.

~~((g))~~ (f) Puget Sound replacement crab buoy tags: Additional tags to replace lost tags will only be issued to owners of Puget Sound commercial crab fishery licenses who obtain, complete, and sign a declaration under penalty of perjury in the presence of an authorized department employee. The declaration shall state the number of buoy tags lost, the location and date where the lost gear or tags were last observed, and the presumed cause of the loss.

~~((h))~~ (g) Coastal replacement crab buoy tags: Coastal crab license holders with a 300-pot limit will be able to replace up to fifteen lost tags by January 15th, up to a total of thirty lost tags by February 15th, and up to a total of forty-five lost tags after March 15th of each season. Coastal crab license holders with a 500-pot limit will be able to replace up to twenty-five lost tags by January 15th, up to a total of fifty lost tags by February 15th, and up to a total of seventy-five lost tags after March 15th of each season. In the case of extraordinary loss of crab pot gear, the department may, on a case-by-case basis, issue replacement tags in excess of the amount set out in this subsection. Replacement buoy tags for the coastal crab fishery will only be issued after a signed affidavit is received by the department.

(8) **No person can possess or use gear with ~~((other))~~ another person's crab pot tag or crab buoy tag.** ~~((No))~~ It is unlawful for any person ~~((may))~~ to possess, use, control, or operate any crab pot not bearing a tag identifying the pot as that person's, or any buoy not bearing tags issued by the department to that person, except ~~((that))~~ under the following circumstances:

(a) An alternate operator designated on a primary license may possess and operate crab buoys and crab pots bearing the tags of the license holder.

(b) Persons operating under a valid coastal gear recovery permit issued by the department may possess crab pots or buoys bearing the tags of another license holder, provided that the permittee adheres to provisions of the permit.

(c) Violation of this section is punishable under ESHB 1516.

(9) ~~((Cannot))~~ **No person can tamper with pot tags.** ~~((No))~~ It is unlawful for any person ~~((shall))~~ to remove, damage, or otherwise tamper with crab buoy or pot tags except when lawfully applying or removing tags on the person's own buoys and pots. However, persons operating under a valid coastal gear recovery permit or emergency gear recovery permit, issued by the department and who adheres to the permit's provisions may possess crab pots or buoys bearing the tags of another license holder. Violation of this section is punishable under RCW 77.15.180 (3)(b).

(10) ~~((Thirty-day period))~~ **When it is unlawful to buy or land crab from the ocean without crab vessel inspection.** It is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, the Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean during the first thirty days following the opening of a coastal crab season from any vessel ~~((which))~~ that has not been issued a Washington crab vessel inspection certificate. The certificate will be issued to vessels made available for inspection in a Washington coastal port and that are properly licensed for commercial crab fishing if no Dungeness crabs are ~~((aboard))~~ on board. ~~((Inspections will be performed by))~~ Authorized department personnel will perform inspections not earlier than twelve hours prior to the opening of the coastal crab season and during the following thirty-day period.

(11) **Grays Harbor pot limit of 200.** It is unlawful for any person to take or fish for crab for commercial purposes in Grays Harbor (catch area 60B) with more than 200 shellfish pots in the aggregate. It shall be unlawful for any group of persons using the same vessel to take or fish for crab for commercial purposes in Grays Harbor with more than 200 shellfish pots.

(12) **Coastal crab pot limit.**

(a) It is unlawful for a person to take or fish for Dungeness crab for commercial purposes in Grays Harbor, Willapa Bay, the Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington unless a ~~((shellfish))~~ crab pot limit has been assigned to the Dungeness crab ~~((-))~~ coastal fishery license held by the person, or to the equivalent Oregon or California Dungeness crab fishery license held by the person.

(b) It is unlawful for a person to deploy or fish more shellfish pots than the number of shellfish pots assigned to the license held by that person, and it is unlawful to use any vessel other than the vessel designated on a license to operate or possess shellfish pots assigned to that license.

(c) It is unlawful for a person to take or fish for Dungeness crab or to deploy ~~((shellfish))~~ crab pots unless the person is in possession of valid documentation issued by the department that specifies the ~~((shellfish))~~ crab pot limit assigned to the license.

(13) **Determination of coastal crab pot limits.**

(a) The number of ~~((shellfish))~~ crab pots assigned to a Washington Dungeness crab ~~((-))~~ coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license will be based on documented landings of Dungeness crab taken from waters of the Pacific Ocean south of the United States/Canada border and west of the Bonilla-Tatoosh line, and from coastal estuaries in the states of Washington,

Oregon, and California. Documented landings may be evidenced only by valid Washington state shellfish receiving tickets, or equivalent valid documents from the states of Oregon and California, ~~(that)~~ which show Dungeness crab were taken between December 1, 1996, and September 16, 1999. Such documents must have been received by the respective states no later than October 15, 1999.

(b) The following criteria shall be used to determine and assign a ~~((shellfish))~~ crab pot limit to a Dungeness crab ~~(-)~~ coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license:

(i) The three "qualifying coastal Dungeness crab seasons" are from December 1, 1996, through September 15, 1997~~((;))~~; from December 1, 1997, through September 15, 1998~~((;))~~; and from December 1, 1998, through September 15, 1999. Of the three qualifying seasons, the one with the most poundage of Dungeness crab landed on a license shall determine the crab pot limit for that license. A crab pot limit of 300 shall be assigned to a license with landings that total from zero to 35,999 pounds and a crab pot limit of 500 shall be assigned to a license with landings that total 36,000 pounds of crab or more.

(ii) Landings of Dungeness crab made in the states of Oregon or California on valid Dungeness crab fisheries licenses during a qualifying season may be used for purposes of assigning a ~~((shellfish))~~ crab pot limit to a Dungeness crab fishery license, provided that documentation of the landings is provided to the department by the Oregon Department of Fish and Wildlife and/or the California Department of Fish and Game. Landings of Dungeness crab made in Washington, Oregon, and California on valid Dungeness crab fishery licenses during a qualifying season may be combined for purposes of assigning a ~~((shellfish))~~ crab pot limit, provided that the same vessel was named on the licenses, and the same person held the licenses. A ~~((shellfish))~~ crab pot limit assigned as a result of combined landings is invalidated by any subsequent split in ownership of the licenses. No vessel named on a Dungeness crab fishery license shall be assigned more than one ~~((shellfish))~~ coastal crab pot limit.

(14) **Appeals of coastal crab pot limits.** An appeal of a ~~((shellfish))~~ crab pot limit by a coastal commercial license holder shall be filed with the department on or before October 18, 2001. The shellfish pot limit assigned to a license by the department shall remain in effect until such time as the appeal process is concluded.

(15) **Coastal - Barging of crab pots by undesignated vessels.** It is ~~((lawful))~~ unlawful for a vessel not designated on a Dungeness crab ~~(-)~~ coastal fishery license to be used to deploy ~~((shellfish))~~ crab pot gear ~~((provided that))~~ except as prescribed below:

(a) Such a vessel may not carry ~~((aboard))~~ on board more than 250 ~~((shellfish))~~ crab pots at any one time.

(b) Such a vessel may deploy ~~((shellfish))~~ crab pot gear only during the 64-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date.

(c) The ~~((lawful owner))~~ primary or alternate operator of the ~~((shellfish))~~ crab pot gear named on the license associated with the gear must be ~~((aboard))~~ on board the vessel when the

gear is being deployed. Violation of this section is punishable under RCW 77.15.500.

(16) **Coastal crab buoys - Registration and use of buoy brands and colors.**

(a) It is unlawful for any coastal Dungeness crab fishery license holder to fish for crab unless the license holder has registered the buoy brand and buoy color(s) to be used with the license. A license holder shall be allowed to register with the department only one, unique buoy brand and one buoy color scheme per license. Persons holding more than one state license ~~((state))~~ shall register buoy color(s) for each license that are distinctly different. The buoy color(s) shall be shown in a color photograph. Violation of this section is punishable under RCW 77.15.520.

(b) It is unlawful for a coastal Dungeness crab fishery license holder to fish for crab using any other buoy brand or color(s) than those registered with and assigned to the license by the department. Violation of this section is punishable under RCW 77.15.520.

WSR 09-18-079

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed August 31, 2009, 10:56 a.m., effective October 1, 2009]

Effective Date of Rule: October 1, 2009.

Purpose: The department is amending WAC 388-450-0175 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 as mandated by ESHB 1244, chapter 564, as passed the legislature in 2009.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0175.

Statutory Authority for Adoption: RCW 74.04.266, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510.

Other Authority: Chapter 564, Laws of 2009 (ESHB 1244).

Adopted under notice filed as WSR 09-15-160 on July 21, 2009.

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

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

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

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

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

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: August 28, 2009.

Stephanie E. Vaughn
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 09-18-086

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed September 1, 2009, 8:16 a.m., effective October 2, 2009]

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

Purpose: This rule making order amends WAC 16-470-105 Area under order for apple maggot—Pest free area—Quarantine areas, by modifying [modifying] the apple maggot pest-free area boundary in Kittitas County.

Citation of Existing Rules Affected by this Order: Amending WAC 16-470-105.

Statutory Authority for Adoption: Chapters 17.24 and 34.05 RCW.

Adopted under notice filed as WSR 09-15-176 on July 22, 2009.

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

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

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

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

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

Date Adopted: September 1, 2009.

Dan Newhouse
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 09-18-098
PERMANENT RULES
SECRETARY OF STATE
(Elections Division)

[Filed September 1, 2009, 2:02 p.m., effective October 2, 2009]

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

Purpose: Rules necessary to implement new legislation passed by the 2009 Washington state legislature.

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.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-208-040, 434-215-080, 434-260-120, 434-260-165, 434-260-170, 434-260-330, 434-260-340, 434-324-075, 434-324-100, 434-324-190, 434-324-200, 434-324-210, 434-324-220, 434-324-230, 434-324-240, 434-324-250 and 434-324-260; and amending WAC 434-215-020, 434-219-190, 434-230-015, 434-235-020, 434-235-030, 434-260-010, 434-260-020, 434-260-040, 434-260-110, 434-260-145, 434-260-150, 434-260-155, 434-260-160, 434-260-305, 434-260-310, 434-261-005, 434-261-086, 434-264-020, 434-324-005, 434-324-008, 434-324-010, 434-324-040, 434-324-045, 434-324-085, 434-324-090, 434-324-095, 434-324-106, 434-324-113, 434-324-130, and 434-324-165.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 09-15-021 on July 6, 2009.

Changes Other than Editing from Proposed to Adopted Version: In the new WAC 434-215-040, the word "set" was changed to "sent."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 10, Repealed 12.

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 23, Repealed 6.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 4.

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

Date Adopted: September 1, 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 _____))

<i>Filing Data For Office Use Only</i>			
Date _____	Fee Paid \$ _____	Filing No. _____	Precinct # _____
Paid by: <input type="checkbox"/> Check <input type="checkbox"/> 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))

<i>Filing Data For Office Use Only</i>			
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 sent 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 to 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.

~~((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 precinct 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 ((+)) 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 pat-

tern 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 ~~((#))~~ 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(;

~~((#))~~ 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 ~~((#))~~ 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 ~~((#))~~ 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 post-mark 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.seestate.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.

~~((2))~~ (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.

Date Adopted: September 2, 2009.

Eva N. Santos
Director

WSR 09-18-112
PERMANENT RULES
DEPARTMENT OF PERSONNEL

[Filed September 2, 2009, 8:52 a.m., effective December 3, 2009]

Effective Date of Rule: December 3, 2009.

Purpose: ESSSB [E2SSB] 5688 passed during the 2009 legislative session. This bill states that agencies shall amend their rules to grant or impose all privileges, immunities, rights, benefits, or responsibilities granted or imposed by statute to an individual because they are a spouse in a marital relationship are to be granted or imposed on equivalent terms to an individual because that individual is in a state registered domestic partnership.

Note: Referendum 71 has qualified for the November 3, 2009, general election ballot. If voted into law, R-71 will be effective thirty days after the election. Therefore, we are changing the effective date of this order to December 3, 2009 (thirty days after the election). If it is not voted into law, we will do an emergency amendment of this order following the election.

Citation of Existing Rules Affected by this Order: Amending WAC 357-01-172, 357-01-228, 357-01-282, 357-16-110, 357-31-070, 357-31-130, 357-31-200, 357-31-285, and 357-31-327.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 09-14-130 on July 1, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 9, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 9, Repealed 0.

WSR 09-18-113
PERMANENT RULES
DEPARTMENT OF PERSONNEL

[Filed September 2, 2009, 8:54 a.m., effective December 3, 2009]

Effective Date of Rule: December 3, 2009.

Purpose: ESSSB [E2SSB] 5688 passed during the 2009 legislative session. This bill states that agencies shall amend their rules to grant or impose all privileges, immunities, rights, benefits, or responsibilities granted or imposed by statute to an individual because they are a spouse in a marital relationship are to be granted or imposed on equivalent terms to an individual because that individual is in a state registered domestic partnership.

Note: Referendum 71 has qualified for the November 3, 2009, general election ballot. If voted into law, R-71 will be effective thirty days after the election. Therefore, we are changing the effective date of this order to December 3, 2009 (thirty days after the election). If it is not voted into law, we will do an emergency amendment of this order following the election.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-330, 357-31-373, 357-31-525, 357-31-395, 357-31-567, 357-46-060, 357-58-475, 357-31-535, 357-31-520, and 357-31-230.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 09-14-129 on July 1, 2009.

Changes Other than Editing from Proposed to Adopted Version: WAC 357-31-525 added language to include subsequent regulations for FMLA eligibility. WAC 357-31-520 and 357-31-535 changed language to clarify FMLA for a registered domestic partner is not counted towards the twelve week FMLA entitlement.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 10, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 10, Repealed 0.

Date Adopted: September 2, 2009.

Eva N. Santos
Director

WSR 09-18-115
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed September 2, 2009, 9:08 a.m., effective October 3, 2009]

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

Purpose: This rule-making order amends chapter 16-354 WAC, Hop rootstocks—Certification, 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.

Citation of Existing Rules Affected by this Order: Amending WAC 16-354-005, 16-354-010, 16-354-020, 16-354-030, 16-354-040, 16-354-050, 16-354-070, 16-354-090, and 16-354-100.

Statutory Authority for Adoption: Chapters 15.14 and 34.05 RCW.

Adopted under notice filed as WSR 09-15-177 on July 22, 2009.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 9, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 9, Repealed 0.

Date Adopted: September 2, 2009.

Dan Newhouse
 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. ((+)) "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.

"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 moderately 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.

"Iilar 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.~~

~~((e)) (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.~~~~

~~((f)) (6) A ((certified)) registered mother block must be kept free of hop hullings at all times.~~

~~((g)) (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.~~

~~((h)) (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.~~~~

~~((i)) (9) Plant pests and weeds must be effectively controlled.~~

~~((j)) (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
<u>Arabis mosaic viruses</u>	<u>0</u>
<u>Hop stunt viroid</u>	<u>0</u>

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 09-18-116

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed September 2, 2009, 9:10 a.m., effective October 3, 2009]

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

Purpose: This rule-making order amends chapter 16-497 WAC, Hop disease quarantine, by (1) 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 (2) revising the current language to make it more clear and readable and to reflect current industry practices.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-497-060; and amending WAC 16-497-005, 16-497-020, 16-497-030, and 16-497-050.

Statutory Authority for Adoption: Chapters 17.24, 15.14, and 34.05 RCW.

Adopted under notice filed as WSR 09-15-180 on July 22, 2009.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 1.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 1.

Date Adopted: September 2, 2009.

Dan Newhouse
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) "Iilar 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 nettle-head 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.~~

~~"Iilar 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 Iilar 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.